



W.P(MD)Nos.16687 to 16692 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P(MD)Nos.16687 to 16692 of 2021
and W.M.P. (MD) Nos.13575 & 13577 of 2021 and 962 of 2022
and W.M.P. (MD) Nos.13579 & 13581 of 2021 and 817 of 2022
and W.M.P. (MD) Nos.13585 & 13587 of 2021 and 1160 of 2022
and W.M.P. (MD) Nos.13584 & 13586 of 2021 and 797 of 2022
and W.M.P. (MD) Nos.13576 & 13578 of 2021 and 1016 of 2022
and W.M.P. (MD) Nos.13580 & 13582 of 2021 and 816 of 2022**

Chandran	... Petitioner in W.P.(MD) No.16687/2021
Rajam	... Petitioner in W.P.(MD) No.16688/2021
Murugan	... Petitioner in W.P.(MD) No.16689/2021
Thangappan	... Petitioner in W.P.(MD) No.16690/2021
V.Raji	... Petitioner in W.P.(MD) No.16691/2021
Ramesh Kumar	... Petitioner in W.P.(MD) No.16692/2021

-VS-

1.The District Collector,
Collectorate,
Nagercoil,
Kanyakumari District.

2.The Assistant Engineer,
Water Resources,
Public Works Department,
Patanam Kaal Division,
Karungal,
Kanyakumari District.

... Respondents in all the Writ Petitions



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COMMON PRAYER : Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned orders vide Form III dated 05.07.2021 issued by the 2nd respondent and quash the same.

For Petitioner in all the : Mr.T.Antony Arulraj
the Writ Petitions

For Respondents in all the : Mr.J.K.Jaya Seelan
Writ Petitions Government Advocate

COMMON ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

These Writ Petitions have been filed to quash the impugned orders vide Form III dated 05.07.2021, issued by the 2nd respondent.

2. The petitioners have admitted that they are in encroachment of lands in S.No.826/21 in Mathicode Village, Killiyur Taluk, Kanyakumari District, which is classified as a water body known as Elupaikulam. The case of the petitioners is that they are residing there along with their family members for more than six decades. The respondents have initiated proceedings under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

3. The grievance of the petitioners is that they are age old people with low income and mostly working as daily coolies. It is also the case of the



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petitioners that they have put up small thatched sheds and obtained electricity service connections for their residential houses. According to them, some of the petitioners are identified as beneficiaries under the scheme introduced by the Government of Tamil Nadu to give financial assistance to the persons for construction of houses. When the petitioners were in the fond hope of changing their house into a concrete house under the “Kalaingar Veedu Valangum Thittam”, the respondents have initiated proceedings for removing their houses by treating the same as encroachment in water body. It is the specific case of the petitioners that they are just beyond the bunds of the tank, therefore, their houses cannot be termed as encroachment in the water body.

4. This Court is unable to countenance the arguments of the learned counsel appearing for the petitioners by referring to the encroachment that it cannot be described as a water body. Every tank will get supply of water through the channels abutting the bunds. Any encroachments either in the tank bed or bund or which is abutting the tank bund which are classified as part of tank has to be treated only as an encroachment in water body. The petitioners have not disputed their encroachments by putting up small residential houses. The petitioners have no right to encroach into the water body, which is always treated as objectionable encroachment. Whenever, encroachment is found in the water body this Court has reiterated the



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necessity to take action for removal of encroachment. Even the Hon'ble Supreme Court in several cases directed the law enforcing agencies to preserve and protect the water body.

5. In this case, when the respondents have initiated action for removal of encroachment in the water body, this Court cannot resist such action merely because the petitioners would be put to hardships or suffer some injury on account of displacement. The Government had time and again issued Government Orders to provide free houses to people with lesser income and people live in penury. In such circumstances, it open to the petitioners to approach the respondents to provide free house patta in any other area. The respondents may also consider their representations for providing alternative sites in the order of priority.

6. With such liberty preserved to the petitioners to approach the Government for free house patta in any other area, these Writ Petitions are dismissed. Three months time is given for eviction. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R, J.]

[D.B.C., J.]

28.08.2023

Index : Yes / No
Neutral Citation : Yes / No
sj



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