



W.P.(MD)No.19433 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2022

CORAM:

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

W.P(MD)No.19433 of 2022
and
W.M.P(MD)No.14179 of 2022

T.Kasi

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Through its Secretary to Government,
Revenue and Disaster Management,
Secretariat,
Fort St.George,
Chennai – 9.
- 2.The Commissioner of Land Administration,
Ezhilagam,
Chepauk,
Chennai -5.
- 3.The District Collector,
Madurai District,
Madurai.
- 4.The Tahsildar,
Madurai North Taluk,
Madurai.
- 5.The Assistant Engineer,
Water Resources Department,



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Irrigation Section No.II,
Madurai – 2.

6.The CSI Madurai Ramnad Diocese,
Represented by its Bishop,
162, East Velli Street,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned Form-III notice passed by the fifth respondent, dated 03.06.2022 and to quash the same.

For Petitioner : Mr.T.A.Ebenezer
For Respondents 1 to 5 : Mr.S.P.Maharajan
Special Government Pleader
For 6th Respondent : Mrs.Afritha Fathima
for M/s. Ajmal Associates

* * *

ORDER

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

This Writ Petition is filed challenging the Form-III notice issued by the fifth respondent, dated 03.06.2022, under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder.



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2. Heard Mr.T.A.Ebenezer, learned counsel for the petitioner, Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice on behalf of Respondents 1 to 5 and Mrs.Afritha Fathima, learned counsel, who accepts notice for the 6th respondent on behalf of M/s.Ajmal Associates. 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 impugned notice has been issued without following the procedures in accordance with law. It is also the case of the petitioner that the petitioner is having patta and assignment from the Slum Clearance Board for constructing the house.

4. Learned counsel for the petitioner relied on the decision of this Court in ***W.P.(MD) No.13465 of 2022 dated 28.06.2022*** in the case of ***Alagammal v. The Government of Tamil Nadu, through its Secretary to Government, Revenue and Disaster Management and others***, with reference to the property, which is adjacent to the petitioner's property.



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5. In the said order, this Court, noticing that the procedure that was directed in the case of ***T.S.Senthil Kumar vs. Government of Tamil Nadu*** reported in ***2010 (3) MLJ 771***, was not followed held as follows:-

“7.Following 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***, this Court in similar case has 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 done survey as per the dictum of Hon'ble Supreme Court. Hence, the impugned Form-III notice, dated 03.06.2022, which is also contrary to the statute as held by the Division Bench of this Court, is set aside.

8.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



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survey, if the survey report reveals that any portion of the water body is encroached, the petitioner is entitled to be heard before passing any order. Only after conducting the survey as directed by this Court, Form – II notice shall be issued to the petitioner and after considering the petitioner's objections, final order considering reasons for rejecting the objections shall be passed vide Form – III.

9.As pointed out earlier, before conducting survey, the fifth respondent shall issue a notice to the petitioners as to the date and time on which, such survey will be conducted. This Writ Petition is allowed accordingly and liberty is given to proceed further as directed above. If the petitioner raises any dispute/claim, she may establish the same before civil Court and shall not resist the eviction by following due process of law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.”

6. Since the facts of the said case and the present case are identical and the petitioner has claimed title to the property, which is allegedly encroached by the petitioner, this Court



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is inclined to dispose of the Writ Petition in the following lines:-

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- (i) The impugned notice dated 03.06.2022 is quashed.
- (ii) The 5th respondent is directed to make arrangements to survey/demarcate the property with the assistance of the Tahsildar concerned in the presence of the petitioner.
- (iii) After Survey, if the Survey Report reveals encroachment of any portion of the property by the petitioner or any one, the fifth respondent is directed to pass appropriate orders after hearing the objections and representation of the petitioner in response to the Show Cause Notice issued under Form – III.
- (iv) It is made clear that the petitioner shall be given opportunity of being heard before passing any order. When the petitioner raises objections based on any claim of title to the property on the basis of assignment or order from the Slum Clearance Board, the fifth respondent or Tahsildar concerned may pass a speaking order after considering the objections or representation of the petitioner.
- (v) The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



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7. The Writ Petition stands disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
24.08.2022

Index : Yes / No

sj

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