



W.P(MD)No.15955 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2022

CORAM

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

**W.P(MD)No.15955 of 2022
and
W.M.P(MD).Nos.11517 and 11518 of 2022**

Nallathambi

... Petitioner

Vs.

- 1.The District Collector
Sivagangai District,
Sivagangai.
- 2.The District Revenue Officer,
Sivagangai District,
Sivagangai.
- 3.The Superintending Engineer,
Water Resource Organization,
Public Works Department,
Sivagangai District,
Sivagangai.
- 4.The Assistant Engineer,
Water Resource Organization,
Irrigation Section-I,
Public Works Department,
Thiruppuvanam,
Sivagangai District.



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5. The Tahsildar,
Thiruppuvanam Taluk,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the fourth respondent herein dated 07.06.2022 made under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and to quash the same as illegal.

For Petitioner : Mrs.A.L.Ganthimathi
for Mr.S.Balakarthick

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

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

Heard Mrs.AL.Ganthimathi, learned counsel appearing for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the respondents.

2. This Writ Petition has been filed for issuance of a writ of Certiorari, to call for the records pertaining to the notice issued by the fourth respondent herein dated 07.06.2022 under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and quash



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the same as illegal.

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3. The learned counsel appearing for the petitioner states that the father of the petitioner owned ancestral lands in Survey Nos.58/5, 58/7, 58/12 and 58/14 of Ladanendhal Village, Sivagangai District. The land measuring 21 ½ out of 43 cents in S.No.58/6 of Ladanendhal Village, was purchased by his father by a registered sale deed, dated 30.04.1996. His father, by a registered Will, bequeathed the house property and the lands in S.Nos.58/5, 58/6 and 58/12 in favour of his grandchildren. It is stated that the properties are in the joint enjoyment of the petitioner and his brother. While so, the petitioner has received a communication, dated 02.06.2022 from the fourth respondent herein claiming that he had encroached the land in Survey No.57/1.

4. It is not in dispute that Survey No.57/1 is a water body, namely, Ladanendhal Kanmoi. Though the petitioner has not claimed any title or right over any portion of Survey No.57/1, notice was issued by the fourth respondent that the petitioner has encroached into a portion of Ladanendhal Kanmoi in Survey No.57/1. Stating that the petitioner was not given any opportunity before issuance of notice, this writ petition has



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been filed mainly on the ground that it is in violation of the principles of natural justice.

5. The learned Additional Government Pleader, on instructions, submits that the fourth respondent has issued notice in Form-III, directing the petitioner to remove the encroachment. However, the learned Additional Government Pleader fairly admits that no survey was conducted in the presence of the petitioner before initiating action for removal of encroachment.

6. This Court has reiterated the requirement of observance of the principles of natural justice at every stage of the eviction proceedings. Following the judgment of the Hon'ble Supreme Court in the case of ***Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]***, this Court has also directed the Authorities under the relevant Statutes to conduct survey before identifying the encroachment (i.e.,) while initiating eviction proceedings, there must be a survey in the presence of the encroacher to identify the extent and the manner of the encroachment. It is admitted in this case that no survey was conducted before issuance of notice, in the presence of the petitioner. Therefore, the impugned order



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passed by the fourth respondent herein, dated 07.06.2022 is liable to be quashed. However, having regard to the further submission of the learned counsel appearing for the petitioner with regard to the other survey fields which are also the subject matter of the eviction proceedings, this Court is inclined to consider the following aspects.

7. The petitioner has stated that the lands in Survey Nos.58/5, 58/7, 58/12 and 58/14 are ancestral lands, on the basis of the registered Will, which is stated to have been executed by his father. It is to be noted that the petitioner has not produced any documents, like, Patta, Chitta and Adangal in respect of other survey numbers. Even though the petitioner has produced the sale deeds in respect of an extent of 31.5 cents in Survey No.58/6, Survey No.58/6 is not the subject matter of the eviction proceedings. However, the notice issued by the fourth respondent herein indicates that Survey Nos.58/7, 58/12 and 58/14, are also referred to as part of Ladanendhal Kanmoi. The Survey Land Register produced by the petitioner is not a settlement Register. Therefore, this Court is unable to ascertain the character of the land in respect of the above three survey numbers. It is open to the petitioner to establish his title in respect of Survey Nos.58/7, 58/12 and 58/14 before the Civil Court. The fifth



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respondent is directed to conduct survey, after issuance of notice to the petitioner and other encroachers to ascertain the manner and extent of encroachment in the water body. After the report of the fifth respondent, it is open to the fourth respondent to initiate action, after issuance of the show cause notice as held by the Hon'ble Division Bench of this Court in the case of ***T.S.Senthil Kumar vs. Government of Tamil Nadu*** reported in ***2010 (3) MLJ 771***.

8. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
28.07.2022

Index :Yes/No
Internet :Yes
ssb



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To

- 1.The District Collector
Sivagangai District,
Sivagangai.
- 2.The District Revenue Officer,
Sivagangai District,
Sivagangai.
- 3.The Superintending Engineer,
Water Resource Organization,
Public Works Department,
Sivagangai District,
Sivagangai.
- 4.The Assistant Engineer,
Water Resource Organization,
Irrigation Section-I,
Public Works Department,
Thiruppuvanam,
Sivagangai District.
- 5.The Tahsildar,
Thiruppuvanam Taluk,
Sivagangai District.



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S.S.SUNDAR, J.
AND
S.SRIMATHY, J.

ssb

ORDER MADE IN
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