



W.P.(MD) No.3613 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2023

CORAM:

THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.(MD)No.3613 of 2019

S.Paulraj

... Petitioner

-Vs-

1.The District Collector,
Theni District.

2.The Revenue Divisional Officer,
Periyakulam, Theni District.

3.The Tahsildar,
Periyakulam Taluk, Theni District.

4.V.M.V.Shanmugam

5.The District Revenue Officer,
Periyakulam, Theni District.

... Respondents

(Cause title is amended vide Court order dated 05.03.2019 in
W.M.P.(MD)No.4028 of 2019)

(R5 is suo motu impleaded vide Court order dated 03.02.2023)

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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to remove the encroachment made by the 4th respondent in Muthu Pillai Kanmoi in Survey No. 2247 measuring 5.63 acres situated in Bit-II Devathanapatti Revenue Village, Periyakulam Taluk, Theni District, as per the judgment and decree dated 13.09.1983 made in O.S.No.701/1983 on the file of the District Munsif-Cum-Judicial Magistrate, Periyakulam.

For Petitioner : Mr.K.Appadurai
For R1 to R3 : Mr.V.Nirmal Kumar,
& R5 Additional Government Pleader

ORDER

**[Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE]**

This Writ Petition has been filed for a direction to the respondents 1 to 3 to remove the encroachment made by the 4th respondent in Muthu Pillai Kanmoi in Survey No.2247 measuring 5.63 acres situated in Bit-II Devathanapatti Revenue Village, Periyakulam Taluk, Theni District, as per the judgment and decree dated 13.09.1983 made in O.S.No.701/1983 on the file of the District Munsif-Cum-Judicial Magistrate, Periyakulam.

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2.In support of the prayer, the learned counsel for the petitioner annexed a copy of the revenue records in the typed set of papers. A perusal of the same clearly shows that the land in Survey No.2247 is classified as water body.

3.It is brought to the notice of this Court that the 1st respondent / District Collector, Theni District, has filed a counter affidavit, wherein, in paragraph No.5, it is stated as follows:

“5.I respectfully state that from the records, it is seen that during the settlement period, as per the SLR copy of erstwhile Madurai District-Devathanapatty Revenue Village, S.No.2247 measuring an extent of 5.63 Acres was referred as Government Poramboke Tank. From the records, it is further seen that during the UDR survey proceedings, Patta was granted in favour of the 4th respondent. Under the said circumstances, it is decided to conduct an enquiry and to make field inspection as to the issue on hand. On enquiry, after affording the opportunity to the 4th respondent, if it is found that during UDR survey proceedings patta was wrongly issued to the 4th respondent, then appropriate proceedings would be passed



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so as to restore the subject survey number to its original position followed by removing the encroachment in the manner known to law.”

4.Relying upon the counter affidavit, the learned Additional Government Pleader for the respondents 1 to 3 submitted that the District Revenue Officer alone has got power to hold an enquiry.

5.In the light of the above submission, since the District Revenue Officer, Periyakulam, Theni District is a proper and necessary party in this writ petition, he is *suo motu* impleaded as 5th respondent. The learned Additional Government Pleader takes notice on behalf of the 5th respondent.

6.Considering the submission made by the learned Additional Government Pleader, the District Revenue Officer / 5th respondent shall hold an enquiry by giving opportunity to both the petitioner as well as the 4th respondent and pass a reasoned / speaking order within a period of four weeks from the date of receipt of a copy of this order. During enquiry, if the 5th respondent finds any encroachment in the water body in question as alleged by the petitioner, he is



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directed to remove the same, after giving sufficient opportunity of hearing to all the parties concerned.

7.With the above direction, this Writ Petition stands disposed of. No costs.

[T.R., A.C.J.] & [D.K.K., J.]
03.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

MYR / RR

To

- 1.The District Collector,
Theni District.
- 2.The Revenue Divisional Officer,
Periyakulam, Theni District.
- 3.The Tahsildar,
Periyakulam Taluk, Theni District.
- 4.The District Revenue Officer,
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