



W.P(MD)No.25312 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.08.2024

CORAM

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

**W.P(MD)No.25312 of 2018
and
W.M.P(MD)No.22924 of 2018**

R.Viju

... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District.
Nagercoil,
Kanyakumari District.
- 2.The Tahsildar,
Kalkulam Taluk,
Thuckalai – 629 175,
Kanyakumari District.
- 3.The Assistant Engineer,
Water Resource Department,
Public Works Department,
Water Irrigation (Special Section),
Thuckalai – 629 175,
Kanyakumari District.



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4.The Executive Officer,
Mulagumoodu Town Panchayat,
Mulagumoodu Post,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the third respondent in Letter No.584/Ko3/Oo.Po(c)/2018 dated 29.11.2018 and to quash the same as illegal, arbitrary and against principles of natural justice.

For Petitioner : Mr.L.Shaji Chellan

For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard both sides.

2.The petitioner challenges Form-3 notice issued by the third respondent. The Form-3 notice mentions four survey numbers, namely, 77/14, 77/7, 77/2 and 77/12. It is not in dispute that Survey No.77/14 is not a water body. In the A-Register, it has been earmarked for Court use.



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3.The learned counsel appearing for the petitioner states that the petitioner has already filed W.P(MD)No.24698 of 2018 seeking patta. Therefore, inclusion of Survey No.77/14 in the impugned Form-3 notice clearly bad as it is not a water body.

4.Coming to the other three survey numbers, it is seen that the petitioner is not concerned with the encroachment made in Survey No.77/12. Therefore, we do not interfere with the impugned Form-3 insofar as Survey No. 77/12 is concerned.

5.However, regarding Survey No.77/2, there appears to be a marginal encroachment. Of course, even a small encroachment in a water body cannot be tolerated. It is beyond dispute between the small feeding channel and the petitioner's compound wall there exists a road.

6.We therefore of the view that the third respondent need not take any action against the petitioner in respect of the encroachment committed in Survey Nos.77/7 and 77/2.



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7.This writ petition is partly allowed. There shall be no order as to

costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [B.P., J.]
08.08.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
MGA

To

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G.R.SWAMINATHAN, J

and

B.PUGALENDHI, J.

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