



WEB COPY



WP(MD)No.8174 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.11.2023

Pronounced on : 11.03.2024

CORAM:

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

WP(MD)No.8174 of 2023

John Kennedy

... Petitioner

VS

1.The District Collector,
Collectorate,
Virudhunagar,
Virudhunagar District.

2.The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

3.The Tahsildar,
Srivilliputhur Taluk,
Virudhunagar District.

4.The Executive Engineer,
Melvaipar Vadi-Nila Division,
Rajapalayam,
Virudhunagar District.

5.The Assistant Executive Engineer,
Melvaippar Vadi-Nila Sub Division,
Srivilliputhur.

6.Panjavarnam

<https://www.mhc.tn.gov.in/judis>



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7.Ramuthai

8.Mariammal

9.Meena

10.Muthukrishnan

11.Pandian

12.Muthumani

13.Paramasivam

14.Ellammal

15.Muthupandi

16.Thamaraikani

17.Muthumani

18.Ganesan

19.Ellammal

20.Karuppasamy

21.Pandiammal

22.Ganesan

23.Kumaran

24.Selvam

25.Mallika

26.Anand

27.Murugan

28.Palavesamani

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29.Lakshmi

30.Ananthaman Kovil

represents by its Dharmakartha

31.Kovil

represents by its Dharmakartha

32.MGR Narpanimandram

represented by its President

33.Kamaraj Paddippakam

represented by its President

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, directing the 1 to 5 respondents to remove the encroachments made by the 6 to 33 respondents in “ Oodai ” Sr.No.234/1 situated in Athikulam, Deivendhiri, Srivilliputhur Taluk, Virudhunagar District based on the proceedings order in Mo.Mu.Aa1/4908/2022m, dated 27.10.2022.

For Petitioner : Mr.B.N.Rajamohamed
For Respondent : Mr.R.Baskaran,
Nos.1 to 5 Addl.Advocate General
Assisted by Mr.K.Balasubramani
Spl.Govt.Pleader
For Respondent : Mr.M.Jothi Basu
Nos.6,8 to 18,20
For Respondent : Mr.M.Murugan
Nos.30



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ORDER

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The petitioner a resident of Athikulam Deivendhiri Village, Srivilliputhur Taluk, has approached this Court seeking a writ of mandamus to remove the encroachments made by the respondents 6 to 33 in Cholankulam tank passing through S.No.234/1, based on the proceedings of the Tahsildar dated 27.10.2022.

2. According to the petitioner, population of the village is more than 5000. Most of them including this petitioner are depending upon agriculture. The main water source for their agriculture is Kannathur Vaaikaal passing through S.No.234/1 from Cholankulam Kanmoi. Due to the encroachments, the water flow is obstructed. Therefore, the petitioner along with two others had earlier filed a writ petition in WP(MD)No.6871 of 2007 before this Court for a direction to remove the encroachments in S.No.234/1 and it was disposed of by this Court by order dated 21.08.2007 directing the official respondents therein to find out the encroachments, if any, and to take appropriate action in accordance with law. Even after the directions of this Court in the said writ petition, the officials did not act upon and therefore, the petitioner submitted a representation before the Legal Services Authority. The District Legal Aid Committee forwarded the petitioner's representation to the Tahsildar on 11.07.2022 and based on which a survey was conducted and a report was filed before the Tahsildar on 23.06.2022 in Na.Ka.No.2648/22 that a Church has



encroached the water body to an extent of 0.00.18.2 M and another individual by name Annamalai has encroached to an extent of 0.00.14 Sq.M. Based on this report, the Tahsildar has sent a communication to the Assistant Engineer, Water Resource Organisation along with Form-I vide his proceedings in Moo.Mu.Aa.1/2648/2022, dated 27.06.2022. The Assistant Engineer, WRO has also proceeded with the same by issuing Form – II on 17.10.2022, but did not proceed further. Therefore the petitioner has approached the Tahsildar once again. Subsequently, the Tahsildar by his communication dated 27.10.2022 has further directed the AE, WRO to remove the encroachment. Even then the respondents 4 and 5 have not acted upon. Therefore, this petitioner has filed this writ petition during March 2023. Thereafter another Form-II notice was issued by the AE, WRO on 30.01.2023 and Form-III notice was also issued on 11.04.2023. The Tahsildar under the capacity as the Chairman of the Taluk Level Committee for removal of encroachment as per G.O.Ms.No.540, Revenue Department dated 04.12.2014 has also issued further directions to the AE, WRO to remove the encroachments. Till date these encroachments have not been removed. The encroachers have not challenged the notice issued in Form-III.

3. The respondents 6 to 21 have filed their counter affidavit stating that they are in occupation of the land for more than 60 years and have been provided with family card, Aadhaar card and electricity service connection. They also claim that in view of their occupation in S.No.234/1, there is no obstruction of water in Oodai.



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4.The Thasildar has filed a counter affidavit that they have identified the encroachments and have duly communicated the same to the department concerned, namely the Water Resource Organisation that the encroachments are in Oodai Poramboke and the AE, WRO is the competent authority to evict the encroachers under Section 6 of the Tamil Nadu Land Encroachment Act.

5.We have considered the submissions made on either side and perused the materials placed on record.

6.The petitioner, an agriculturist, is agitating this issue from the year 2007 and a direction was already issued by this Court in WP(MD)No.6871 of 2007 as early as on 21.08.2007 to remove the encroachments, if any in the water body. Even then the authorities have not taken any action. The petitioner has also approached various authorities including the Legal Services Authority and also filed this writ petition. This writ petition is pending from April 2023 and the respondents 4 and 5, being the competent authorities to take action, have not filed any counter affidavit explaining as to the course of action taken by them. Only after filing of this writ petition, Form-III notice was issued, when the Form-II notice was issued on 17.10.2022. Thereafter the Thasildar has sent a reminder, subsequently another Form-II notice was issued on 30.01.2023. Form-III notice was issued on 11.04.2023.



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7. Where ever there is an encroachment in the water body, it is the responsibility of the Department concerned to restore the water body. The Hon'ble Supreme Court and this Court in a catena of judgments has held that the water bodies cannot be allowed to be obliterated.

8. In the result, this writ petition is allowed with a direction to the official respondents to proceed with the Form-III notice dated 11.04.2023 and to remove the encroachments, within a period of twelve weeks from the date of receipt of a copy of this order. In the event if any of the encroachers falls under the Below Poverty Line and is eligible for free house site patta, the 1st respondent/ The District Collector shall consider their cases, sympathetically and provide a suitable alternate place as expeditiously as possible. No costs.

[GRSJ]

[BPJ]

11 .03.2024

DSK

Index: Yes / No



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