



W.P(MD)Nos.10984 to 10990 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.06.2023

Pronounced on : 11.03.2024

CORAM

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE B.PUGALENDHI**

**W.P(MD)No.10891 of 2023
and
WMP(MD)No.9544 of 2023**

Chittuthayammal

... Petitioner

Vs.

- 1.The District Collector, Madurai, Madurai District.
- 2.The Block Development Officer,
Chellampatti Panchayat Union, Madurai District.
- 3.The Tahsildar, Usilampatti Taluk, Madurai District.
- 4.The President/Executive Officer,
Vikkiramangalam Village Panchayat,
Chellampatti Panchayat Union,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice dated 20.04.2023 in unnumbered letter issued by the fourth respondent and quash the same as illegal.

For Petitioner : Mr.S.Vellaichamy



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For Respondents : Mr.K.Balasubramani,
Spl Government Pleader

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ORDER

Heard both sides.

2.The petitioner challenges the impugned notice issued by the fourth respondent on the ground set out in the affidavit filed in support of this writ petition. Similarly placed individuals have filed WP(MD)Nos.10984 to 10990 of 2023, they were disposed of in the following terms :

“2.In all these writ petitions, eviction notices issued by the President of the local body have been put to challenge. It has been held that while the president of the local body who is also its executive authority is empowered to issue notices calling upon the encroachers to remove encroachments, he cannot physically cause their removal. He has to necessarily refer the matter to the jurisdictional Tahsildar and the provisions of the Tamil Nadu Land Encroachment Act, 1905 will have to be applied. As and when such notices are issued, it is open to the petitioners herein to satisfy such authority that they have not committed any encroachment.”

3.The learned counsel for the petitioner however relies on the decrees made in O.S No.29 of 2021 on the file of the District Munsif cum Judicial Magistrate Court, Usilampatti and O.S No.745 of 2012 on the file of the Sub Judge, Usilampatti Camp, Madurai District. The first decree can be ignored



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because it is only between private parties. In the second suit, the District Collector, Madurai, the Tahsildar, Usilampatti and the local bodies have been shown as defendants. Interestingly, in the typed set of papers, copy of the decree dated 22.09.2016 alone has been enclosed. The judgment copy has not been made available. In paragraph No.3 of the affidavit filed in support of this writ petition, it is stated that the suit was decreed in favour of the petitioner based on the judgment of the earlier suit and that the learned Sub Judge has stated that the respondents 1 to 3 have admitted the petitioner's case.

4.We notice that the decree dated 22.09.2016 in O.S No.745 of 2012 is an exparte decree. Of course, an exparte decree is also to be treated as enforceable. But here we are concerned with a water body. In such cases, courts have to exercise parens patriae jurisdiction. Normally, such jurisdiction is invoked only in cases concerning minors/persons with mental disability and idols. We would extend the said principle to water bodies also. That the authorities had taken the stand that the suit property is Odai Poramboke is evident. In such cases, the presiding officers ought to have travelled an extra mile. They could not have dealt with this case like any other adversarial litigation. It was not an issue only between the plaintiff on the one hand and the defendant on the other. Not only the general public but also future



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generations have a definite stake in the matter. The conscience of the court must have been satisfied that the plaintiff had not committed encroachment on a water body. In this case, such exercise was not undertaken. The "A" Register, the earlier settlement records have not been called for. Survey must have been directed to be conducted. Spot inspection must have been undertaken.

5.We, therefore, treat the decree dated 22.09.2016 as non est in the eye of law. Such an approach adopted by us will not prejudice the petitioner. This is because she is not going to be thrown out overnight. She can always establish that the suit property is not a part of the water body. She will have opportunity as and when action is initiated against against her under the Tamil Nadu Land Encroachment Act, 1905. This writ petition is also disposed of on the same lines as that of WP(MD)Nos.10984 to 10990 of 2023 dated 11.03.2024. No costs. Connected miscellaneous petition is closed.

(G.R.S,J.) & (B.P, J.)

11.03.2024

Index : Yes / No
Internet : Yes/ No
SKM



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