



W.P.(MD)Nos.18006 to 18010 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2022

CORAM

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

W.P.(MD)Nos.18006 to 18010 of 2022

and

W.M.P.(MD)Nos.13152 to 13154, 13156 and 13157 of 2022

S.Krishnan	... Petitioner in W.P.(MD) No.18006/2022
S.Muniasamy	... Petitioner in W.P.(MD) No.18007/2022
U.Sathya	... Petitioner in W.P.(MD) No.18008/2022
R.Karikalan	... Petitioner in W.P.(MD) No.18009/2022
C.Poongundran Ganesh Krishnan	... Petitioner in W.P.(MD) No.18010/2022

Vs.

- 1.The District Collector,
Sivagangai District,
Sivagangai.
- 2.The Tahsildar,
Ilayankudi Taluk,
Sivagangai District.
- 3.The Executive Officer,
Salaigramam Village Panchayat,
Salaigramam Post,
Ilayankudi Taluk,
Sivagangai District.



W.P.(MD)Nos.18006 to 18010 of 2022

4.The Revenue Inspector,
Salaigramam,
Ilayankudi Taluk,
Sivagangai District.

5.The Village Administrative Officer,
Salaigramam,
Ilayankudi Taluk,
Sivagangai District.

... Respondents in all the writ petitions

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent to dispose of the appeal dated 16.07.2022 filed by the petitioner within a time stipulated by this Hon'ble Court.

For Petitioner in all the : Mr.M.P.Senthil
Writ Petitions

For Respondents 1, 2, 4 : Mr.T.Amjadkhan
& 5 in all the Writ Government Advocate
Petitions

For 3rd Respondent in all : Mr.J.Ashok
the Writ Petitions Additional Government Pleader

* * *

COMMON ORDER

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

These Writ Petitions have been filed by the same set of writ petitioners, who have earlier filed Writ Petitions in W.P.(MD) Nos. 12939 of etc., batch cases challenging the order / notice dated 15.06.2022, for removal of encroachment by initiating proceedings under Section 131(2) of the Tamil Nadu Panchayats Act, 1994.



W.P.(MD)Nos.18006 to 18010 of 2022

2. Since the encroachment is in respect of a water body following judgments of earlier Division Bench, this Court in the said Writ Petitions held that the local body is not competent to deal with the encroachment on water bodies and such encroachment shall be dealt with by the Revenue Officials by invoking provisions of the Tamil Nadu Land Encroachment Act, 1905.

3. The relevant portion of the common order dated 22.06.2022 made in W.P.(MD) Nos.12939 to 12943 and 12978 to 12982 of 2022 is extracted hereunder:-

“9.However, the encroachment in water bodies cannot be permitted. Therefore, the impugned notices issued by the sixth respondent are quashed and the third respondent is directed to follow the procedure, as contemplated under the Tamil Nadu Land Encroachment Act. It is not in dispute that the petitioners have encroached the land in S.No.350, which is classified as oorani. Therefore, there is no dispute that the entire building in which the petitioners are in occupation falls within the water body. Therefore, there is no requirement of survey



W.P.(MD)Nos.18006 to 18010 of 2022

or demarcation of the encroachment in this case, as directed by this Court in the case of ***T.S.Senthil Kumar vs. Government of Tamil Nadu*** reported in ***2010 (3) MLJ 771***, and by this Court following the judgment of Honourable Supreme Court in the case of ***Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]***. However, the procedure contemplated under the Land Encroachment Act shall be strictly followed by the third respondent while removing the encroachment from the water body.

10.Considering the fact that the local body has no power or jurisdiction to initiate action for removal of encroachment in exercise of their power under Section 131(2) of the Act, this Court directs the third respondent to proceed further, as indicated in the judgment of Honourable Full Bench of this Court, referred to above. The Tahsildar, the third respondent, is granted eight weeks time to report this Court as to the removal of encroachment of petitioners and other encroachers.

11.It is noticed that the local body has also put up construction in the bund, which is not permissible and it is also contrary to the directions issued by the Honourable



WEB COPY



W.P.(MD)Nos.18006 to 18010 of 2022

Supreme Court. The local body or any Government Agency or statutory authority, who have encroached into or put up any construction in any land, which is classified as a water body, have to vacate and shift the building to some other place, so that the entire water body and bund or water catchment area, if any, which is also part of oorani, is available to the public serving the purpose, as a water body and they should be maintained, as a water body as per the direction of this Court.

12.With the above directions, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.Post the matter for reporting compliance on 24.08.2022.”

4. Pursuant to the said common order of this Court, disposing of those Writ Petitions, it appears that the respondents have passed final orders under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, directing the petitioners to remove the encroachments. It is stated that the petitioners in all these Writ Petitions preferred appeal before the first respondent – District



W.P.(MD)Nos.18006 to 18010 of 2022

Collector under Section 10 of the Tamil Nadu Land Encroachment Act, 1905.

5. Though this Court is unable to sustain the arguments of the learned counsel for the petitioner, considering his request that the petitioners may be given some time, this Court is inclined to direct the respondents not to take any coercive action pursuant to the notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 till such time the appeal filed by the petitioners under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 is decided by the District Collector, Sivagangai District on merits.

6. This Court has earlier directed the Tahsildar, Ilayankudi Taluk, Sivagangai District, to report compliance by 24.08.2022. Therefore, in all promptness the respondents have taken action in compliance of the directions issued by this Court. However, the grievance of the petitioner is that the respondents have not issued a show cause notice or a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 before issuing notice under Section 6 of the Act.



W.P.(MD)Nos.18006 to 18010 of 2022

7. It is in the said circumstances, this Court is inclined to dispose of the Writ Petition with the following directions:-

(i) The District Collector, Sivagangai District - 1st respondent is directed to consider the appeals filed by the petitioners dated 16.07.2022, under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 and pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

(ii) Till such time, the appeals preferred by the petitioners are disposed of, the respondents shall not forcibly evict the petitioners from the premises.

8. The Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

Index : Yes / No

sj

To

1.The District Collector,
Sivagangai District,
Sivagangai.



WEB COPY



W.P.(MD)Nos.18006 to 18010 of 2022

**S.S.SUNDAR, J.
and
S.SRIMATHY, J.**

sj

- 2.The Tahsildar,
Ilayankudi Taluk,
Sivagangai District.
- 3.The Executive Officer,
Salaigramam Village Panchayat,
Salaigramam Post,
Ilayankudi Taluk,
Sivagangai District.
- 4.The Revenue Inspector,
Salaigramam,
Ilayankudi Taluk,
Sivagangai District.
- 5.The Village Administrative Officer,
Salaigramam,
Ilayankudi Taluk,
Sivagangai District.

W.P.(MD)Nos.18006 to 18010 of 2022

10.08.2022