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W.P.No.35590 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.35590 of 2024

A.Muthu
S/o.Aarumugam

... Petitioner

Vs.

1. The District Collector
O/o. of the District Collector
Kancheepuram - 631 501
Kancheepuram District.
2. The Tahsildar
Uthiramerur Taluk
Uthiramerur 603 406.
3. The Block Development Officer
Uthiramerur 603 406
Kancheepuram District.
4. The Divisional Engineer
O/o. Divisional Engineer
Highway Department
Kancheepuram 631 501.
Kancheepuram District.

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5. The Assistant Line Engineer
Construction and Maintenance
Highway Department
Uthiramerur 603 406
Kancheepuram District.
6. The Assistant Engineer
Construction and Maintenance
Uthiramerur 603 406
Kancheepuram District.
7. Tamil
S/o.Mohan
8. Narayanan
S/o.Muniyappa Naidu
9. Dheenadhayalan
S/o.Muniyappa Naidu
10. Shreeramulu
S/o.Lingappa Naidu

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the respondents 1 to 6 to take necessary steps to remove the encroachments made by the respondents 7 to 10 made on the Government Poromboke land in Survey Numbers 528 and 529 of Karuvaepampoondi Village, Uthiramerur Taluk, Kancheepuram District which belongs to the Highways Department and Canal by considering the petitioner's representation dated 19.09.2024.



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For Petitioner : Mr.V.R.Appaswamee
For Respondents : Mr.V.Ravi
Special Government Pleader
for R1 to R6

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition has been filed seeking a mandamus to direct the respondents 1 to 6 to remove the encroachments made by the respondents 7 to 10 on the Government Poromboke land in Survey Numbers 528 and 529 of Karuvaepampoondi Village, Uthiramerur Taluk, Kancheepuram District ('said land' hereafter).

2. According to the writ petitioner, lands in Survey Numbers 528 and 529, partly belong to Highways Department and a lake is located in portion of above survey numbers, and due to encroachment, width of road is reduced and causes flood.

3. Issue notice to official respondents i.e., R1 to R6.

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4. Mr.V.Ravi, learned Special Government Pleader accepts notice for R1 to R6.

5. Mr.V.Ravi, learned State Counsel submits that the writ petitioner is also one of the encroachers in a portion of the said land and that a survey will be conducted and appropriate action will be taken on the alleged encroachers as per law.

6. In the light of the limited scope of captioned WP, main WP was taken up in the Admission Board with the consent of both sides, by preserving the rights of private respondents 7 to 10.

7. In the light of the narrative thus far, the official respondents shall conduct a survey and if there is an encroachment (post survey), appropriate authority shall initiate action either under 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' {hereinafter 'Tanks Act' for the sake of convenience, clarity and brevity} or



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under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} or under Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'said Act' for the sake of brevity, convenience and clarity}.

8. If the action is under Tanks Act, the respondents 1 to 6 is directed to follow the procedure laid down by Hon'ble Full Bench in ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} more particularly clauses (i) to (iii) of sub-paragraph (f) of paragraph No.15 will be followed and the same reads as follows:

'15. Certain provisions of Tank Act namely, Sections 4 to 10 were challenged in a Writ Petition with a prayer to declare those provisions as null and void and contrary to Article 14 of the Constitution of India on the ground that those provisions confer upon the executive, unguided and uncanalised discretionary power, since they denied to the persons aggrieved an opportunity of being heard. The said Writ petition was heard by a Division Bench to which one of us (M.Sathyanarayanan,J.) was a party. The Division Bench took note of the various decisions including the decision in the case of Sivakasi Region Tax Payers Association (supra), disposed of the Writ Petitions without declaring the provisions of the Act as unconstitutional, since no opportunity is given and held that



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there is nothing in the Act which excludes the principles of natural justice, the Act (Tank Act) does not specifically indicate that the encroachers do not have right to be heard and issued the following directions vide judgment dated 10.02.2010, reported in 2010 3 MLJ 771.

(a)

(b).....

(c).....

(d).....

(e).....

(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 encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the



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