



W.P.(MD)No.19442 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.19442 of 2022
and
W.M.P(MD)No.14189 of 2022

1.M.Thottichi
2.R.Alagupandi
3.A.Boomi
4.M.Kattaiyan
5.M.Muthurani
6.C.Vijaya
7.A.Pandiammal

... Petitioners

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Executive Engineer,
Public Works Department,
Water Resource Organisation,
Periyar Main Canal Section,
Melur,
Madurai District.

3.The Assistant Engineer,
Water Resource Organisation,
Periyar Main Canal Section,
Madurai.
(R2 & R3 amended vide suo motu

... Respondents



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order of this Court dated 24.08.2022
by SSSRJ & SSYJ)

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Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, to forbear the respondents No.2 to 3 from evicting the petitioners from their residential houses in Survey No.95/1, Sekkimangalam I Bit, Madurai East Taluk, Madurai District without conducting the survey and issuing Form I and Form II Notice and without following the procedure contemplated by this Hon'ble Court in the Case of T.S.Senthil Kumar v. Government of Tamil Nadu reported in (2010) 3 MLJ 771.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.P.Maharajan

Special Government Pleader

* * *

ORDER

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

This Writ Petition is filed for issuance of a Writ of Mandamus, to forbear the respondents No.2 to 3 from evicting the petitioners from their residential houses in Survey No.95/1, Sekkimangalam I Bit, Madurai East Taluk, Madurai District without conducting the survey and issuing Form I and Form II Notice and without following the procedure contemplated by this Hon'ble Court



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in the case of ***T.S.Senthil Kumar v. Government of Tamil Nadu***

reported in ***(2010) 3 MLJ 771***.

2. Heard Mr.T.Lajapathi Roy, learned counsel for the petitioners and Mr.S.P.Maharajan, learned Special Government Pleader, who accepts notice on behalf of Respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. It is represented by learned Special Government Pleader that respondents 2 and 3 have not been described properly. It is represented that Water Resource Organisation, Periyar Main Canal Section is the proper authority. Therefore, this Court suo motu directs the Registry to carryout the amendment by describing respondents 2 and 3 as follows:-

“2.The Executive Engineer,
Public Works Department,
Water Resource Organisation,
Periyar Main Canal Section,
Melur,
Madurai District.

3.The Assistant Engineer,
Water Resource Organisation,
Periyar Main Canal Section,
Madurai.”



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4. The case of the petitioners is that they are residing in their residential houses in Survey No.95/1, Sekkimangalam I Bit, Madurai East Taluk, Madurai District. It is stated that the houses constructed by the petitioners and others are in existence for more than 70 years and all the houses belongs to persons belonging to weaker section of the society. It is the further case of the petitioners that in order to help a private individual an attempt is being made by the respondents to remove the building constructed by the petitioners and others by alleging unlawful encroachment in water body.

5. From the averments made in support of the petition, it is seen that the petitioners are not having any title over the property, however, they claim possessory right on the basis of their long and continuous enjoyment. However, it is admitted that no survey was conducted in the presence of the petitioners.

4. This Court in a similar case 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***, held as follows:-

“7.Following the Division Bench of



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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 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,



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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.”

5. Considering the facts admitted, this Court is inclined to dispose of the Writ Petition in the following lines:-

(i) The 3rd respondent is directed to make arrangements to survey/demarcate the property with the assistance of the Tahsildar concerned in the presence of the petitioners and shall issue a notice to the petitioners as to the date and time on which, such survey will be conducted.

(ii) After Survey, if the Survey Report reveals that any



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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.

(iii) It is made clear that the petitioners shall be given opportunity of being heard before passing any order. If the petitioners claim title based on possession, they may establish the same before civil Court and shall not resist the eviction by following due process of law.

6. 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

To

1.The District Collector,
Madurai District,
Madurai.



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S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

2.The Executive Engineer,
Public Works Department,
Water Resource Organisation,
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Melur,
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