



W.P.(MD)No.28996 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.28996 of 2023
and
W.M.P.(MD)No.25036 of 2023

V.Girija

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Principal Secretary,
Revenue & Disaster Management Department,
Fort St.George,
Chennai-9.
- 2.The District Collector,
Kanyakumari District,
Nagercoil.
- 3.The Sub-Collector,
Padmanabapuram,
Thuckalay Post,
Kanyakumari District.
- 4.The Tahsildar,
Kalkulam Taluk,
Thuckalay Post,
Kanyakumari District.



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5.The Assistant Engineer,
Public Works Department,
Irrigation (Special) Wing,
Thuckalay,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 5th respondent in Form of Notice to order for removal of encroachment in Form III dated 20.02.2019 and quash the same as illegal and arbitrary.

For Petitioner :Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran

For Respondents :Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned senior counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. By the impugned Form III notice, the petitioner has been called upon to vacate from the petition mentioned premises. We are more than satisfied that the petitioner has been in occupation of a water body without any iota of right or title.



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3. When the matter was taken up for admission, the learned Special Government Pleader submitted that the impugned Form III notice was issued way back in February 2019 and that alternative site was assigned in favour of the petitioner in 2022 itself. The learned senior counsel in response submitted that alternative site assigned in favour of the petitioner is located more than 5 kilo meters from the present residence and that the petitioner is entitled to seek alternative site in the very same village as per the norms laid down in G.O.Ms.No.465, Revenue and Disaster Management Department, dated 27.11.2018. He placed particular emphasis on Class II of the said G.O.

4. Considering the fact that the petitioner has been in occupation of the petition mentioned premises for quite some time, even as we decline to interfere with the impugned Form III notice, we make it clear that the petitioner shall not be disturbed for the next four months. In the mean while, the petitioner is permitted to submit an application to the second respondent for allotment of an alternative site in the Padmanabapuram Village itself. The second respondent shall take note of the petitioner's representation and consider the feasibility of allotting the alternative site. In the affidavit itself as envisaged by G.O.Ms.No.465, dated 27.11.2018, if the second respondent finds that the



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petitioner's request is not feasible of compliance, the petitioner has no other option but to move to the alternative site originally assigned in his / her favour.

5. With this direction, the Writ Petition is disposed of. The second respondent has to pass a speaking order on the petitioner's representation. We make it clear that any order to be passed by the second respondent will not be open to the judicial review or amenable to a fresh challenge. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [B.P., J.]
12.12.2023

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

1.The Principal Secretary,
Revenue & Disaster Management Department,
Fort St.George,
Chennai-9.

2.The District Collector,
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3.The Sub-Collector,
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4.The Tahsildar,
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