



W.P.No.35027 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

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K.Sambandam

S/o.Krishnasamy

... Petitioner

VS

1. The District Collector

Mayiladuthurai District

2. The Revenue Divisional Officer

Mayiladuthurai District

3. The Tahsildar

Tharangambadi Taluk

Mayiladuthurai District

4. The Superintendent (Water Resource Department)

Cauvery Basin Division (E)

Mayiladuthurai District



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5. T.Murugapandiyan
S/o.Thirunavukarasu

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 4 herein to remove the encroachment made by the 5th respondent in the water body namely Mahimalaiar vaaikal situated in S.No.339 and Government Poramboke Lane situated in S.No.382B/16 in Ozhugaimangalam, Erukatancherry Village, Tharangampadi Taluk, Mayiladuthurai District by considering the petitioner representation dated 28.06.2024 within a time frame fixed by this Court.

For Petitioner : Ms.Ra.Thejashvini

For Respondents : Mr.V.Ravi
Special Govt. Pleader for R1 to R4

ORDER

(Order of the Court was made by M.SUNDAR, J.)

Captioned writ petition pertains to lands comprised in two survey numbers, 'one is S.No.339 and another is S.No.382B/16 in



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Ozhugaimangalam, Erukatancherry Village, Tharangampadi Taluk, Mayiladuthurai District' {hereinafter 'said lands' for the sake of brevity and convenience}.

2. The case of the writ petitioner is that S.No.339 is classified as 'வடிகால் வாய்கால்' in Mahimalai River and S.No.382B/16 is classified as 'Government Poramboke Lane'. It is the specific case of the writ petitioner that R5 (T.Murugapandiyan, son of Thirunavukarasu, residing at No.128, Gandhi Nagar, Vazhudavur Road, Pondicherry – 605 009) has caused encroachment in both the aforesaid survey numbers in the guise of promoting housing plots in the name and style 'பாண்டியன் நகர்'.

3. Learned counsel adverting to paragraph 3 of the support affidavit submits that the writ petitioner's house is situate in S.No.382B/15 in Ozhugaimangalam, Erukatancherry Village, Tharangambadi Taluk, Mayiladuthurai District, passage to his house has



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been obstructed and the irrigation source for writ petitioner's agricultural lands has also been obstructed.

4. From the case file we do find that there is an advertisement pamphlet which talks about 'பாண்டியன் நகர்' with a reference to a Government of Tamil nadu approval being Approval No.24 of 2023 but in the plan on the reverse of the pamphlet, we find that the eastern part has been shown as 'Vaikkal'.

5. Issue notice to official respondents i.e., R1 to R4.

6. Mr.V.Ravi, learned Special Government Pleader accepts notice for R1 and R4.

7. Learned State counsel submits that it would be desirable to conduct a survey and if any encroachment is found, action would be initiated under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) as regards S.No.339 and under appropriate



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statute as regards S.No.382. In both cases, the fifth respondent would be

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show-caused and will be given opportunity.



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8. As regards Tanks Act, the procedure to be followed has been laid down in clauses (i), (ii) and (iii) of sub-paragraph (f) of paragraph 15 of Full Bench judgment of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu*** reported in **2015 (5) LW 397** and the same reads as follows:

'15(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 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



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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.'

9. As regards, said 1905 Act, this Court has repeatedly held that 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' which is being referred to as 'said 1905 Act' is a self contained Code. The reason *inter-alia* is that there is a provision to have the alleged encroacher show-caused under section 7 followed by an order (considering the cause shown). The order under section 6 is appealable under section 10 [District Collector is the appellate authority] and there is a provision for further revision to the Government under Section 10-A [Section 10-A(3) to be precise] of said 1905 Act. Pending appeal / revision, there is a provision for making interim prayer vide Section 10-B of said 1905 Act. Therefore, said 1905 Act is a self contained Code in every sense of the expression.



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10. As regards any other statute there is provision for the fifth respondent being show-caused.

11. In the light of narrative thus far, considering the nature of the matter, we took up the main writ petition in the Admission Board with the consent of both sides making it clear that all the rights and contentions of R5 (private respondent) are preserved.

12. We make an order to the effect that the official respondents shall conduct a survey and if any encroachment is found as regards S.No.339, proceedings shall be initiated under Tanks Act which means R5 will be show-caused and if there is encroachment in S.No.382 proceedings will be initiated under appropriate statute i.e., either under said 1905 Act or under any other appropriate statute, which again means that R5 will be show-caused and given opportunity.

13. Let the official respondents do the needful as expeditiously as the business of the official respondents would permit.



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Captioned writ petition disposed of in the aforesaid manner albeit with preservation of rights and contentions of R5 in the aforesaid manner.

There shall be no order as to costs.

[M.S., J] [K.R.S., J]

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To

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