

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,
II Additional District Munsif, Nagercoil.

Monday, on the 25th day of August, 2025.

I.A. No. 3 of 2025 in O.S. No.15 of 2025

CNR No.TNKK04-000306-2024

Karthik Suryaraj

... Petitioner / Plaintiff

-vs-

1. Tamil Nadu Water Resources Department
Myladi, Kanyakumari District.

2. The State of Tamil Nadu, rep. by the
District Collector, Nagercoil,
Kanyakumari District

3. Jayakumar

... Respondents / Defendants

This petition came before this court on 21.08.2025 for a final hearing in the presence of Mr. A. Lawrence, Peter Shaw, Advocate for the Petitioner / Plaintiff and Mr. C. Johnson, Government Pleader for the 1st and 2nd Respondents / 1st and 2nd Defendants and Mr. C. Sahaya Varuvel Rajan, Advocate for the 3rd Respondent / 3rd Defendant, and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner has filed the above petition under Order XXVI Rule 9 and 10 and Section 151 of Code of Civil Procedure, seeking to pass an order appointment of Advocate / Commissioner to note down the following facts,

Points to be noted by the Advocate-Commissioner:

1. To note down the physical features of petition schedule property.
 2. To note down whether any encroachment is made by the Petitioner / Plaintiff by the petition schedule property.
 3. Such other points as the commissioner is requested to note at the spot may also be noted.
- 2) Gist of Averments in the Petitioner / Plaintiff Petition:

The petitioner submit that petitioner was residing in the plaint schedule property for the past 8 years. The Petitioner purchased the plaint schedule property on 25.10.2013 and constructed the house after getting proper approval from the competent authority and petitioner was properly paying land tax and house tax.

3) The petitioner that the plaint schedule property is a north facing plot and at the western side of the plot an irrigation canal is situated. The petitioner that the irrigation canal under the control of the 1st Respondent/ 1st defendant. The 2nd respondent/ 2nd defendant is the formal party to the suit. The 3rd respondent / 3rd defendant's house is situated in the eastern side of the plaint

schedule property. The 3rd respondent/ 3rd defendant with an intention to grab the plaint schedule property threatens the plaintiff in many ways and the plaintiff gave criminal complaint in police and an FIR was registered against him.

4) The petitioner that the 3rd respondent / 3rd defendant and some residents nearby the plaint schedule property used to pollute the irrigation canal by letting the drainage water into the canal that comes out from their residences through a long drainage pipes fixed underneath the Panchayat Road.

5) The petitioner raised a complaint about the above issue before 1st respondent/ 1st defendant several times but they did not take any action. The petitioner that the 1st respondent/1st defendant sent a notice dated 21.11.2023 to petitioner stating false allegation that petitioner was polluting the irrigation canal by letting the drainage water that comes out of petitioner's house. Moreover the 3rd respondent/ 3rd defendant instigated the officials of the 1st respondent/ 1st defendant and the officials from the 1st respondent/1st defendant illegally came to petitioner and threatened petitioner with false allegation.

6) The petitioner sent a complaint on 26.09.2024 to the 1st respondent/ 1st defendant regarding their illegal activities and to take necessary action to prevent the canals from the pollution caused by the drainages from the 3rd respondent/ 3rd defendant and nearby residents. The petitioner that on 04.10.2024 without any prior notice the 1st respondent/ 1st defendant came to the plaint schedule property and marked a symbol of encroachment on the western

side of the compound wall of the plaint schedule property and orally threatened petitioner they they will demolish a portion of the plaint schedule property.

7) Under these circumstances petitioner was being a law abiding citizen are without any support and the 3rd respondent/ 3rd defendant Government Official shall demolish the marked property in the compound wall. Also the 3rd respondent/3rd Defendant accompanying with the 1st respondent/ 1st defendant giving unnecessary disturbance to petitioner. Hence having no other way petitioner have come forward with the suit seeking the remedy to protect the eastern side compound wall and to declare that the portion of the compound wall in the plaint schedule property that was marked by the 1st respondent/ 1st defendant illegally belongs to petitioner.

