



W.P.(MD)No.17890 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :10.08.2022

CORAM:

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

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... Petitioner

Vs

1. The District Collector,
Madurai District Collector Office,
Madurai-625002.

2. The Tahsildar,
Madurai South Taluk Office,
Madurai-625002.

3. The Executive Engineer,
Public Work Department,
Water Resource Offices,
Gundar Basin Division,
Madurai-625002.

4. The Accidents Engineer,
Public Work Department,
Water Resource Offices,
Gundar Basin Division,
Madurai-625002.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records relating the impugned order passed by the 4th respondent proceedings dated 11.07.2022 and quash same as illegal and consequently to direct the respondents 1 to 3 to consider the petitioner required as regarding to alert the alternative place within the Jurisdiction of South Taluk at Madurai District.

For Petitioner	: Mr.K.Suresh
For Respondents	: Mr.N.Satheesh Kumar, Additional Government Pleader

ORDER

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

This writ petition is filed challenging the notice issued in Form – III under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

2. Heard Mr.K.Suresh, learned counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader, who takes notice for the respondents.



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3. It is the case of the petitioner that he is residing in Survey No.159 in Virathanoor Village, Sathyaa Nagar, Madurai South Taluk, Madurai District. Stating that the petitioner is residing there from his birth and that, he has put up construction for his residential house to live with his family, the petitioner states that he is entitled to get alternate accommodation before evicting from the water body. The petitioner in the whole affidavit does not dispute the fact that he has encroached in the water body as per the notice. In the impugned notice, it is stated that the petitioner has encroached an extent of 36 sq. ft. of water body known as Kirudhumaal river. The petitioner has put up a tiled house in the encroached portion as per the impugned notice. Therefore, the petitioner is directed to vacate the place pursuant to the notice in Form – III.

4. The learned counsel appearing for the petitioner though admitted that he has encroached the water body, submitted that the petitioner who is in possession of the property and residing there for several decades, has a special right which according to him is protected.



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5. It is the further contention of the learned counsel appearing for the petitioner that the petitioner has given a representation for alternative site. Since there was no response from the official respondents, it is stated by the learned counsel that the petitioner cannot be evicted without providing an alternative accommodation to the petitioner. Having regard to the above facts and circumstances of the case, this Court is unable to entertain this writ petition. The petitioner is under a misconceived notion.

6. This Court and the Honourable Supreme Court, have repeatedly held that every water body in this country has to be protected. An encroacher of water body cannot claim a privilege or right by virtue of his long enjoyment. When the petitioner was not permitted by any instrumentality of State to occupy, there is no question of pleading estoppel. The petitioner has encroached into a water body knowing fully well about the character of land and the fact that the water body is meant for public. As a matter of fact, the encroached portion is part of water course. Merely because the petitioner was in enjoyment for few decades and has put up some constructions for residential house, that will not



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give him right except the right under Article 300 A of the Constitution of India. It is not disputed that procedure contemplated under the Statute is followed before passing an order of eviction. Further, the petitioner, who has admitted his encroachment cannot claim alternative accommodation. Hence, this writ petition is liable to be dismissed.

7. In the result, this writ petition is dismissed. No Costs.

[S.S.S.R., J.] [S.S.Y., J.]
10.08.2022

Index : Yes / No

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