



W.P.(MD)No.20625 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2022

CORAM

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

W.P(MD)No.20625 of 2022
and
W.M.P.(MD)Nos.14952 and 14954 of 2022

Sumathi

... Petitioner

Vs.

1.The District Collector, Sivagangai District.

2.The Tahsildar, Thiruppuvanam Taluk,
Sivagangai District.

3.The President,
Thiruppachethi Village Panchayat,
Thiruppuvanam Taluk, Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Letter No.1/22, dated 17.08.2022 on the file of the third respondent and to quash the same as illegal and consequently, to direct the respondents to take suitable action against all the encroachments in the petitioner's village Ooranis, Kanmois and streets in equal before law.

For Petitioner :Mr.R.Udhayakumar

For R1 to R3 :Mr.S.P.Maharajan

Special Government Pleader



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ORDER

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

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned letter, dated 17.08.2022 issued by the third respondent and to direct the respondents to take suitable action against all the encroachments in the petitioner's village Ooranis, Kanmois and streets in equal before law.

2.Heard Mr.R.Udhayakumar, learned Counsel for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice on behalf respondents. By consent of both parties, the present Writ Petition is taken up for final disposal at admission stage.

3.From the facts and averments made in the affidavit filed in support of this Writ Petition, this Court understand that the petitioner has encroached into a water body, which comes under the control of local body, namely, the third respondent in this Writ Petition. Vide impugned order issued by the third respondent, the petitioner was directed to remove the encroachment in the water body.



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4.It is the grievance of the petitioner that the respondents, without considering the representation of the petitioner for grant of patta to the property, have initiated action for removal of encroachment. Since the impugned order directs the petitioner to remove encroachment is without notice to the petitioner to show cause, the petitioner challenges the order of eviction on the ground that it is in violation of principles of natural justice.

5.The learned Special Government Pleader appearing for the respondents has admitted that the impugned order has been passed by the local body under Section 222(1) of Tamil Nadu Panchayats Act, 1994, which does not empower the local body to remove encroachment in water body.

6.This Court and the Hon'ble Supreme Court repeatedly reiterated the need to protect the water bodies for future generation. In this case, the petitioner has not produced even a scrap of paper to show his/her title or right, which can be recognized as lawful. Though the petitioner states that several other persons have also encroached nearby land, that cannot be a ground to sustain the plea of the petitioner.



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7.Further, this Court finds that the impugned order has been passed by the local body i.e., President of the Panchayat. This Court has earlier in a few judgments observed that the local body or Block Development Officer has no power to initiate action for removal of encroachment in water bodies as the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 are not applicable to the tanks, that are vested with the local bodies. In such instances, where the tanks are under the control of local bodies, the Revenue Department is required to take action to remove the encroachments under the provisions of Tamil Nadu Land Encroachment Act, 1905.

8.In that view of the position, this Court though allow this Writ Petition by setting aside the order impugned in the Writ Petition, directs the Tahsildar, Thiruppuvanam Taluk, Sivagangai District - 2nd respondent herein to initiate action for the removal of the encroachment by taking action under the provisions of the Tamil Nadu Land Encroachment Act, 1905. The second respondent shall also issue notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, to the petitioner within a period of two weeks from the date of receipt of a copy of this order and after hearing the petitioner and considering the representation / objection of the petitioner in response to the show cause notice, the



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second respondent shall pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of reply from the petitioner in response to the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. It is open to third respondent to approach this Court in case the encroachment is not removed within a reasonable time.

9.The learned Counsel for the petitioner, while making submissions in the present Writ Petition, has given the list of encroachment in the same village. It is his grievance that the third respondent has initiated action selectively due to political reasons. Whenever there is an encroachment in public property or water body, it is the bounden duty of the respondents to initiate action for removal of encroachment, so that the water body is retained for public purpose. It goes without saying that the official respondents are directed to ensure the removal of encroachment in all water bodies and public properties. If it is found that the water bodies are encroached and no action is taken by the second respondent in relation to other areas, this Court will not hesitate to pass appropriate orders with a direction to initiate disciplinary proceedings against the second respondent for dereliction of duty.



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10. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
02.09.2022

Index : Yes / No
cmr

To

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