



W.P(MD)Nos.27621 and 27710 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)Nos.27621 and 27710 of 2023
and

W.M.P.(MD)Nos.23730, 23731, 23835 and 23836 of 2023

Rajathi Masuthabarakath ... Petitioner in W.P.(MD)No.27621 of 2023

M.Nazurullakhan ... Petitioner in W.P.(MD)No.27710 of 2023

Vs.

- 1.The District Collector,
O/o. District Collector,
Ramanathapuram,
Ramanathapuram District.
- 2.The District Revenue Officer,
O/o. District Revenue,
Ramanathapuram,
Ramanathapuram District.
- 3.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.



W.P(MD)Nos.27621 and 27710 of 2023

4.The Tahsildar,
O/o. the Tahsildar Office,
Ramanathapuram Taluk,
Ramanathapuram District.

5.The Commissioner,
Ramanathapuram Municipality Office,
Vandikara Street,
Ramanathapuram,
Ramanathapuram District.

6.The Executive Engineer,
Public Works Department (Water Management),
Vaigai Illangal, (Nearby Krishna Theater),
Paramakudi, Ramanathapuram District.

7.The Superintendent of Engineer,
Public Works Department (Water Management),
District Collector Campus, Sivagangai,
Sivagangai District.

8.The Assistant Engineer,
Water Resources Department,
Irrigation Section No.II,
Ramanathapuram,
Ramanathapuram District.

... Respondents in both W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 8th respondent vide his proceedings Nil dated 26.10.2023 and consequential impugned order passed by the 8th respondent vide his proceedings Nil dated 31.10.2023 and quash the same as illegal.



W.P.(MD)Nos.27621 and 27710 of 2023

(In both W.Ps)

For Petitioner : Mr.S.Mohamed Suhail,
For M/s.Ajmal Associates.

For Respondents : Mr.K.Balasubramani,
Spl. Govt. Pleader for R1 to R4 & R6 to R8.
Mr.K.Saravanan for R5.

COMMON ORDER

Heard both sides.

2.When the writ petitions were taken up for hearing, the learned Special Government Pleader submitted that the similar notices were issued to 11 other persons and that the writ petition filed by one of them was dismissed by the Hon'ble Division Bench on 22.11.2023 (W.P.(MD)No.27440 of 2023). The order copy is yet to be uploaded.

3.We wanted to know from the respondents if any survey was done in the presence of the petitioners or if any survey notice was individually issued to the writ petitioners. The answer is in the negative. We are clearly of the view that in such matters, the mandate issued in



W.P(MD)Nos.27621 and 27710 of 2023

T.P.Senthilkumar's case will have to be scrupulously adhered to. In fact, we had also issued further directions in the matter. They are as follows:-

*“3.But the matter cannot rest there. It is not as if the petitioner has approached this Court for the first time. When the competent authority took action on the earlier occasion, it was quashed by this Court in WP(MD)No.8131 of 2023 on 11.04.2023 on the ground that without issuing Form – II notice, Form – III notice was straightaway issued. The Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 was enacted with the object of preserving the water bodies and for clearing encroachments committed in respect of them. Unless the authorities adhere to due process of law, any action taken for the protection of the water bodies will be nullified. We take judicial notice of the fact that Forms (I, II and III) annexed to the statute are peremptory in nature and a literal adherence to the statutory provisions would only end in favoring the encroacher. That is why, the Hon'ble Division of the Madras High Court in **T.S.Senthil Kumar v. Government of Tamil Nadu (2010) 3 MLJ 771** issued 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 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



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W.P(MD)Nos.27621 and 27710 of 2023

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 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



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W.P(MD)Nos.27621 and 27710 of 2023

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

We are of the view that a slight tweaking may be necessary by taking note of all the subsequent decisions. For instance, vide order dated 15.06.2022 in WP(MD)No.11825 of 2022 (R.Gurusamy v. Government of Tamil Nadu) following the decision of the Hon'ble Supreme Court reported in (2006) 1 SCC 379 (Madhavrao v. Ramesh Jatav and ors), another Hon'ble Division Bench of this Court held that survey to identify an encroachment should be done in the presence of the interested persons/encroachers. The authorities under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 shall adopt the following procedures:

- 1. After publication of Form -I in respect of the water body in question, notice should be issued in Form – II to the alleged encroacher to the effect that the survey indicates the encroachment on his/her part. Objection/explanation should be invited from the encroacher.*



W.P(MD)Nos.27621 and 27710 of 2023

2. *If the encroacher disputes the correctness of the survey as contained in Form – I, fresh survey should be done in his/her presence.*
3. *Form – III notice ordering removal of encroachment shall be enclosed along with the final order.”*

4. Even while not interfering with Form II and Form III notices, we direct the fifth respondent to conduct survey. Survey will be conducted on 05.12.2023 from 10.00 am onward. The writ petitioners will not be given any individual notices. After the survey is completed, the survey sketch together with survey report will be served to the petitioners. The further action to be taken by the respondents will depend upon the outcome of survey.

5. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S.J.) & (B.P.J.)
23.11.2023

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



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To:-

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Ramanathapuram District.
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O/o. District Revenue,
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- 3.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
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- 4.The Tahsildar,
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- 5.The Executive Engineer,
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W.P(MD)Nos.27621 and 27710 of 2023



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