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W.P.(MD)NO.9996 OF 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.9996 of 2025 AND

W.M.P.(MD)No.7437 of 2025

Sri Meenakshi Sundareswarar Nagara Sivan Kovil,
A.Thekkur,
Rep.by its Trustee
Thanikachalam.

... Petitioner / Petitioner

Vs.

1. The Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai.
2. The District Collector / Monitoring Committee,
Sivagangai.
3. The Tahsildar,
Tirupattur,
Sivagangai District.
4. R.Ramesh
5. G.Senguttuvan
6. G.Jeyalakshmi
7. T.Neethipathi
8. M.Chandrapriya
9. A.Aruldass
10. Moorthy
- 11.K.Mariyaselvam



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- 12.V.Janaki
13. P.Priya
- 14.Periyampillai
- 15.Arjunan
- 16.Periyasamy
- 17.M.Palaniyammal
- 18.G.Kaliammal
19. C.Nagammal
20. Syed Ibrahim
- 21.Mydeen
- 22.Kajeena Begam
- 23.T.Nagammal
- 24.Saila Rani
- 25.Vaitheeswaran
- 26.Rafiath Bazaria
27. Abdul Jafar
28. Rani
- 29.Annapoorani
- 30.Pugalenthi
- 31.Iyyavu
- 32.Kanagu
- 33.Subbiah
- 34.Malathy
- 35.Sulaiman
- 36.Palaniyammal
- 37.Rajeswari
- 38.Kasi
- 39.Pappa
- 40.Nagammal
- 41.Seethayan
- 42.Thavasumani
- 43.Raman
- 44.Sundaram
- 45.Baluchamy
- 46.Rukkumani
- 47.Palaninathan
- 48.Tamilarasi
- 49.P.Pandiyani
- 50.C.Muniyandi

... Respondents



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Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the official respondents to evict the entire encroachments made by the respondents 4 to 50 and other unnamed encroachers if any in survey No.218 of A.Thekkur Village, Tirupattur Taluk, Sivagangai District which was confirmed by the appellate authority / second respondent through her order in Na.Ka.No.E4/4253/2023 dated 10.10.2024 within the time stipulated by this Court.

For Petitioner : Mr.RM.Arun Swaminathan
For R-1 to R-3 : Mr.K.Balasubramani,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for respondents 1 to 3.

2. Issuance of notice to the private respondents is dispensed with.



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3. The petitioner is a temple. They want the encroachment in survey No.218 of A.Thekkur Village, Tirupattur Taluk to be cleared.

4. It is not in dispute that survey No.218 was originally classified as Sivan Kovil Oorani. The persons in encroachment of the land were sought to be evicted. They therefore filed W.P.No.59 of 2004 and the writ petition was dismissed only on 25.03.2008. It appears that the said order has become final and no challenge was mounted. Since no action was taken, the temple filed W.P.(MD) No.26690 of 2022 for evicting the encroachment. The writ petition was disposed of on 05.12.2022 in the following terms:-

“5. Considering the facts and circumstances of the case and also considering the fact that this Court, in a catena of decisions, has held that encroachment on the water body is liable to be removed, we direct the respondents to remove the encroachment in S.No.218 i.e., water body, after affording sufficient opportunity to all the parties concerned and by following due process of law. Such an exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order. Insofar as the



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second limb of the prayer for restoring the name of Sri Meenakshi Sundareswarar Nagara Sivan Kovil in revenue records in respect of S.No. 212/16 is concerned, we are not inclined to express any view or opinion and it is for the third respondent to take appropriate decision on the same.”

5. Questioning the same, some of the encroachers filed SLP(Civil)(D)No.2350 of 2023 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court dismissed the SLP vide order dated 17.03.2023 in the following terms:-

“4. The petitioners would firstly contend that they were not arrayed as party in the writ proceeding. They would next argue that civil proceedings are pending over the concerned land and therefore the High Court should not have overlooked those in order to issue peremptory order for removal of encroachments.

5. Responding to the above, the respondent's counsel would refer to the proceedings in W.P No.59/2004 and the order dated 25.03.2008 to point out that the present petitioner was the Petitioner No.21 in the said



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proceeding and on a similar issue of encroachments, the High Court dismissed the petition by adverting to the fact the order for removal of the encroachment passed by the 1st respondent on 26.12.2003 cannot to be said to be irregular or illegal. The Court also made it clear that the petitioners herein are at liberty to claim possessory title or seek alternate sites by approaching the concerned authorities.

6. We have considered the rival submissions. It is also noticed that adequate opportunities are ordered prior to removal of the encroachments. Additionally, *Tamil Nadu Land Encroachment Act, 1905* also provides for remedy to the affected persons both at the original level and also at the appellate level. It is also relevant to note that although the petitioners were not arrayed, a counsel appearing on their behalf had made submission before the High Court.

