



W.P.(MD)No.14213 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2022

CORAM

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

W.P(MD)No.14213 of 2022 and
W.M.P(MD)No.10157 of 2022

The Pentecostal Mission Society,
represented by its Manager-cum-Officer of the Society,
Yobu Samuel, Chennai-600 063. ... Petitioner

Vs.

- 1.The Assistant Engineer,
Public Works Department /
Water Resources Organisation,
Parthibanoor Mathaganai Division,
Paramakudi, Ramanathapuram District.
- 2.The Tahsildar,
Paramakudi, Ramanathapuram District.
- 3.The Block Development Officer (Village Panchayats) /
the Commissioner of Panchayat Union,
Paramakudi, Ramanathapuram District.
- 4.The Inspector Police,
Paramakudi, Ramanathapuram District. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the first respondent, Assistant Engineer, Public Works Department / Water Resources Organization, Paramakudi in Letter No.15/2022/U.Pe.Ma.Parama, dated 21.06.2022 and to quash the same as illegal.



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For Petitioner :Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

For R1, R2 and R4:Mr.J.Ashok
Additional Government Pleader

For R3 :Mr.T.Amjad Khan
Government Advocate

ORDER

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

Challenging the impugned notice as well as Form III notice, dated 21.06.2022, issued by the first respondent, the above Writ Petition is filed.

2.Heard Mr.Isaac Mohanlal, learned Senior Counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader, who takes notice for R1, R2 and R4 and Mr.T.Amjad Khan, learned Government Advocate, who takes notice for the third respondent. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The petitioner states that the petitioner society is a Religious Charitable Society. On the basis of sale deeds stated to have been



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obtained by them in respect of S.Nos.225/1A, 407/7 and 407 /8 at Urapuli Village, Paramakudi Taluk, Ramanathapuram District, the petitioner claims title to the property. However, the petitioner received the impugned notice in Form-III from the first respondent dated 21.06.2022 calling upon the petitioner to remove the encroachment in specific extent in S.Nos.225 and 236. Though the notice is issued under Section 6 of the Tamil Nadu Protection of Tanks and Eviction Encroachments Act, 2007, the classification of the land is shown as Government poramboke.

4.The grievance of the petitioner is that the first respondent, without conducting a survey in the presence of the petitioner, has issued the impugned notice in Form-III notice under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment, 2007.

5.This Court in the case of ***Gurusamy vs the Government of Tamil Nadu and others, in W.P.(MD)No.11825 of 2022***, held as follows:

“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 view of the same, the impugned order, as such, without even conducting a survey and demarcating the encroachment in the presence of the petitioner, is invalid. Hence, the impugned order as well as Form-III, dated 21.06.2022 are hereby quashed and the Writ Petition is allowed with the following directions:

(1) Since it is stated that the water body, in which the petitioner is stated to have been encroached, is under the control of the Public Works Department, the second respondent is directed to conduct a survey after issuing notice to the petitioner or anyone, who is interested. After considering the document of title deeds, that may be produced by the petitioner, the second respondent is directed to draw a report indicating whether the petitioner is in encroachment of any portion of the water body and send the said report to the first respondent. The entire exercise shall be completed by the second respondent within a period of six weeks from the date of receipt of a copy of this order. The second respondent may also furnish the copy of revenue records to show that the encroached portion is a water body.

(2) The first respondent is directed to initiate appropriate proceedings after following the procedure and after giving an opportunity to the petitioner. In case, if there is any encroachment by



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the petitioner, it is made clear that the first respondent shall pass final orders after considering the objections/representation of the petitioner. The first respondent shall complete the entire proceedings within a period of eight weeks from the date of receipt of a report from the second respondent.

No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
05.07.2022

Index : Yes / No

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