



WP No.7034 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.7034 of 2024

1.S.K.Balasundaram

2.Maheshwari

: Petitioners

versus

1.The District Collector,
Salem District

2.The Revenue Divisional Officer,
Mettur, Salem District

3.The Commissioner,
Tharamangalam Municipality,
Tharamangalam, Salem District

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the notice issued by the third respondent in Na.Ka.No.1736/2023/F1 dated 07.11.2023 (served on 08.03.2024) under Section 128 of the Tamil Nadu Urban Local Bodies Act, (Amended) 1998, quash the same.



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For Petitioners : Mr.V.Elangovan
For Respondents : Mr.C.Kathiravan,
Special Government Pleader

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.V.Elangovan, learned counsel for the petitioners and Mr.C.Kathiravan, learned Special Government Pleader, for the respondents.

2. The petitioners are challenging the notice issued under Section 128 of the Tamil Nadu Urban Local Bodies Act (Amended), 1998, for removal of encroachment on a waterbody.

3. The learned counsel for the petitioners submits that initially, WP No.11703/2016 was filed by one Vedachalam, alleging encroachment on the part of the first petitioner herein. The first petitioner was respondent No.5 in the said writ petition.

4. This Court, recorded the statement of the District Collector, that the encroacher has been evicted. In view of the same, the writ petition was disposed of. Subsequently, on 22.11.2023, a notice was issued to both the petitioners



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herein for removal of encroachment. Both the petitioners approached this Court by filing a writ petition in WP No.35761 of 2023. Directions were given to treat the notice as a show-cause notice and opportunity was given to the petitioners to file their reply and the respondents were directed to consider the same. The petitioners have filed their reply. According to the petitioners, in the impugned notice, their reply is not at all considered. There is no whisper about the same.

5. The learned counsel for the petitioners submits that even the notice is dated 07.11.2023 i.e. prior to the earlier notice dated 22.11.2023. This shows non-application of mind by the respondents. The petitioners have patta over the land. The said aspect also was not considered.

6. It is not the case of the petitioners that they were not given opportunity. It has been observed that the report of the Tahsildar is also received; meaning thereby, survey was conducted and on survey, it was found that the first petitioner - S.K.Balasundaram has encroached about 4 sq.m. and the second petitioner – Maheswari has encroached about 17 sq.m. The area under the control of municipality has been blocked and kept by the petitioners.



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7. It is not the case of the petitioners that they have independently got the measurement done to substantiate that they have not encroached on a waterbody.

8. It is also not that the authorities have held that the petitioners have encroached the entire land. The petitioners have some land of their own but have encroached some part of a waterbody.

9. In light of the above, the writ petition as such is dismissed. There shall be no order as to costs. Consequently, WMP No.7862 of 2024 is closed.

10. WMP Nos.7859 of 2024 filed to permit the petitioners to file a single writ petition is allowed and disposed of.

(S.V.G., CJ.)

(D.B.C., J.)

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Index : Yes/No
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To

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