



W.P(MD)No.10325 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10325 of 2015

and

M.P.(MD)No.1 of 2015

Tirupathi @ Vellaisamy

... Petitioner

Vs.

1.The District Collector,
Tiruchirappalli.

2.The Block Development Officer,
Manapparai Taluk,
Manapparai,
Trichy District.

3.The Tahsildar,
Manapparai, Trichy District.

4.The Village President,
Puthanatham Village,
Manapparai Taluk,
Trichy District.

5.Periyasamy

6.Perumal
(R5 & R6 are impleaded vide order
dated 04.03.2016 in M.P.(MD)No.2/15)

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice dated 19.06.2015 passed by the fourth respondent and quash the same.

For Petitioner : Mr.B.Jameel Arasu

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1 & R3

: Mr.Aayiram K.Selvakumar for R2 & R4

: Mr.A.Balamani for R5 & R6

ORDER

Heard the learned counsel on either side.

2. The petitioner challenges the notice issued under Section 5 of the Tamil Nadu Encroachment Act, 1905. The learned counsel contends that the impugned notice is without jurisdiction. Section 5 of the Act is as under:-

5. Liability of person unauthorisedly occupying land to penalty after notice:-

Any person in any area other than the transferred territory liable to pay assessment under Section 3 shall also be liable at the discretion of the Collector to pay in addition by way of penalty

(i) if the land be assessed land, a sum not exceeding five rupees or when ten times the assessment payable for one year under Section 3 exceeds five rupees, a sum not exceeding ten times such assessment, provided that no penalty shall ordinarily be imposed in respect of the unauthorised occupation of such land for any period not exceeding one year;



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(ii) If the land be unassessed, a sum not exceeding ten rupees, or when twenty time the assessment payable for one year under Section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.

3. It is obvious that the president of the village panchayat is not figuring as one of the authorities set out in the provision. On the ground of want of jurisdiction, the impugned notice is set aside. However, I need to make some observation. The learned Additional Government Pleader points out that the petitioner is occupying the water body known as 'Kilavikulam'. Encroachment on water body cannot be permitted. While the president of the panchayat may not have the jurisdiction to issue the impugned notice under Section 5 of the Act, he is very much having the power to issue notice for removal of encroachment under Section 131 of the Tamil Nadu Pachayats Act. It has been held in more than one decision that the power of the panchayat president to issue notice cannot be questioned. However, he cannot physically cause removal. He has to necessarily call upon the authorities under the Land Encroachment Act to remove the encroachment.

4. The learned Additional Government Pleader also informs the Court that injunction suit filed by the petitioner stood dismissed for default.



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5. With these observations namely

A. The petitioner has encroached on a water body and that such encroachment cannot be permitted.

B. The panchayat has the power under Section 131 of the Tamil Nadu Panchayats Act, the Writ Petition is allowed.

The authorities are directed to ensure that the petition mentioned water body namely Kilavikulam is cleared of all encroachment. Due process of law will have to be adhered to. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

Index : Yes / No
Internet : Yes/ No
rmi

***NOTE: Registry to mark a copy of this order
to the District Collector, Trichy.***

To

- 1.The District Collector,
Tiruchirappalli.
- 2.The Tahsildar,
Manapparai, Trichy District.



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G.R.SWAMINATHAN, J.

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