



WEB COPY

WP.Nos.13875 of 2022 etc. batch



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

**WP.Nos.13875, 13644, 13657, 13652, 13653, 13660, 13648, 13670, 13676,  
13673, 13679, 13672, 13681, 13680, 13682, 13684, 13686, 13688, 13692,  
13695, 13696, 13698, 13718, 13727, 13724, 13729, 13732, 13871, 13873,  
13884, 13876 and 13880 of 2022  
and W.M.P.Nos. 12911, 12888, 12893, 12896, 12898, 12903, 12932,  
12930, 12926, 12936, 12938, 12941, 12939, 12945, 12942, 12949, 12943,  
12955, 12960, 12964, 12967, 12997, 13022, 13016, 13011, 13015, 13145,  
13148, 13150, 13141, 13138 and 13140 of 2022  
and Cont.P.No.320 of 2021**

**W.P.No.13875 of 2022:**

A. John Peter

... Petitioner

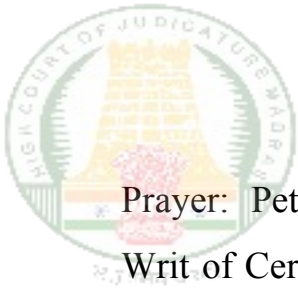
Vs.

1.The District Collector, Cuddalore District,  
Cuddalore.

2.The Assistant Engineer,  
National Highways Department,  
Neyveli Section,  
Virudhachalam Sub division,  
Cuddalore District.

3.The Tahsildar, Virudhachalam Taluk,  
Cuddalore District.

.... Respondents



Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records connected with the impugned notice in Ka.No.24/2022/A.E., dated 25.05.2022 issued by the second respondent and quash the same.

For Petitioner in all Writ Petitions : Mr.V.Abel Jenish

For Respondents in all Writ Petitions: Mr.A.Selvendran,

Special Govt. Pleader

For Petitioner in Contempt Petition : Ms. M.Janani

For Respondent in Contempt Petition: Mr.A.Selvendran

Special Government Pleader

### **COMMON ORDER**

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

The present Writ Petitions have been filed challenging notice dated 25.05.2022 issued by the second respondent, Assistant Engineer, National Highways Department directing the petitioners to remove the encroachment made in S.No.271 Romapuri Village, Cuddalore District as the same belongs to the National Highways Department.

2. The main contention of the petitioners is that they are occupying various portions of land in S.No.271 Romapuri Village, Cuddalore District and that they are eking their livelihood by doing work on daily wage basis.

3. On account of a private dispute between the parties, complaints and counter complaints were made culminating in the filing of a Writ Petition in



W.P.No.8180 of 2019 by one A.K.Mumtaj Begum before this Court seeking removal of the encroachment made by one Viswanathan, arrayed as R3 in W.P.No.8180 of 2019. As a result, the District Collector has issued notice dated 12.07.2021, which was challenged by the said D.Viswanathan in W.P.No.21436 of 2019.

4. The aforesaid Writ Petitions came to be disposed by this Court by a common order dated 14.02.2020 directing the Assistant Engineer, National Highways, Vridhachalam, Cuddalore District to conduct enquiry and survey the lands in the presence of both parties as well as R4 in W.P.No.8180 of 2019. It was also directed that if found that there were encroachments, the same should be removed within a period of twelve weeks from date of receipt of a copy of that order.

5. In compliance with the aforesaid direction notice was issued directing the parties to remove the encroachment. The said notice was challenged before this Court in W.P.No.23238 of 2021 by the said Viswanathan on the ground that the same had been issued without conducting survey and enquiry as per the directions of this Court in W.P.Nos.8180 and 21436 of 2019.

6. While recording the submission of the learned Additional Government Pleader that 36 persons have encroached the property in



S.No.217 of Romapuri Village, this Court disposed W.P.No.23238 of 2021 vide order dated 22.11.2021 directing the Tahsildar, Vridhachalam to cause a survey in the presence of the parties occupying S.No.217 of Romapuri Village and remove all encroachments in the said survey number in accordance with law within a period of six months from date of receipt of a copy of that order.

7. Pursuant to the aforesaid directions of this Court in W.P.No.23238 of 2021, the impugned notices came to be issued to the petitioners, challenged in these Writ Petitions.

8. Learned counsel for the petitioners submit that when the petitioners are continuing their habitation for a long time in the said survey number, without considering their livelihood, source of income and providing an alternate site, issuance of notice is bad. He further submits that a detailed enquiry has got to be conducted in terms of Section 26 of the Tamil Nadu Highways Act, 2001, which has not been done in this case.

