



W.P.(MD)No.12643 of 2018

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**

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U.Dharmasekar

... Petitioner

Vs.

- 1.The District Collector,
Thanjavur, Thanjavur District.
- 2.The Revenue Divisional Officer,
Thanjavur, Thanjavur District.
- 3.The Tahsildar,
Orathanadu Taluk, Thanjavur District.
- 4.Mathiyalagan
- 5.Malarkodi

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the first respondent to consider the petitioner's representation, dated 09.05.2018 within a stipulated time fixed by this Court.

For Petitioner :Mr.S.Gopala Manikandan

For R1 to R3 :Mr.J.Ashok

Additional Government Pleader



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ORDER

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

This Writ Petition is filed for issuance of a Writ of Mandamus to direct the first respondent to consider the petitioner's representation, dated 09.05.2018 within a stipulated time fixed by this Court.

2.The Hon'ble Supreme Court in the case of ***Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]*** has held that survey to identify encroachment shall be done in the presence of persons, who are interested or the persons, who are found to be encroachers.

3.Following the judgment of Honourable Supreme Court in the case of ***Madhav Rao Schindia's*** case above referred to, this Court has repeatedly held that before removal of encroachment, the actual encroachment should be identified by conducting a survey by the Tahsildar concerned after issuing notice to the alleged encroachers or in the presence of the alleged encroachers.

4.The Honourable Full Bench of this Court, in the case of ***T.K.Shanmugam vs. the State of Tamil Nadu and others*** reported in ***2015-5-L.W.397***, on a reference as to the applicability of the provision



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of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, has held as follows:

“44.The Government Orders starting from 30.12.2006 in G.O.(Ms)No.854, Revenue Department and subsequent Government Orders in G.O.Ms.No.498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular reference to encroachments in water bodies are in clear violation of the public trust doctrine. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularizing their possession which has to be deprecated.”

45.In the light of the above, we answer the reference on the following terms:- The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations / directions issued in L.Krishnan vs. State of Tamil Nadu reported 2005-3-L.W. 313 = 2005(4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh vs. State of Punjab, reported in 2011-3-L.W.17=(2011) 11 SCC 396, and the observations contained in paragraph 20(d)(3) of the judgment of Division Bench in T.S.Senthil Kumar, vs. Government of Tamil Nadu, reported in 2010-3-MLJ 771] and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905.”

5.The Division Bench of this Court in the case of ***T.S.Senthil***



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Kumar vs. Government of Tamil Nadu reported in **2010 (3) MLJ**

771, held that principles of natural justice should be read into the provisions of Tamil Nadu Protections of Tanks and Eviction of Encroachments Act, 2007. So saying, this Court has held as follows:

“20.In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra *Mysore vs. J.V. Bhat* - 1975 (2) S.C.R. 407 and (ii) *The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka*, - 1991 (1) U.J. (S.C.) 628 = AIR 1991 SC 1117 = 1991 (2) SCC 604., where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. *The Act* does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under *Section 12* of the Act. The meaning and weight of the words “public interest” shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to



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come up on such tanks or tank poramboke lands, and water charged lands.

(e)The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f)We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.”

6. Therefore, it goes without say that in case of the encroachment in water body, which comes under the revenue department, the revenue officials are entitled to proceed with eviction by invoking the provisions of Tamil Nadu Land Encroachment Act.

7. In view of the preposition of law established by the precedent as extracted above, this Court is inclined to dispose of this Writ Petition



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with the following directions:

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“The Tahsildar concerned is directed to remove the encroachment in the water body after issuing a show cause notice to the encroachers and pass final orders under Section 6 of the Tamil Nadu Land Encroachment Act, after considering the objections/representations from the encroachers. The entire exercise shall be completed by the official respondents within a period of twelve weeks from the date of receipt of a copy of this order.”

8. With the above directions, this Writ Petition is disposed of. No costs.

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

Index : Yes / No

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