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W.P.(MD) No.17617 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2023

CORAM:

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

**W.P.(MD) No.17617 of 2023
and
W.M.P.(MD) Nos.14718 & 14720 of 2023**

S.Rani

... Petitioner

-VS-

1.The District Collector
Trichy District
Trichy

2.The Tahsildar
Manapparai Taluk Office
Manapparai
Trichy District

3.James

4.Infantraj

5.Arulsamy

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records pertaining to the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 10.07.2023, issued by the second respondent read along with the impugned notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 22.06.2023, issued by the second respondent with respect to S.F.No. 10/5 of Vaiyampatti Village, Manapparai Taluk, Trichy District, quash the same as illegal.

For Petitioner : Mr.A.M.Ramanathan

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader for R1 & R2

ORDER

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

This writ petition is filed challenging the order, dated 10.07.2023, passed by the second respondent, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (for brevity, “the Act”) and the notice, dated 22.06.2023, issued by the second respondent, under Section 7 of the Act,



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directing the petitioner to remove encroachment from an extent of 0.0181 sq.meter of land in Survey No.10/5 of Vaiyampatti Village, which is classified as “Vaari”.

2. From the impugned order, it is seen that the nature of the encroachment is by constructing a bath room and terrace house. The encroachment is substantial. However, the petitioner comes forward with the case stating that she is not in encroachment of any portion of public property or Varri, as alleged.

3. The petitioner further states that she made a representation for removal of encroachment in the Vaari and changing the course of Vaari as against a private individual and the said private individual has now instigated the official respondents by giving wrong particulars complaining that the petitioner has encroached into the Vaari.

4. Learned counsel for the petitioner states that the order under Section 6 of the Act was earlier passed by the Local Body against the petitioner's deceased husband and therefore, this Court, at the instance of the



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petitioner, quashed the same. Again, an attempt is made by the respondents to initiate action, without even conducting proper survey or measurement, in the presence of the petitioner, to identify whether the encroachment.

5. Learned Additional Government Pleader, who takes notice for the respondents 1 to 3, is unable to produce any record to show that survey was conducted, after issuing notice to the petitioner, in her presence.

6. The Honourable Supreme Court in the case of **Madhav Rao Schindia vs. Ramesh Jatav [(2006) 1 SCC 379]** has held that survey to identify encroachment shall be done in the presence of persons, who are interested or the persons, who are found to be encroachers.

7. Following the Judgment of Honourable Supreme Court in the case of **Madhav Rao Schindia** above referred to, this Court has repeatedly held that before removal of encroachment, the actual encroachment should be identified by conducting a survey by the Tahsildar concerned after issuing notice to the alleged encroachers or in the presence of the alleged encroachers.



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8. The Division Bench of this Court in the case of **T.S.Senthil Kumar vs. Government of Tamil Nadu reported in 2010 (3) MLJ 771**, held that principles of natural justice should be read into the provisions of Tamil Nadu Protections of Tanks and Eviction of Encroachments Act, 2007. So saying, this Court has held as follows:

“20.In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra Mysore vs. J.V. Bhat - 1975 (2) S.C.R. 407 and (ii)The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka, - 1991 (1) U.J. (S.C.) 628 = AIR 1991 SC 1117 = 1991 (2) SCC 604., where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice.The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a)The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the



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Act, strictly follow the letter, dated 10.10.2007.

(b)The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c)As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d)The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e)The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have



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resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate



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orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.”

9. In such circumstances, this Court is inclined to pass the following orders:

- (i) This writ petition is allowed.
- (ii) The order, dated 10.07.2023, passed by the second respondent, under Section 6 of the Act and the notice, dated 22.06.2023, issued by the second respondent, under Section 7 of the Act, are quashed.
- (iii) Liberty is given to the second respondent to proceed afresh in accordance with law.
- (iv) Before initiating action under the Act, the second respondent is directed to conduct a survey, after issuing notice to the petitioner and any other interested persons.
- (v) Survey shall be conducted in the presence of the petitioner.



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- (vi) In case the petitioner or anyone is found to be in encroachment of any public land, it may be open to the second respondent to proceed further in accordance with law.
- (vii) No costs. Consequently, connected miscellaneous petitions are closed.

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

[D.B.C., J.]

21.07.2023

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

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To:

1.The District Collector,
Trichy District,
Trichy.

2.The Tahsildar,
Manapparai Taluk Office,
Manapparai,
Trichy District.



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