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W.P.Nos.76, 77 and 80 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 04.01.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR**

**AND**

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

**W.P.Nos.76, 77 & 80 of 2023**

**and**

**W.M.P.Nos.70, 73 & 74 of 2023**

M.Govindan

... Petitioner  
in W.P.No.76 of 2023

G.Vasanthakumar

... Petitioner  
in W.P.No.77 of 2023

G.Mohanraj

... Petitioner  
in W.P.No.80 of 2023

Vs.

1.The District Collector,  
Salem – 6,  
Salem District.

2.The Revenue Tahsildar,  
Sankagiri Taluk,  
Salem District.



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3. The Assistant Engineer,  
Public Works Department,  
Water Resources Organization,  
Mettur Canal Division,  
Kullampatti,  
Salem District.

... Respondents  
in all writ petitions

**Common Prayer** : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Lr. No. 334 / KO. 31 / 2022 / AE / K. Patti dated 19.12.2022 and form III issued by the 3rd respondent under Rule 6 (1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 quash the same and consequently forbear the respondents from interfering with the petitioners' right to shelter over an extent of 5 cents in S. No. 210/1, Pullagoundanpatti Village, Sankagiri Taluk, Salem District by considering their representation dated 27.12.2022.

For Petitioner : Mr.N.Manoharan  
in all writ petitions

For Respondents : Mr.A.Selvendran  
Special Government Pleader  
in all writ petitions



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**COMMON ORDER**

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

The petitioner in W.P.No.76 of 2023 is the father of the petitioners in W.P.Nos.77 and 80 of 2023. The petitioners state that they are in possession and enjoyment of a rocky portion of land measuring 5 cents in S.No.210/1, Pullagoundanpatti Village, Sankagiri Taluk, Salem District, for more than 50 years.

2.It is pertinent to mention that the petitioner in W.P.No.76 of 2023 is 62 years old and other two petitioners in W.P.Nos.77 and 80 of 2023, who are his sons, are aged about 32 and 31 years respectively. Therefore, the contention of the petitioners that they are in possession for more than 50 years is a patent lie. It is admitted that, earlier one Kuppayee filed a writ petition in W.P.No.4664 of 2021 to remove the encroachments in S.No.210/1 by stating that the property encroached is a canal/bund. The said writ petition was disposed of by this Court by order dated 01.03.2021, with the following direction :



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*“(7) This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his representation or in this writ petition, directs the 2nd respondent to cause inspection of the land in S.No.210/1 in Pulla Gounden Patti Ammani Village with the aid of the relevant revenue records, after putting on notice the petitioner and the private respondents and if the result of the inspection reveals that S.No.210/1 is a water way and the same is in encroachment, shall take immediate, necessary and appropriate action in accordance with law and complete the said exercise within a period of ten weeks from the date of receipt of a copy of this order/uploading of the order in the website and communicate the decision taken, to the petitioner, private respondents as well as any other person/s concerned.*

*(8) The writ petition stands disposed of accordingly. No costs.”*

3.Pursuant to the direction of this Court, the Assistant Engineer, Public Works Department, Mettur Canal Division, Kullampatti, issued eviction notice in Form-3 by exercising power under Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007. All the three writ



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petitioners in the above writ petitions filed W.P.Nos.18590, 18595 and 18598 of 2021 for issuance of a Writ of Certiorarified Mandamus to quash the notice dated 13.08.2021 made under Form-3 under Rule 6(1) of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and consequently, to forbear the respondents from interfering with the petitioners' right to shelter over an extent of 5 to 6 cents in S.No.210/1, Pullagoundanpatti Village, Sankari Taluk, Salem District. After hearing the respondents in the writ petition, this Court found that the properties, which are encroached by the petitioners, are classified as canal and that therefore, the notice for eviction is by a competent authority in exercise of its power under the specific Statute. However, the petitioner's contention that the order impugned in the three writ petitions are in violation of principles of natural justice was favourably considered by this Court and therefore, this Court passed the following order :

*“5.The learned Government Counsel appearing for the respondents submitted that the third respondent is the competent authority to pass orders and the impugned notices can be treated as show-cause notices and the third respondent is ready to consider the reply submitted by the petitioners and*



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*pass orders in accordance with law.*

*6.In the light of the above submissions of the learned counsels on either side, this Court, without expressing any opinion on the merits of the matter, directs the third respondent to pass orders taking into consideration the representations of the petitioners as reply to the notice in accordance with law, after affording opportunity of personal hearing to the petitioners. Further, the respondents are directed to conduct survey before passing the orders. Till then, the respondents are directed to maintain status quo as on date.”*

4.Pursuant to the specific direction of this Court, the petitioners submitted a representation and appeared before the 3<sup>rd</sup> respondent. It is contended before the 3<sup>rd</sup> respondent that the petitioners are in long enjoyment of the property and that the PWD Canal is running far away from the house put up by the petitioners. It is also contended by the petitioners that the property, which is in their possession in S.No.210/1, is a 'tharisu' as per old A-Register and the same was mistakenly entered as 'PWD Canal' in the A-Register which was prepared after UDR. After hearing the petitioners and giving sufficient opportunity to the petitioners, the 3<sup>rd</sup> respondent has



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passed the impugned orders by directing the respective petitioners to remove the encroachment within a period of 21 days. The 3<sup>rd</sup> respondent has passed similar orders against each of the petitioners and the order specifically reads that the encroachment is in the poramboke canal and that the removal of encroachment is therefore, inevitable, in view of the specific direction by this Court earlier in the writ petition in W.P.No.4664 of 2021.

