



W.P.(MD)Nos.17717 and 17728 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :08.08.2022

CORAM:

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

W.P.(MD)Nos.17717 and 17728 of 2022
and
W.M.P(MD)Nos.12908, 12909, 12918 and 12919 of 2022

Sathasivan

... Petitioner in both W.Ps

Vs

1. The State of Tamil Nadu,
Rep. by District Collector, Kanyakumari
District, Nagercoil.

2. The Executive Engineer,
Public Works Department (WRO),
Kothaiyaru Basin Division, Nagercoil,
Kanyakumari District.

3. The Assistant Executive Engineer,
Public Works Department (WRO),
Kothaiyaru Basin Division,
Cheruppalloor, Kulasekaram Post,
Kanyakumari District.

... Respondents

Prayer in W.P(MD)No.17717 of 2022: Writ Petition filed under Article 226 of
Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for



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the entire record pertaining to impugned order dated 13.06.2022 passed by the 3rd respondent and quash the same as illegal and consequently direct the 3rd respondent to follow the procedure laid down in Tamil Nadu Land Encroachment Act, 1905 as well as to consider the petitioners objections, before issuing notice under Rule 5 (3) of Tamil Nadu Land Encroachment Act, 1905.

Prayer in W.P(MD)No.17728 of 2022: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire record pertaining to impugned order dated 11.07.2022 passed by the 3rd respondent and quash the same as illegal and consequently direct the 3rd respondent to follow the procedure laid down in Tamil Nadu Land Encroachment Act, 1905 as well as to consider the petitioners objections, before issuing notice under Rule 6 (1) of Tamil Nadu Land Encroachment Act, 1905.

(In Both W.Ps)

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.J.Ashok,
Additional Government Pleader

COMMON ORDER

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

Challenging the eviction proceedings initiated by the third respondent under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, the above writ petitions are filed.



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2. Heard Mr.P.M.Vishnuvarthanan, learned counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader, who takes notice for the respondents.

3. Brief facts that are necessary for the disposal of this writ petitions are as follows:

The petitioner states that he is a resident of Ponmanai village and has put up a residential house which according to him is the property given to the petitioner in the family partition that took place on 08.03.1990. The petitioner would also contend that the temple constructed by the petitioner's predecessor in interest as their family deity was in existence for more than 75 years near his property and that, at the instance of some Christian machinery who made an attempt to purchase the property adjacent to the petitioner's property, the third respondent issued the impugned notices, dated 13.06.2022 in Form - II and dated 11.07.2022 in Form – III.

4. The grievance of the petitioner is that the petitioner was not put on notice before conducting any survey and that the third respondent has assumed encroachment without an actual survey demarcating the encroached land and the patta land of the petitioner.



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5. Following the judgment of the Honourable Supreme Court in

Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379] and the judgment of the Division Bench of this Court in ***T.S.Senthil Kumar vs. Government of Tamil Nadu [2010 (3) MLJ 771]***, this Court in the case of ***R.Gurusamy vs. Government of Tamil Nadu and others*** in ***W.P(MD)No.11825 of 2022***, has observed as follows:

*“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.*

10.However, liberty is given to the fifth respondent to make arrangements for survey/demarcation in the presence of the petitioner and to proceed further. After such survey, even if the survey report reveals that any portion of the petitioner's



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construction is encroaching into any part of the water body, the petitioner is entitled to be heard before passing an order, after conducting the survey as directed by this Court in the decisions referred to supra.

11.As pointed out earlier, before conducting survey, the fifth respondent shall issue a notice as to the date and time on which, such survey will be conducted. This Writ Petition is allowed accordingly.”

6. The learned Additional Government Pleader on instructions submitted that though survey was conducted by the Tahsildar on the basis of revenue records, the petitioner was not put on notice before conducting such survey.

7. In the said circumstances, this Court is inclined to hold that the impugned orders/notices in Form – II, dated 13.06.2022 and in Form -III, dated 11.07.2022, purported to have been issued under Section 5(3) and 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, are liable to be quashed. However, the third respondent is directed to conduct survey by inviting the Tahsildar concerned namely, the Tahsildar, Thiruvattar Taluk along with Taluk Surveyor. Before conducting survey, the Tahsildar, is directed to issue a notice to the petitioner informing him well in advance at



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least giving him a weeks time calling upon him to appear at the time of survey.

The Surveyor shall give a report to the petitioner as well as the third respondent. It is thereafter, the third respondent shall issue notice in Form – II. After getting explanation, the third respondent shall also issue a notice in Form – III after considering the objections if any that may be raised by the petitioner.

8. With the above directions, these writ petitions are disposed of.

No Costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
08.08.2022

Index : Yes / No

pm

To:

1.The District Collector,
Kanyakumari District,
Nagercoil.

2. The Executive Engineer,
Public Works Department (WRO),
Kothaiyaru Basin Division, Nagercoil, Kanyakumari District.

3. The Assistant Executive Engineer,
Public Works Department (WRO),
Kothaiyaru Basin Division,
Cheruppalaor, Kulasekaram Post,
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