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W.P.(MD)NO.31528 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.31528 of 2024

P.Raghunathan

... Petitioner

Vs.

The Assistant Engineer,
Parappalaru Dam Division,
Ottanchathram,
Dindigul District.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings / Notice issued by the respondent dated 16.12.2024 in the Form of Notice for removal of encroachment in Form III under Rule 6(1) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and quash the same as illegal and in violation of principles of natural justice.

For Petitioner	: Mr.D.Kirubakaran, for M/s.B.Saravanan Associates.
For Respondent	: Mr.K.Balasubramani, Special Government Pleader.

* * *

**ORDER**

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Heard both sides.

2. The petitioner questions the impugned Form III notice issued by the respondents on the ground that it was not preceded by any notice. He further adds that even survey was not conducted, in short, the case of the petitioner is that the direction given by the Hon'ble Division Bench in T.S.Senthilkumar's case has not been followed.

3. The contentions advanced by the learned counsel appearing for the petitioner are undoubtedly persuasive and formidable. But the facts of the case will have to be seen. The petitioner had filed ***W.P.(MD)No.867 of 2008*** for forbearing the authorities from dispossessing him except by due process of law. The writ petition was disposed of on ***13.02.2008*** in the following terms:-

“3. The learned Special Government Pleader appearing for the respondents has submitted that the petitioner will not be dispossessed from the petition mentioned property, without following the due process of law.

4. This Court considered the arguments of the learned counsel on either side and perused the material records placed.



5. Even if any encroachment is made, the said encroacher shall be given an opportunity. Hence, this Court is of the considered view that the prayer sought for by the petitioner is to be granted. Accordingly, the respondents are directed not to disturb the possession of the petitioner, without following due process of law.”

4. Even though this writ petition was disposed as early as on 13.02.2008, it took almost 11 years for the authorities to issue notice. On 17.07.2019 notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 was issued. It was questioned by the petitioner by filing W.P.(MD)No.16616 of 2019. The stand of the petitioner is that the issuance of notice was without jurisdiction. The said writ petition is found falling with the Hon'ble Division Bench which was disposed of on 26.07.2019 in the following directions:-

“5. Considering the fact that the present notice though was issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, we are of the view that such proceedings can be initiated only by the revenue authorities. However, even before initiating such proceedings by the revenue authorities, the respondent herein is entitled to take action under Section 131(2) of the Tamil Nadu Panchayat Act, 1994. Therefore, without expressing any view on the merits of the claim



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made by the respective parties, we direct both the parties to treat the impugned notice as the one issued under Section 131(2) of the Tamil Nadu Panchayat Act, 1994, so as to enable the petitioners to give explanation to the said notice. If any such explanation is given, the same shall be considered by the respondent and appropriate orders shall be passed on merits and in accordance with law. If the respondent is of the view that the petitioners are liable to be evicted even after considering their objection, it is open to the respondent to resort to the remedies available under the Tamil Nadu Land Encroachment Act, 1905, through the revenue officials as contemplated under Section 131(2) of the Tamil Nadu Panchayat Act, 1994, r/w Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905.

6. Accordingly, both the writ petitions are disposed of by directing the petitioners to give explanation within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation, the respondent shall pass appropriate orders as directed supra, within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.”

Another five years passed and the present impugned notice came to be issued.



5. This is again questioned by the petitioner on the ground that the principles of natural justice have not been complied with.

6. We called upon the learned Special Government Pleader to produce “A” Register. It is seen therefrom that survey No.758/E1, Aravakurichi Village has been classified as Nangachiyaru. It is beyond dispute that the petition-mentioned survey number is a water body. The encroachment on a water body cannot be permitted. We called upon the petitioner to produce some material to indicate the character of his possession. No material has been enclosed in the typed set of papers. It is not the case of the petitioner that he has not put up construction in survey No.758/E1. It is also not the case that he is having patta. Asking the authority to issue one more notice would be an useless formality.

7. We therefore decline to interfere with the order impugned in this writ petition. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)
3rd January 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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W.P.(MD)NO.31528 OF 2024

G.R.SWAMINATHAN, J.

AND

B.PUGALENDHI, J.

PMU

To:

The Assistant Engineer,
Parappalaru Dam Division,
Ottanchathram,
Dindigul District.

W.P.(MD)No.31528 of 2024

03.01.2025