



WP No.9941 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.02.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
and
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 9941 of 2016
and
W.M.P.Nos.8918 & 8945 of 2016

M.Ganesan

.. Petitioner

Versus

1. The District Collector
Salem District, Salem.
2. The Revenue Divisional Officer,
Revenue Divisional Office,
Attur Taluk, Salem District.
3. The Tahsildar,
Attur Taluk, Attur,
Salem District.
4. The District Surveyor,
Survey Department,
Salem Collectorate Office,
Salem District.
5. The Taluk Surveyor,
Survey Department,
Attur Taluk
Salem District



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6. The Assistant Executive Engineer,
Public Works Department,
Water Resource Organisation,
Sarabanga Basin Sub Division,
Attur Taluk, Salem District.

7. The Junior Engineer,
Public Works Department,
Water Resource Organisation,
Thalaivasal & Post,
Attur Taluk, Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records relating to Form-III dated 22.02.2016 issued by the 7th respondent and to quash the same and consequently direct the 4th respondent to conduct proper survey and after demarcation, remove the encroachments.

For Petitioner : Ms. V.Meenakshi
for Mr. K.K. Senthil Velan.

For Respondents : Mr. A. Selvendran
Special Government Pleader

ORDER

[Order of the Court was made by R.MAHADEVAN,J.]

The prayer made in this Writ Petition is to quash the Form-III notice dated 22.02.2016 issued by the 7th respondent and consequently direct the 4th respondent to remove the encroachments, if any, after conducting a survey and upon demarcating the lands properly.



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2. In the affidavit filed in support of the writ petition, it is stated that the petitioner owns agricultural land in Survey No. 61/2 of Kattukottai Village measuring 4.85 acres, which was purchased by his father in the year 1959 by way of a registered sale deed. It is further stated that on the southern side of the said land, Kallaru river is running west to east in the land in Survey No. 62. It is therefore stated that during rainy season, due to excess flow of water, there is a possibility for the river water to enter into the agricultural lands and therefore, one Jayaraman filed WP No. 5444 of 2015 before this Court to direct the sixth respondent herein to exercise the power vested under Section 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and to remove the encroachment caused by the petitioner in the river bund. Similarly two other writ petitions were also filed. While one writ petition was filed by one V. Panneerselvam in WP No. 19735 of 2014 to remove the encroachment in the river bund, the petitioner himself has filed WP No. 19961 of 2015 to remove the encroachment said to have been caused by the said Jayaraman (petitioner in WP No. 5444 of 2015). In all these writ petitions, this Court passed order directing the respondents to demarcate the lands by way of proper survey and if any encroachment exists, it shall be removed. The grievance of the petitioner is that no survey was conducted and the lands have not been demarcated till date. While so, the seventh respondent



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issued the notice under Section 7 of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act. Aggrieved by the same, the petitioner has filed this writ petition.

3. When this matter is taken up for consideration, the learned Special Government Pleader appearing for the respondents, on instructions, submitted that nothing survives for further adjudication in this Writ Petition inasmuch as the encroachments have already been removed after service of notice stipulated under Rule 6 (1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 to all the parties concerned.

4. However, the learned counsel for the Petitioner contended that the authorities concerned have adopted a selective discriminative theory in the matter of removal of encroachments, with the result of which, many of the encroachments have not yet been removed.

5. In view of the above submission, this Court, without going into the merits of the case, directs the fourth respondent to consider the petitioner's representation dated 11.06.2015, if not considered earlier and pass appropriate orders, on merits and in accordance with law, after affording an



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opportunity of hearing to the petitioner and all the other parties concerned within a period of eight (8) weeks from the date of receipt of a copy of this order. It is needless to state that if there is any encroachment subsisting, as alleged by the petitioner, the same shall be removed, after following due process of law.

6. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(R.M.D., J) (M.S.Q., J)

01.02.2023

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

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3. The Tahsildar,
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4. The District Surveyor,



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