8) The petitioner that as there are no possibilities of any amicable settlement, petitioner approaches this court with this suit seeking the remedy to protect the eastern side compound wall and to declare that the portion of the compound wall in the plaint schedule property that was marked by the 1st respondent/ 1st defendant illegally, belongs to petitioner and for permanent injunction restraining the respondents/Defendants or their men or agent not to disturb the peaceful enjoyment of the plaint schedule property. The plaint may be read as part and parcel of this affidavit.

9) Under above circumstances petitioner was entitled to get an order for Appointment of Commissioner is necessary. Without the appointment of an Advocate / Commissioner to note the points as asked for in the accompanying application issues in the suit cannot be effectively and properly adjudicated. Appointment of an Advocate / Commissioner would go a long way in promoting the cause of justice. Hence, it has become highly essential that an order has to be passed by this Court for the appointment of an Advocate /Commissioner to note down the points as asked for in the accompanying application and to file a comprehensive report thereof otherwise, petitioner will be put to irreparable loss and injury. Hence this petition is to be allowed.

10) Gist of the Averments in the 1st and 2nd Respondents / 1st and 2nd

Defendants Counter:

The 1st and 2nd Respondents / 1st and 2nd Defendants had filed counter stating that the petition seeking appointment of commissioner is not maintainable in law on facts. The petitioner has encroached part of irrigation canal and constructed a compound wall in the canal comprised in Re.Sy.No.122/5 of Terekalputhooor Village. The said property is classified in revenue record as "பாசன வாய்க்கால்". Moreover it is absolutely and exclusively belongs to the Government.

11) The petitioner has no right in any portion of the property comprised in Re.Sy.No.122/5 of Terekalputhooor Village. The petitioner has encroached the government land and he has illegal constructed compound wall by encroaching the irrigation canal and drain out rain water and waste water of his house in the irrigation canal. The petitioner has filed the petition with the sole motive of harassing the 1st and 2nd respondents which would affect the interest of public. The petitioner is trying to create records and fillup the lacuna in this case to seeking appointment of commissioner when is not at all sustainable. The appointment of commissioner will not serve any useful purpose. The petition is devoid of merits and good faith. There is no sufficient ground narrated in this petition. The petitioner is not come forward with clean hands. Hence, to accept the counter and dismissed the petition.

12) **The 3rd Respondent / 3rd defendant had filed memo adopting their written statement cum counter claim in the above Petition:**

It is submitted that the plaintiff has encroached prt of irrigation canal and constructed a compound wall in the canal comprised in Re.Sy.No.122/5 of Therakalputhooor Village. The said property is classified in revenue record as "பாசன வாய்க்கால்". Moreover it is absolutely and exclusively belongs to the Government. This defendant is not aware about the criminal case between he plaintiff and 3rd defendant.

13) It is submitted that the complaint received from the 3rd defendant about the drain out entire waste as well as drainage water of plaintiff's house and two another into the irrigation canal and polluting the canal. So, this defendant sent a notice dated 21.11.2023 to this plaintiff, one Henry Paul Samuvel and Jai Sindh Jebakumar Manvel for removal of pollution and letting drainage water into canal. A letter was written to the Thasildhar, Agasteewaram Taluk through this defendant letter 23/766/2024, dated 26.06.2024 requesting him to fix the area for removal of encroachments in survey No.122/5 of Therakalputhooor Village. Subsequently, on 04.10.2024 a measurement was carried out by the Taluk Surveyor and Form-I containing the details of the encroachers was received from the Thasildhar, Agasteeswaram through letter A1/11/2024, dated 19.11.2024. It was mentioned that two of the said encroacher had built a compound wall and one had built a barbed wire fence. It is submitted that as per report of the Thasildhar, Agasteeswaram Taluk regarding their encroachment this defendant's office letter No.கோ.23/766/2024, dated 25.11.2024, Form-II has been advertised. Subsequently Form-III notice was issued to 4 encroachers including this plaintiff vide this office letter No.கோ/23/806/2024, dated 09.12.2024. In this situation, the plaintiff had filed WP (MD) No.30883 of 2024 before the Hon'ble Madurai Bench of Madras High Court stating that he was serve Form-III notice issued by this defendant straight away without complying the principles of natural justice. So, on 19.12.2024, the Hon'ble Madurai Bench

