



W.P.(MD).No.13576 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.S. SUNDAR
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

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Mari

... Petitioner

Vs.

- 1.The Government of Tamil Nadu
through its Secretary to the Government,
Revenue and Disaster Management,
Secretariat,
Fort St. George,
Chennai -9.
- 2.The Commissioner of Land Administration,
Ezhilagam,
Chepauk,
Chennai -5.
- 3.The District Collector,
Madurai,
Madurai District.
- 4.The Assistant Engineer,
Water Resources Department,
Irrigation Section No.2 (I/C),
Periyar Vaigai Basin Sub Division No.1,
Madurai.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned Form III notice passed by the fifth respondent, dated 03.06.2022 and quash the same.

For Petitioner : No appearance

For Respondents : Mr.J.Ashok

Additional Government Pleader

ORDER

(Order of the Court was made by S.S.SUNDAR.J.,)

The petitioner has challenged the impugned Form III notice issued by the fifth respondent, dated 03.06.2022, under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007.

2. There is no representation for the petitioner.

3. The case of the petitioner is that the petitioner is in enjoyment of a small extent of land in Survey No.748 for a long time along with his family members and obtained electricity service connection. The fifth respondent has issued a notice, directing the petitioner to vacate the premises under the pretext that the petitioner has encroached into the water body. Thereafter, the petitioner



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has submitted his objections.

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4. It is the grievance of the petitioner that without passing any order on the representation of the petitioner, the fifth respondent has now issued the impugned Form III notice under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007.

5. This Court, in the case of *R.Gurusamy vs. State of Tamil Nadu* in W.P.(MD).No.11825 of 2022, dated 15.06.2022, passed an order in the following lines:

*“9.The Division Bench of this Court in the case of **T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in 2010 (3) MLJ 771, held that the encroachment should be identified after conducting survey. The Hon'ble Supreme Court in **Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]** has held that such survey to identify encroachment shall be done in the presence of the persons, who are interested or the persons, who are found to be encroachers. However, the respondents have not taken care to comply with the directions of this Court. Hence, the impugned Form-III notice, dated 03.06.2022, which is contrary to the statute as held by the Division Bench of this Court, is set aside.”*



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6. In this case also no survey was conducted, after issuing notice to the petitioner. Hence, the impugned Form III notice, dated 03.06.2022 is quashed. However, liberty is given to the fifth respondent to conduct a survey, after issuing notice to the petitioner or any other encroacher and pass orders, after considering the objections and representation of the petitioner.

7. The 5th respondent may require the assistance of the 4th respondent to conduct a survey, after issuing notice to the petitioner and the fifth respondent. After getting a report from the Tahsildar, demarcating the encroached area, pursuant to the survey conducted, in the presence of encroachers, the fifth respondent shall issue a show cause notice to the petitioner and others and pass final orders with regard to the removal of encroachment, considering the representation and the objections of the petitioner, in response to the show cause notice issued to the petitioner.

8. With the above directions, this Writ Petition is disposed of. No costs.

**[S.S.R.J.] [S.S.Y.J.,]
29.06.2022**

Index : Yes / No
Internet: Yes / No
akv



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