



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

CORAM :

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE B.PUGALENDHI**

**WP(MD) No.23553 of 2023
and
WMP(MD)No.19752 of 2023**

Kshathiriya Hindu Nadar Uravinmurai
Perunahi – 623 115,
Kamuthi Taluk, Ramanathapuram District,
Rep.by its President K.Bala Murugan Nadar

... Petitioner

vs.

1.The Tahsildar, Kamuthi,
Ramanathapuram District.

2.V.Bose

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records related to the impugned proceedings of the first respondent, viz, the Tahsildar, Kamuthi dated 01.09.2023 and 19/09/2023 and quash them both and consequently direct the first respondent to conduct a proper survey and measurement of



survey numbers 34/1, 34/2 and adjoining survey numbers of Perunazhi Village, Kamuthi Taluk, Ramanathapuram District in the presence of the petitioner and remove the encroachments made in Sy.No.34/2 (Vellaikannu Nadar Oorani) and undertake further efforts to protect and preserve the said water body that was taken over by the government from the petitioner Uravinmurai and thus render justice.

For Petitioner	: Mr.N.Dilipkumar
For Respondents	: Mr.K.Balasubramani Special Government Pleader for R1
	Mr.C.M.Arumugam for R2

ORDER

Heard both sides.

2.The petitioner challenges the order issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. The impugned proceedings have been triggered by the orders passed in Cont P(MD)No.231 of 2021. The petitioner received notice under Section 7 of the Act dated 01.09.2023. The petitioner requested time to offer their objections. However, without giving such an opportunity, final order under Section 6 of the Act came to be passed on 19.09.2023.



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3.The contention of the learned counsel for the petitioner is that the impugned proceedings are based on survey for which they were not put on notice. It is true that an Advocate Commissioner was appointed by this Court and survey was also carried out by employing advance technology. Para 9 of the status report of the Tahsildar, Kamuthi reads as follows :

“It is respectfully submitted that the Advocate Commissioner after following due procedures conducted survey on 04.03.2023 and at the time of survey, the Zonal Deputy Tahsildar, Revenue Inspector, Village Administrative Officer of Perunali, Taluk Sub Inspector of Survey, Firka Surveyor, Assistant Engineer of National Highway, and Sub Inspector of Police, Perunali were present. Further, counsel for the petitioner also present on the day. In presence of all the authorities mentioned above, the said Vellaikannu Oorani in Survey No.34/2 was surveyed by using 'Differential Global Positioning System' (DGPS) machine. It is necessary to remind that when survey was conducted previously on 10.06.2020, the survey was conducted manually. When the survey was conducted on 04.03.2023 in the presence of Advocate Commissioner, DGPS machine was used so as to exactly survey the water body.”



4. Yet, we are constrained to interfere only for the reason that notice was not given to the petitioner before conducting such survey. The notice issued under Section 7 of the Act remains intact. The order passed under Section 6 of the Act alone is set aside. Survey shall be conducted by the District Surveyor assisted by the revenue authorities on 07.10.2023. The petitioner will not receive any further notice. The petitioner shall be present on the spot. The survey report along with sketch will be served on the petitioner. The petitioner is at liberty to offer their objections. After consideration of the materials on record, the Tahsildar, Kamuthi shall pass orders under Section 6 of the Act thereafter. The entire exercise shall be completed before the end of November 2023.

5. This writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S, J.) & (B.P, J.)
29.09.2023

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Note : Issue order copy on 03.10.2023



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To

1.The Tahsildar, Kamuthi, Ramanathapuram District.



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G.R.SWAMINATHAN, J.
and
B.PUGALENDHI, J.

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