

**(2015) 09 MAD CK 0198**

**In the Madras High Court**

**Case No :** Writ Petition [MD]. No. 15409 of 2015 and M.P. No. 1 of 2015

Koodammal

APPELLANT

Vs

The Junior Engineer, PWD - WRO

RESPONDENT

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**Date of Decision :** 02-09-2015

**Acts Referred:**

Constitution of India, 1950 — Article 136

**Citation :** (2015) 09 MAD CK 0198

**Hon'ble Judges :** S. Nagamuthu, J;V.S. Ravi, J

**Bench :** Division Bench

**Advocate :** G.R. Swaminathan for T. Antony Arul Raj, for the Appellant; K. Chellapandian, Additional Advocate General Assisted by Muthukaruppan, Additional Government Pleader, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Nagamuthu, J—This Writ Petition is all about the obstruction for the removal of the encroachment on water bodies comprised in Survey Nos. 1203/1 and 2, Kamarajar Nagar, Palani Village, Dindigul District.

2. There is a chequered history behind this litigation. Indisputably, Vaiyapuri Tank and Sirunaickenkulam Tank in Palani Village are the irrigation tanks benefiting vast extent of ayacut lands. In the year 1992, an attempt was made by the local municipality to construct a bus stand for the use of the public in a portion of Vaiyapuri Tank. It was stoutly opposed by the farmers, who are the beneficiaries of the said tank. The action of the Municipality was challenged by filing a Writ Petition in W.P. No. 10172 of 1992. The main contention in the Writ Petition by the petitioner therein was that it was the main irrigation source for ayacutthars and therefore, the Municipality had no jurisdiction to establish a bus stand on the same. A learned Single Judge of this Court granted an interim order of injunction and thereafter, the proposal was kept in abeyance by the Municipality. Subsequently, a Peace Committee Meeting was convened, including the farmers, in which the farmers agreed that an extent of 5.25 acres of land could be utilized

for the purpose of construction of bus stand, without detrimental to the irrigation rights of the ayacutthars.

3. In pursuance of the said undertaking, this Court, by order dated 22.04.1997, modified the order and permitted the Municipality to cover an area of 5.25 acres of land for the purpose of bus stand. But, the said work could not be completed, because there were lot of encroachments on the said tank. It was reported to this Court when the Writ Petition was taken up for final hearing that 50% of the encroachers were yet to be evicted, though there was a specific direction issued by this Court to remove the encroachments. It appears that the encroachers made a representation to the Government seeking patta for their encroachments. It also appears that the District Administration had submitted a proposal to the Government to grant patta to the encroachers.

4. Aggrieved over the said action of the Government in not evicting the encroachers and instead proposing to grant patta, thereby legalizing their encroachments, the ayacutthars filed a Writ Petition in W.P.[MD].No. 3679 of 2008 before this Court. By order dated 21.04.2008, this Court issued a direction to the District Collector and the Public Works Department Authorities to pass appropriate orders. Even the said order was not complied with by the District Collector. Therefore, a Contempt Petition in Cont.P.[MD].No. 302 of 2009 was filed. While so, the welfare association of the encroachers filed Writ Petitions in W.P.(MD)Nos. 7440 of 2009 and 7552 of 2009. The said Contempt Petition was tagged along with these two Writ Petitions.

5. By order dated, 22.12.2009, a Division Bench of this Court dismissed the said Writ Petitions and closed the Contempt Petition with an observation that the earlier order of this Court, directing removal of the encroachments must be complied with in all seriousness within a period of six months from the date of receipt of a copy of the order. As against the said order of the Division Bench, the association took up the matter before the Hon''ble Supreme Court by filing SLP.Nos. 16331 and 21961 of 2010. By order dated 10.12.2012, the Hon''ble Supreme Court dismissed the said Special Leave Petitions thereby confirming the order of the Division Bench of this Court. The operative portion of the order of the Hon''ble Supreme Court reads as follows:-

"In our opinion, the view taken by the High Court is consistent with the law down by this Court that no encroachment should be tolerated over the water bodies which constitute part of the precious natural resources and the farmers cannot be deprived of their right to draw water from such sources.

As a sequel to the above, we hold that the petitioners have failed to make out a case for interference by this Court under Article 136 of the Constitution of India".

6. Though the said order of the Hon''ble Supreme Court was passed as early as on 10.12.2012, the District Administration has not removed the encroachments so as to restore the water bodies and ensure the rights of ayacutthars for irrigation.

7. In those circumstances, though belatedly, at least, on 17.08.2015, the Junior Engineer, Public Works Department, Nee.Aa.Thu.Varathamani, Palani, has issued a notice to one of the encroachers requesting her to vacate the encroached land as per the order of the Hon"ble Supreme Court. In the said notice itself, he has mentioned that as an alternative, patta shall be issued to the petitioner assigning a house site either in Thumpalapatti or in Melakkottai village. Challenging the said notice, the petitioner is now before this Court with this Writ Petition.

8. We have heard the learned counsel appearing for the petitioner, the learned Additional Advocate General appearing for the respondent and we have also perused the records carefully.

9. In this Writ Petition, it is mainly contended that the petitioner was not a party to the earlier Writ Petition, and therefore, those orders passed by this Court as well as the Hon"ble Supreme Court would not bind her. In our considered view, the said argument does not even have persuasive force for the simple reason that the earlier Writ Petition was filed by an association, known as, "Uppliyanthittu Kamarajar Nagar Residents Welfare Association". It is submitted by the learned counsel for the petitioner that the petitioner is not a member of the said association. Assuming that the petitioner is not a member of the association, she is bound to be evicted in view of the order, dated 21.04.2008, passed earlier in W.P.[MD].No. 3679 of 2008, which was filed by the farmers. It is not as if the petitioner were not aware of the said Writ Petition, which was disposed of by this Court on 21.04.2008 itself. The said order has become final. The second Writ Petitions, in W.P.(MD)Nos. 7440 of 2009 and 7552 of 2009, were filed by the welfare association of the encroachers only to restrain the authorities from removing the encroachments.

10. There can be no dispute that the petitioner is an encroacher of the land comprised in Survey Nos. 1203/1 and 2, Kamarajar Nagar, Palani Village, Dindigul District, which forms part of the water body. An encroacher has got no vested right to prevent the encroachment being removed, that too, to restore the water body.

11. The learned counsel for the petitioner would submit that the impugned notice has not been issued in accordance with any statute governing the issue. In our considered view, though it is true that the impugned notice has been issued without reference to the statutory provision, on that score, the same cannot be interfered with, because failure to mention the statutory provision would not cause any prejudice to the petitioner. The petitioner, being an encroacher, has got no right and is bound to vacate and hand over vacant possession of the property.

12. The learned counsel for the petitioner would further submit that the property in question has been in possession and enjoyment of her family and her forefathers for at least three generations. First of all, there is no proof for the

said contention. Further, assuming that the petitioner has been in possession of the property for a considerable period, that would not confer any right on the petitioner over the land. As we have already pointed out, as an encroacher, she is liable to be vacated and she has to hand over vacant possession to the Government. It also needs to be mentioned that in the impugned notice itself, it is stated that the Government has decided to give alternative site to the encroachers. The petitioner can very well take the alternative site and allow the Government to restore the water body by removing the encroachment.

13. In view of all the above, we do not find any merit at all in the Writ Petition. The Writ Petition fails and the same is, accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.