



W.P.(MD)No.14093 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2022

CORAM:

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

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E.Esakikonar

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District.

2.The Tahsildar,
Nanguneri Taluk,
Tirunelveli District.

3.The Special Officer/Block Development Officer,
Shenbagaramanallur Village Panchayat,
Nanguneri Taluk,
Tirunelveli District.

4.The Village Administrative Officer,
Shenbagaramanallur Village,
Nanguneri Taluk,
Tirunelveli District.

5.Sudalaimuthu @ Gopal

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 to remove the encroachment made by the 5th respondent in S.No.932/6



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& 932/4 of Nochikulam, Shengabagaramanallur Village, Nanguneri Taluk, Tirunelveli District classified as Odai and Government land respectively by passing final orders in the proceedings initiated for removal of encroachment in Na.Ka.Aa8/2967/2020 dated 23.10.2020 within the time fixed by this Hon'ble Court.

For Petitioner : Mr.H.Arumugam

For Respondents 1 to 4 : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

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

Alleging that the fifth respondent in the writ petition has encroached a portion of Survey No.932/6, which is classified as drainage channel, the above writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents 2 and 3 to remove the encroachment made by the fifth respondent in S.No. 932/6 & 932/4 of Nochikulam, Shengabagaramanallur Village, Nanguneri Taluk, Tirunelveli District classified as Odai and Government land respectively by passing final orders in the proceedings initiated for removal of encroachment in Na.Ka.Aa8/2967/2020 dated 23.10.2020 within a time frame.



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2. Heard Mr.H.Arumugam, learned counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader for the respondents 1 to 4. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. Having regard to the order proposed to be passed in this writ petition, notice to the fifth respondent is dispensed with.

4. Learned Additional Government Pleader appearing for respondents 1 to 4 submits that the encroachment is found only in S.No.932/6, which is classified as a drainage channel. Since the property vests with the local body, it is stated by learned Additional Government Pleader that no action is initiated either under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 or by resorting to Tamil Nadu Land Encroachment Act, 1905.

5. From the records, it is found that there is some encroachment. However, the question is whether the encroachers were put on notice before conducting survey is not revealed from the records produced. This Court has already held that the property,



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even if it is classified as waterbody, which comes under the control of local body, Section 131 of the Tamil Nadu Panchayat Act, 1994 does not give the power to the local body to remove the encroachment by force.

6. In view of the above, this Court is disposing of the Writ Petition in the following lines:-

(i) The second respondent is directed to conduct survey afresh either in the presence or after issuing notice to the petitioner, 5th respondent or any other encroacher, who is found to have encroached the public land.

(ii) If the 5th respondent or any one is found to have encroached the water body, after survey and demarcation of boundary, it is open to the second respondent Tahsildar to initiate proceedings under the provisions of Tamil Nadu Land Encroachment Act, 1905.

(iii) It is made clear that show cause notice as contemplated under Section 7 of Tamil Nadu Land Encroached Act, 1995, shall be served on the 5th respondent, if he is found to be an encroacher. It is only after hearing the objections or representation in response to the show cause notice, final order shall be passed



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within a reasonable time.

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(iv) The second respondent is directed to complete the process of eviction, in case of encroachment, within a period of twelve weeks from the date of receipt of a copy of this order.

(v) A report of action taken shall be submitted to the first respondent District Collector with a copy marked to the local body.

No costs.

[S.S.S.R., J.] [S.S.Y., J.]
04.07.2022

Index : Yes / No

sj

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