9. He also submits that in light of the judgment of the Hon'ble Supreme Court in the case of **Gunasekaran V. Divisional Engineer, National Highways and others (2021 10 SCC 505)**, as followed by this Court in the case of **R.Mohan V. Assistant Divisional Engineer, National Highway, (2022 SCC online Madras 1502)**, the authorities under the National Highways Act, 1956 alone has got jurisdiction to deal with the encroachment



meant under the National Highways and not the authorities under the State Highways Act. Hence, he submits that the impugned notices will have no legs to stand as there is a reference to the State Act in the impugned notices.

10. Per contra, learned Special Government Pleader would submit that in compliance with the orders passed by this Court the authorities under the National Highways Department have issued the impugned notices and hence there is nothing untoward in the said notices.

11. Heard the learned counsel on both sides and perused the materials placed before us.

12. A perusal of the cause title and the affidavits filed in support of the Writ Petitions clearly shows that the relief sought for by the petitioners is as against the National Highways Department only and according to the petitioners it is only the Assistant Engineer, National Highways Department has issued the notices. Merely because in the impugned notice a reference has been made to the State Highways Act the subject column will not render the impugned notices bad in law. That apart, it is an admitted case that the petitioners are encroachers.

13. Furthermore, the decisions cited by the petitioners have not been applicable to the facts of the present case. In the aforesaid decisions, the notice had been issued under the provisions of the State Act, which is not in



the present case. In the present case, the notice has been issued by the National Highways Department only.

WEB COPY

14. Furthermore, in the orders passed by this Court in the earlier round of litigation, no direction was given to the authorities for providing an alternate site to the petitioners and it was only a direction to cause survey and enquiry, whether there is any encroachment. This Court also recorded the submission of the then learned Government Pleader that there were 36 encroachments in the said survey number, which has not been denied by the petitioners. Hence, in compliance with the directions issued by this Court, the present impugned notices have been issued.

15. In light of the aforesaid narration, we are of the view that there is no error on the part of the National Highways Authority in issuing the impugned notices. When it is an admitted case that the petitioners are encroachers, following of procedure under Section 26 as stated by the petitioners may not be necessary. However, we leave it to the authorities to take such a decision.

16. We make it clear that no encroacher be permitted to squat on the Government property, more so in the National Highways Property. A Hon'ble Division Bench of this Court, while dealing with the issue of removal of unauthorized developments in the case of *M/s.Karur District, Vengamedu, Kongu Nagar Residents Welfare Association, Karu [W.P.(MD) No.2895 of*



2011] dated 04.04.2016, had issued the following directions:

*“27. Hence, the writ petition is disposed of with the following directions:*

*(i) A Committee comprising of a Joint Director of Town and Country Planning, nominated by the first respondent, a Revenue Divisional Officer nominated by the second respondent and an officer of the rank of Assistant Director of Survey and Land Records, nominated by the second respondent, is hereby constituted.*

*(ii) Within two weeks of receipt of a copy of this order, the first respondent shall nominate an officer of the rank of Director of Town and Country Planning, who has a track record as an officer of high integrity. Similarly, the second respondent District Collector shall also nominate an officer of the rank of Revenue Divisional Officer and an officer of the rank of Assistant Director of Survey and Land Records within two weeks of the receipt of the copy of this order.*

*(iii) The Committee so constituted shall take into possession, within two weeks of the constitution, all the records available in the offices of the respondents 1 to 3 or in the offices of any one of the Assistant Directors or Deputy Directors of Town and Country Planning, which relate to the layout in question.*

*(iv) Thereafter, the Committee shall conduct a local inspection of the lands in S.F.Nos. 135, 136, 137, 138, 140, 141, 146, 151, 152, 153, 154, 155 and 160 in Vengamedu region, Inam Karur Town, Karur District with the help of Town/Municipal Surveyors, Village Administrative Officers and Revenue Inspectors and submit a report.*

*(v) The report shall indicate*

*(a) the lands earmarked for public purposes as per the approved layout*

*(b) the details of lands sold by the promoters/original owners, from out of the lands earmarked for public purposes*

*(c) the details of persons, who have purchased the lands*

*(d) the details of buildings constructed at such lands along with an indication whether building plan approvals have been obtained or not*

*(e) the details of the elected representatives of the third*



respondent Municipality, who have purchased lands in their own names or in the names of their close relatives and the details of construction put up by them

(vi) The report as indicated above shall be submitted by the Committee within a period of three months from the date of constitution of the Committee

(vii) Till the Committee submits its report, the concerned Sub-Registrar/District Registrar shall not allow registration of any documents relating to the lands in the above survey numbers, unless the Committee issues a no objection certificate that such a land does not form part of the land earmarked for public purposes

(viii) Till the Committee files its report, the Municipality shall not accord any building plan approval, on the land earmarked for public purposes, except with a no objection certificate issued by the Committee

(ix) Till the Committee submits its report, no electricity connection shall be given to the buildings that have come up recently on the lands earmarked for public purposes and

(x) The third respondent Municipality is also enjoined from granting regularization to unauthorized constructions and the constructions put up on the lands earmarked for public purposes.