of Madras High Court passed order in WP (MD)No.30883 of 2024 directing the 1st defendant herein to give fresh notice and proceed as per law to remove the encroachment. Subsequently, to that the plaintiff had filed WP (MD)NO.1806 of 2025 before the Hon'ble Madurai Bench of Madras High Court to quash the impugned order in letter ௫௪௩/59/10/2024, dated 06.01.2025 as illegal. The above WP (MD) No.1806/2025 was disposed by giving a direction to 1st and 2nd defendants to follow the order in WP (MD) No.30883 of 2024, dated 19.12.2024. After disposal of writ petition only with an intention to delay the execution WP (MD) No.30883 of 2024 and WP (MD) No.1806 of 2025 order the petitioner / plaintiff had filed this present suit with false allegations. Based on the Hon'ble Madurai bench of Madras High Court order the 1st and 2nd defendants to take action of demolish the illegal construction made by the plaintiff in irrigation canal. The Government have every right to remove encroachment made in the canal based on the Hon'ble Madurai Bench of Madras High Court order.

14) The petitioner / plaintiff has encroached the Government land and he has illegally constructed compound wall by encroaching the irrigation canal comprised in Resurvey No.122/5 of Therakalputhooor Village. The Government has every right to remove the encroachment made in the canal based on Hon'ble Madurai bench of Madras High Court order. Moreover the petitioner / plaintiff has to remove all the encroachment in the Re.Sy.No.122/5 of Theralalputhooor

Village. It is submitted that the plaintiff is not entitled to claim any right over the Re.Sy.No.122/5 of Therakalputhooor Village belonged to the Government. The petitioner / plaintiff wilfully and wantonly files this vexatious suit with false claims to harass and to grasp the Government land and give hardships to the 1st and 2nd defendants. The suit is not maintainable in law on facts. The plaintiff has no cause of action to file this suit. The petitioner / plaintiff has filed this by suppression and misrepresentation of facts. The suit is devoid of merits and good faith. The suit is most frivolous and vexatious one. The petitioner / plaintiff had no approach this court with clean hands. The suit is bad for misjoinder and non joinder of parties. Hence, to accept the counter and dismissed the petition.

15. The point for consideration is whether the above petition has to be allowed or not?

16. Point:

Heard both sides. Records perused. The petitioner is the plaintiff in the suit filed for declaration by declaring the portion of the compound wall in the plaint schedule property that was marked by the 1st defendant illegally, belongs to the plaintiff and for permanent injunction. The plaintiff stated that at the western side of the plaint schedule property, an irrigation canal is situated which is under the control of 1st respondent / 1st defendant. Since, the residents nearby the plaint schedule property allegedly pollute the irrigation canal, the petitioner

raised the complaint before the 1st respondent / 1st defendant several times and got a notice dated 21.11.2023 stating the above as false allegation and alleged that the petitioner is polluting the irrigation canal by letting the drainage water comes out of the house.

17) Subsequently, 1st respondent / 1st defendant on 04.10.2024 came to the plaint schedule property and marked a symbol of encroachment on the western side of the compound wall of the plaint schedule property as alleged by the petitioner. Since, the suit relief with regard the compound wall and the same has been allegedly encroached, this court is of the considered view, that an of an Advocate Commissioner is proper for the just and effective adjudication with regard to suit 'A' relief. In the light of above facts, this court is inclined to allow the petition.

As a result, this petition is allowed, Advocate Selvi. X. Minisha M.S.No.285/2024 is an appointed as Advocate Commissioner in this petition and her remuneration is fixed as Rs.8,000/- (Rupees Eight Thousand only), the same shall be paid by the petitioner on or before 04.09.2025. The Advocate Commissioner is directed to visit the plaint schedule property after due notice to both sides in order to inspect and submit the detailed report and plan within two months. The Commissioner shall take assistance of Taluk Surveyor. Call on 04.09.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 25th day of August 2025.

II Additional District Munsif
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No.3/2025 in
O.S.No.15/2025
Date: 25.08.2025.
II ADM Court, Nagercoil.