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W.P.(MD)NO.17379 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)Nos.17379 to 17406 of 2023 AND
W.M.P.(MD)Nos.14561 to 14563, 14566 to 14587,
14589, 14590 and 14596 of 2023

W.P.(MD)No.17379 of 2023

R.Ramesh

... Petitioner

Vs.

1. The District Collector,
Sivagangai District.

2. The Tahsildar,
Thiruppathur Taluk,
Sivagangai District.

3. The Zonal Deputy Tahsildar,
Thiruppathur Taluk,
Sivagangai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the 2nd respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 04.07.2023 and quash the same.



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For Petitioner : Mr.A.Arumugam

For Respondents : Mr.K.Balasubramani,
Special Government Pleader.

For Intervenor : Mr.R.M.Arun Swaminathan

* * *

COMMON ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Special Government Pleader appearing for the respondents and the learned counsel appearing for the intervenor.

2. Before we discuss the case facts, we are constrained to observe that the issue has been hanging fire right from the year 2001 onwards. Notice under Section 7 of The Tamil Nadu Land Encroachment Act was issued leading to the institution of W.P.No.8477 of 2001. At every stage, the writ petitioners have been succeeding on technical grounds. The allegation is that the water body known as ' Sivan Kovil Oorani ' comprised in survey No.218 in A.Thekkur Village had been encroached upon by the petitioners herein. The temple authorities filed W.P.(MD)No.26690 of 2022 for directing the authorities to



clear the encroachment in the water-body. The writ petition was disposed of on 05.12.2022 in the following terms:-

“ 5. Considering the facts and circumstances of the case and also considering the fact that this Court, in a catena of decisions, has held that encroachment on the water body is liable to be removed, we direct the respondents to remove the encroachment in S.No.218 i.e., water body, after affording sufficient opportunity to all the parties concerned and by following due process of law. Such an exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order. Insofar as the second limb of the prayer for restoring the name of Sri Meenakshi Sundareswarar Nagara Sivan Kovil in revenue records in respect of S.No.212/16 is concerned, we are not inclined to express any view or opinion and it is for the third respondent to take appropriate decision on the same.”

3. Aggrieved by the same, some of the encroachers filed SLP(Civil)Diary No.2350 of 2023 before the Hon'ble Supreme



Court of India. SLP was dismissed on 17.03.2023 in the following terms:-

“ 6. We have considered the rival submissions. It is also noticed that adequate opportunities are ordered prior to removal of the encroachments. Additionally, Tamil Nadu Land Encroachment Act, 1905 also provides for remedy to the affected persons both at the original level and also at the appellate level. It is also relevant to note that although the petitioners were not arrayed, a counsel appearing on their behalf had made submission before the High Court.

7. Taking all the aforesaid circumstances into account, we see no merit in the Special Leave Petition and accordingly the same is dismissed. The proceedings for removal of the encroachments is however expected to be taken in accordance with law. All contentions are left open for the parties.”

4. Thereafter, notices under Section 7 of the Act were issued by the Zonal Deputy Tahsildar, Thiruppathur Taluk. One



Ramesh, encroacher filed W.P.(MD)Nos.8458 to 8470 of 2023.

The said writ petitions were partly allowed on 13.04.2023 in the following terms:-

“2. The petitioners have been served with notices under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. It was followed by the order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. We were taken through the contents of the notices under Section 7 of the Act. Nowhere, it called upon the noticees to offer their objections. It is peremptory in nature. Therefore, the consequential order passed under Section 6 of the Act is also bad in law. There has been a clear violation of principles of natural justice. We therefore set aside the final order passed under Section 6 of the Act. Notice under Section 7 of the Act will be treated as show cause notices. The petitioners are given 15 days from the date of receipt of a copy of this order to offer their objections before the third respondent. The third respondent shall hold enquiry. The intervenor also



can very well associate himself in the said enquiry.

The third respondent will hear the writ petitioner and Sri Meenakshi Sundareswarar, Nagara Sivan Kovil, A.Thekkur rep. by its trustee and thereafter pass final order. The petitioners will not adopt any dragging on tactics. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.”

5. The petitioners were directed to appear for enquiry before the Zonal Deputy Tahsildar on 02.06.2023 at 10.00 a.m. The petitioners had appeared for enquiry and offered their objections. Thereafter, the impugned orders came to be filed under Section 6 of the Act. They are put to challenge in these writ petitions.

6. The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to set aside the impugned orders and grant relief as prayed for.



7. In this case, the Zonal Deputy Tahsildar issued notice under Section 7 of the Act. When the notices were put to challenge, we had allowed the writ petitions on 13.04.2023 by directing the Zonal Deputy Tahsildar to pass final order. But contrary to our direction, the Tahsildar, Thiruppathur, had passed the order. It is true that the Zonal Deputy Tahsildar issued proceedings dated 28.06.2023, purporting to act in compliance of our direction. What was envisaged was that the Zonal Deputy Tahsildar should pass the order under Section 6 of the Act.

8. There is yet another aspect. As per the principles of administrative law, the authority who issues the notice, receives objections and conducts the enquiry alone should dispose of the matter. Final order should not be passed by some other authority. On these twin grounds, we are constrained to interfere. The orders impugned in the writ petitions are set aside.

9. The Zonal Deputy Tahsildar had already issued notice under Section 7 of the Act and received objections from the petitioners. Since the petitioners' counsel asserts that no formal enquiry was held, enquiry shall be held by the Zonal



Deputy Tahsildar on 27.07.2023 at 3.00 p.m. On the said date, the petitioners shall be present. They would not receive any fresh notice from the Zonal Deputy Tahsildar. Enquiry shall be conducted on the same day. Thereafter final order will be passed by the Zonal Deputy Tahsildar under Section 6 of the Act within a period of ten weeks from the date of receipt of a copy of this order. If it is adverse to the petitioners, the petitioners can very well question the same in the manner known to law. All the other contentions of the petitioners are left open.

10. These writ petitions stand allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)

20th JULY 2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

Note : Issue order copy on 24.07.2023.



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To:

1. The District Collector,
Sivagangai District.
2. The Tahsildar,
Thiruppathur Taluk,
Sivagangai District.
3. The Zonal Deputy Tahsildar,
Thiruppathur Taluk,
Sivagangai District.



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W.P.(MD)NO.17379 OF 2023

G.R.SWAMINATHAN, J.

AND

B.PUGALENDHI, J.

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W.P.(MD)Nos.17379 to 17406 of 2023

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