5.Challenging the impugned order directing removal of encroachment made by the petitioners, the above three writ petitions have been filed.

6.Learned counsel appearing for the petitioners submitted that the land in S.No.210/1 is not a canal or waterbody, but it is a waste land as per the Revenue records, particularly the A-Register prepared immediately after settlement. Learned counsel then submitted that the house put up by the petitioners is far away from the existing canal as could be seen from the Google Map and that the petitioners are not in encroachment of any waterbody. He also submitted that the building constructed by the petitioners is in the rocky portion and therefore, the classification of land as



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canal cannot be accepted. Learned counsel then relied upon the judgment of the Division Bench of this Court in ***T.S.Senthil Kumar v. Government of Tamil Nadu and others*** reported in ***2010 (3) MLJ 771***. Stating that the order has been passed without considering the objections raised by the petitioners with regard to character of land and the nature of enjoyment, the counsel submitted that the impugned order is liable to be quashed. Learned counsel then submitted that the order is passed without even conducting a survey as directed by this Court.

7.Per contra, learned Special Government Pleader appearing for the respondents, submitted that a survey was conducted and that encroachment was confirmed, pursuant to the directions of this Court earlier in W.P.Nos.18590, 18595 and 18598 of 2021. He produced before this Court the A-Register prepared after UDR to show that the property in S.No.210/1 is classified as “PWD Vaikkal”. Since sufficient opportunity is given to the petitioners before issuing notice under Form-3 and passing the order removing encroachment, the learned Special Government Pleader submitted that the order is strictly in adherence to the principles of natural justice and



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after giving sufficient opportunity to the petitioners.

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8.This Court is unable to countenance the submissions of the learned counsel appearing for the petitioner in all the three writ petitions. First of all, the petitioners are not claiming title. Though the petitioners projected their long enjoyment and settled possession as a good reason to sustain their continued enjoyment over a public land, the petitioners are not claiming or cannot claim title by adverse possession over the land belongs to the Government. The petitioners cannot have a privilege or a legitimate claim on account of their continuous possession for a long time. The petitioners' case that they are in enjoyment of the property for more than 50 years cannot be believed as it was pointed out earlier. The property has been classified as “PWD Canal” as per Revenue records. A property which is classified as waterbody has to be retained as such by the Government. Merely because a person is in enjoyment of a waterbody for a long number of years, the respondents or this Court cannot permit such encroachment, as it has been repeatedly pointed out by the Hon'ble Supreme Court, and our High Court that waterbodies should be preserved in the larger interest of



public and future generations.

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9.This Court is convinced that the petitioners are given adequate opportunity to put forth their case before the 3<sup>rd</sup> respondent. The petitioners themselves have admitted that they have appeared before the 3<sup>rd</sup> respondent. The objection raised by the petitioners before the 3<sup>rd</sup> respondent is that the property is not a waterbody and that they are in enjoyment for more than 50 years. Admittedly, the petitioners are not the owners and the petitioners' request cannot be considered for granting patta in favour of them when the property is a waterbody. The petitioners are in encroachment of a property classified as waterbody. The petitioners have admitted the fact that buildings put up by them are in S.No.210/1. The property in S.No.210/1 is classified as a waterbody. Even though earlier it was classified as 'tharisu' as per Settlement A-Register, that does not give the petitioners any hope of getting patta merely because they have encroached the property. The petitioners have admitted the existence of a water canal just adjacent to the construction put up by the petitioners in S.No.210/1. The petitioners who are in encroachment cannot claim any right based on their possession as



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against the Government. The position is made clear in several precedents by this Court and Hon'ble Supreme Court time and again and this Court has issued general instructions in many writ petitions to remove encroachments in public properties in the interest of public. This Court finds no other valid ground in these writ petitions.

10. One of the contentions raised by the petitioners is that the impugned order is passed by a person, i.e., the 3<sup>rd</sup> respondent, who has no jurisdiction. Earlier, this Court, in the writ petitions filed by the petitioners, has specifically held that the 3<sup>rd</sup> respondent is the competent authority to pass orders and therefore, the 3<sup>rd</sup> respondent was directed to treat the notice issued to the petitioners as a show cause notice. The petitioners cannot agitate the same issue again before this Court in these writ petitions questioning the competency of the 3<sup>rd</sup> respondent.

11. For all the above reasons, this Court does not find any reason to interfere with the impugned order passed by the 3<sup>rd</sup> respondent. Therefore, these writ petitions are dismissed. No costs. Consequently, connected



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miscellaneous petitions are closed.

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(S.S.S.R., J.) (A.A.N., J.)

04.01.2023

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mkn

Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

- 1.The District Collector,  
Salem – 6,  
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- 2.The Revenue Tahsildar,  
Sankagiri Taluk,  
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- 3.The Assistant Engineer,  
Public Works Department,  
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**S.S. SUNDAR, J.**



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**and**  
**A.A.NAKKIRAN, J.**

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