17. A Division Bench of Madurai Bench of Madras High Court in the case of **K.K.Ramesh vs. State and others [W.P.(MD) No.22163 of 2018]** decided on **28.01.2019** has issued interim directions to the Chief Secretary with respect to the removal of encroachments,

*“7. Be that as it may, the Comptroller and Auditor General of India in the Report No. 8 of 2017 for the year ended March, 2017, relating to the General and Social Sector in the Government of Tamil Nadu, has submitted a Report in terms of Article 151(2) of the Constitution of India, 1950. In the said Report, it has been highlighted that the system envisaged in the TNPTTE Act to protect the tanks from encroachments did not help in protecting the tanks as the Water Resources Department did not fix boundaries for all the*



WEB COPY



water bodies through survey, which was the first step in prevention of encroachments and eviction of already existing encroachments. Having due regard to the fact that 49% of the total objectionable encroachments in the State were on water bodies, it has been recommended in that Report that inasmuch as the TNPTEE Act had inherent limitations as it did not cover encroachments on smaller irrigation tanks and Ooranis (traditional water bodies) created to harvest rain water for drinking and other purposes, the Government may consider bringing rivers, streams, tanks, ooranis, etc., under the purview of the TNPTEE Act and ensure a time bound survey of all water bodies. Further, in order to overcome the coordination issues between the Water Resources Department and the Revenue Department in surveying the water bodies, it has been expressed that the Government may consider creation of survey units in Water Resources Department Divisions / Circles, in line with similar survey units functioning in urban local bodies.

8.Despite the aforesaid Statutory Provisions, Court Directions and Report of the Constitutional Authorities, no tangible headway appears to have been made in the process of fully evicting the encroachers from their illegal occupation of the water bodies. As such, the situation has become imperative for this Court to take up the task of monitoring the eviction of the encroachers from the water bodies. As a first step in that regard, we issue the following directions:-

(i) The Chief Secretary to the Government of Tamil Nadu shall file a Report of action taken by the Government of Tamil Nadu on the recommendations for rectification of the shortcomings in the process of eviction of encroachments on water bodies indicated in the Report No. 8 of 2017 of the Comptroller and Auditor General of India for the year ended March, 2017, by 11.02.2019;

(ii) The Collectors of their respective Districts in the State shall prepare a list of lands identified as water bodies in their revenue records and send copies of the



WEB COPY



same to the Officers of the Registration Department, the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), the Local Bodies and the District Election Officers in their respective Districts by 08.02.2019 and file an action taken report before this Court by 11.02.2019;

(iii) The Chief Secretary, Government of Tamil Nadu shall, after collecting necessary data from the concerned Departments and Collectors of the various Districts, file a Report showing the list of water bodies as found in the revenue records of the State by 11.02.2019;

(iv) No registering authority under the Registration Act, 1908, shall henceforth register any document in respect of any land which has been notified as water body in the revenue records of the State and the Inspector General of Registration, Government of Tamil Nadu shall issue necessary circular to all the Registration Officers in the State for ensuring compliance in this regard by 11.02.2019;

(v) No electricity connection shall henceforth be provided to any building in any land which has been notified as water body in the revenue records of the State and the Chairman-cum- Managing Director, TANGEDCO shall issue necessary circular to all its officers authorised to grant electricity connection for ensuring compliance in this regard by 11.02.2019;

vi) No water connection shall henceforth be provided to any building in any land which has been notified as water body in the revenue records of the State and the Principal Secretaries of Municipal Administration Department and Rural Development and Panchayat Raj Department shall issue necessary circular to all the urban and rural local bodies in the State for ensuring compliance in this regard by 11.02.2019;



WEB COPY

WP.Nos.13875 of 2022 etc. batch



(vii) *No approval shall henceforth be given for any construction of any building and no building shall be assessed for property tax, by any local body in any land which has been notified as water body in the revenue records of the State and the Principal Secretaries of Municipal Administration Department and Rural Development and Panchayat Raj Department shall issue necessary circular to all the urban and rural local bodies in the State for ensuring compliance in this regard by 11.02.2019;*

(viii) *No person shall henceforth be included in the voters list for the election, if the residence claimed by such person is in any land, which has been notified as water body in the revenue records of the State and the Chief Election Officer of the State shall issue necessary circular to all the authorities involved in that process in the State for ensuring compliance in this regard by 11.02.2019; and*