7. Taking all the aforesaid circumstances into account, we see no merit in the Special Leave Petition and accordingly the same is dismissed. The proceedings for removal of the encroachments is however expected to be taken in accordance with law. All contentions are left open for the parties.”



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6. Thereafter, the encroachers applied for reclassification of the land. According to them, since they are in possession of the same, classification of Oorani has to be deleted. With the aforesaid prayer, one encroacher filed W.P.(MD)No.3425 of 2023. The writ petition was dismissed by us on 21.02.2023. Challenging the order passed under Section 6 of the Tamil Nadu Land Encroachment Act, M.Arjunan filed W.P.(MD)No.4829 of 2023 and it was dismissed as withdrawn on 28.03.2023 with liberty to the petitioner to approach the appellate authority. A batch of writ petitions were filed by a number of encroachers in W.P.(MD)Nos.8458 to 8470 of 2023. They challenged the notices issued under Section 7 of the Act. The said writ petitions were disposed of by us vide order dated 13.04.2023 in the following terms:-

“2. The petitioners have been served with notices under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. It was followed by the order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. We were taken through the contents of the notices under Section 7 of the Act. Nowhere, it called upon the noticees to offer their objections. It is peremptory in nature. Therefore, the consequential order passed under

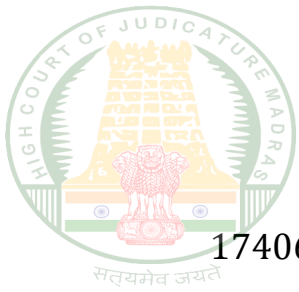


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Section 6 of the Act is also bad in law. There has been a clear violation of principles of natural justice. We therefore set aside the final order passed under Section 6 of the Act. Notice under Section 7 of the Act will be treated as show cause notices. The petitioners are given 15 days from the date of receipt of a copy of this order to offer their objections before the third respondent. The third respondent shall hold enquiry. The intervenor also can very well associate himself in the said enquiry. The third respondent will hear the writ petitioner and Sri Meenakshi Sundareswarar Nagara Sivan Kovil, A.Thekkur rep. by its trustee and thereafter pass final order. The petitioners will not adopt any dragging on tactics. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. ”

7. Thereafter, an enquiry notice was issued by the Zonal Deputy Tahsildar. He also conducted enquiry. But then, the eviction order came to be passed by the Tahsildar. Since the person who issued notice and conducted the enquiry did not pass the order, we had interfered with the order dated 20.07.2023 in W.P.(MD)Nos.17379 to



17406 of 2023 in the following terms:-

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“7. In this case, the Zonal Deputy Tahsildar issued notice under Section 7 of the Act. When the notices were put to challenge, we had allowed the writ petitions on 13.04.2023 by directing the Zonal Deputy Tahsildar to pass final order. But contrary to our direction, the Tahsildar, Thiruppathur, had passed the order. It is true that the Zonal Deputy Tahsildar issued proceedings dated 28.06.2023, purporting to act in compliance of our direction. What was envisaged was that the Zonal Deputy Tahsildar should pass the order under Section 6 of the Act.

8. There is yet another aspect. As per the principles of administrative law, the authority who issues the notice, receives objections and conducts the enquiry alone should dispose of the matter. Final order should not be passed by some other authority. On these twin grounds, we are constrained to interfere. The orders impugned in the writ petitions are set aside.

9. The Zonal Deputy Tahsildar had already issued notice under Section 7 of the Act and received objections from the petitioners. Since the petitioners' counsel asserts that no formal enquiry was held, enquiry shall be held by the



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Zonal Deputy Tahsildar on 27.07.2023 at 3.00 p.m. On the said date, the petitioners shall be present. They would not receive any fresh notice from the Zonal Deputy Tahsildar. Enquiry shall be conducted on the same day. Thereafter final order will be passed by the Zonal Deputy Tahsildar under Section 6 of the Act within a period of ten weeks from the date of receipt of a copy of this order. If it is adverse to the petitioners, the petitioners can very well question the same in the manner known to law. All the other contentions of the petitioners are left open.”

Thereafter, fresh enquiry was conducted and the Zonal Deputy Tahsildar passed a fresh order on 28.06.2023 directing the encroachers to remove the encroachments. Challenging the same, they filed an appeal under Section 10 of the Act before the District Collector. The District Collector issued eviction order and dismissed the appeal on 10.10.2024. The grievance of the petitioner is that even though the appeal was dismissed as early as on 10.10.2024, till date the eviction orders have not been enforced.

8. It is seen that the process that commenced way back in the



year 2001. Since then, a quarter century has passed. We direct the second respondent to ensure that the petition mentioned water body is cleared of all encroachments within a period of six months from the date of receipt of a copy of this order. This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)
8th April 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Commissioner of Land Administration,
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