(ix) *The Report of the action taken by all the authorities indicated supra, shall be filed before the Registrar (Judicial) of this Court by 13.02.2019.*

9. *We are fortified in issuing these interim directions by the decisions of the Division Bench of this Court in Elephant G.Rajendran -vs- Chief Secretary (Order dated 09.09.2016 in W.P.No.219566 of 2015) and the Hon'ble Supreme Court of India in Sunil Kumar Kori -vs- Gopal Das Kabra (Order dated 27.09.2016 in Civil Appeal Nos. 9728 and 9729 of 2016). It is needless to add here that citizens, who have acted in violation of their fundamental duty under Article 51-A(g) of the Constitution of India, 1950, to protect and improve the natural environment including lakes and rivers, cannot be heard to complain of deprivation of any fundamental right till their purge from their unconstitutional acts."*

18. This Court, in the case of **V.B.R.Menon V. State of Tamil Nadu**

**and others (W.P.No.13648 of 2016 dated 29.04.2019)** while dealing with the



issue regarding encroachment of property obstructing the water channels in a

Public Interest Litigation, held as follows:

WEB COPY

29. *Though there is an Act called, 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (Act 8 of 2007) for checking and eradication of the encroachment, eviction of encroachment in tanks which are under the control and management of Public Works Department, the Officials convert the said Act a meaningless one, as they are hand in glove with the violators. In fact, the Comptroller and Auditor General of India, in his Report No.4 of 2017 had strongly recommended for framing stringent laws to fix responsibility on the officials responsible for non-enforcement of the provisions of the said Act in identifying and eviction of encroachments of any nature. It was also recommended that CMDA should stop issuing conditional approvals for layouts and buildings along water bodies.*

30. *It is pertinent to note that the First Bench of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), while dealing with a matter pertaining to demolition of the violated portions of a building and decimation of the unauthorised constructions, held as follows:*

*"4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:*

*(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;*



WEB COPY

WP.Nos.13875 of 2022 etc. batch



*(b) Ensure that the on-going construction complies with the norms;*

*(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.*

*(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available.”*

19. In view of the principle laid down in the aforesaid judgments, no encroachment is permissible.

20. In the result, these Writ Petitions are dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

21. Contempt Petition No.320 of 2021 is filed alleging contempt as against the officials in implementing the order passed by this Court dated 14.02.2020 in W.P.Nos.8180 and 21436 of 2019.

22. In view of the fact that there is an order of stay operating against the respondent officials in proceeding with the matter, we are of the view that there is no wilful and deliberate disobedience of the order of this Court. That



apart, a Division Bench of this Court, on 14.02.2020 in W.P.Nos.8180 and 21436 of 2019 has categorically directed the Assistant Engineer, National Highways to conduct enquiry, survey the land and issue notices to the parties concerned and thereafter remove the encroachment in accordance with law within a period of twelve weeks from date of receipt of a copy of that order, which has been complied with vide impugned notices in the Writ Petitions.

23. We make it clear that in case of inaction by the officials, disciplinary action for major misconduct to be initiated and major punishment to be imposed, if charges are proved and the same shall be entered in the service records.

24. In light of the above, Contempt Petition is closed. No costs.

(S.V.N.,J) (K.R.S.,J)

31.07.2023

2/2

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No

sl

To

1.The District Collector, Cuddalore District, Cuddalore.

2.The Assistant Engineer,  
National Highways Department,  
Neyveli Section,  
Virudhachalam Sub division,  
Cuddalore District.

3.The Tahsildar, Virudhachalam Taluk,  
Cuddalore District.



WEB COPY



WP.Nos.13875 of 2022 etc. batch

**S.VAIDYANATHAN,J.**  
**AND**  
**K.RAJASEKAR,J.**

Sl

**WP.Nos.13875, 13644, 13657, 13652, 13653,**  
**13660, 13648, 13670, 13676, 13673, 13679,**  
**13672, 13681, 13680, 13682, 13684, 13686, 13688,**  
**13692, 13695, 13696, 13698, 13718, 13727, 13724,**  
**13729, 13732, 13871, 13873, 13884,**  
**13876 and 13880 of 2022**  
**and W.M.P.Nos. 12911, 12888, 12893,**  
**12896, 12898, 12903, 12932, 12930, 12926,**  
**12936, 12938, 12941, 12939, 12945, 12942, 12949,**  
**12943, 12955, 12960, 12964, 12967, 12997, 13022,**  
**13016, 13011, 13015, 13145, 13148, 13150, 13141,**  
**13138 and 13140 of 2022**  
**and Cont.P.No.320 of 2021**

**31.07.2023**

**2/2**