

In the High Court of Judicature at Madras

Dated: 09.02.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.23440 of 2014

K.Senthil @ K.Senthilraj . Petitioner

Vs.

- 1.The District Collector,
Vellore District, Vellore.
- 2.The Tahsildar,
Wallajah Taluk,
Vellore District.
- 3.The Executive Engineer,
(P.W.D) Water Resources Organisation,
Upper Palar Division,
Vellore, Vellore District.
- 4.The Assistant Engineer,
(P.W.D) Water Resources Organisation,
Palar Dam Section
Ranipet, Vellore District.

- 5.Subramani
- 6.Saravanan
- 7.Shanthi
- 8.K.Muneer Basha
- 9.Trusty M.K.Shanmugam
- 10.Manimegalai
- 11.Malarkodi
- 12.V.Hallis
- 13.P.Parasuraman
- 14.V.Inbasekaran
- 15.Elumalai
- 16.E.Mani
- 17.P.Muniyandi
- 18.Kumutha

19.Raman
20.Thangam
21.V.Meena
22.K.Kasi
23.S.Lakshmi
24.Settu
25.M.Chitra
26.K.Raja
27.Devaki
28.K.P.Palani
29.Narasammal
30.M.Bommi
31.Hussain
32.Malathy
33.Thangamani
34.Sirraj
35.S.Jaikumar
36.Malliga
37.Thilaga
38.M.Muruganandam
39.C.Subramani
40.Pushami
41.Vijayalakshmi
42.Munusamy

... Respondents

RR5 to 42 impleaded as per order
dated 12.12.2014 by NPVJ & PRSJ in M.P.No.1/14
in W.P.No.23440 of 2014

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Mandamus, directing the Respondents to take appropriate action for removal of encroachments in SF Nos.354, 75, 76/2 and 31 of Melvisharam Village, Wallajah Taluk, Vellore District in terms of "Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007" by considering the applications dated 16.06.2014.

For Petitioner : Mr.S.Kamadevan

For Respondent : Mr.P.S.Siva Shanmugasundaram
Nos.1 to 4 Special Government Pleader

For Respondent : No Appearance
Nos.5 to 42

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has preferred the present Writ Petition praying for passing of an order by this Court in directing the Respondents 1 to 4 to take appropriate action for removal of encroachments in S.F. Nos.354, 75, 76/2 and 31 of Melvisharam Village, Wallajah Taluk, Vellore District in terms of "Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007" by considering his application dated 16.06.2014.

2.At the outset, it is to be pointed out that the private Respondents 5 to 42 were impleaded as parties to the Writ Petition by means of an order of this Court dated 12.12.2014 in M.P.No.1 of 2014. After impleadment, notice was issued to them and the same was returned with an endorsement "refused so herein returned to sender" and as such, this Court is not inclined to issue fresh notice.

3.According to the Petitioner, he purchased the lands in S.F.No.26/5 A2, 34/7, 76/1, 76/3, 76/4, 76/5, 77/2, 77/4, 78/1, 79/1 and 80/2A of Melvisharam Village, Wallajah Taluk, Vellore District under six registered sale deeds on the file of the Sub-Registrar, Arcot. After purchase and transfer of ownership, his name was entered in the records and patta was also issued in his favour. As a matter of fact, the aforesaid lands are contiguous and he intended to construct an educational institutional building to start a new Polytechnic College and indeed, when endeavors were made to fence the lands, based on the existing boundaries mentioned in the sale deeds, the adjacent occupiers raised objections who are in possession of the adjacent Government Porombake lands in S.F.Nos.354, 75, 76/2 and 31. Therefore, he projected an application dated 16.06.2014 to the Second Respondent/Tahsildar, Wallajah Taluk, Vellore District praying for effecting measurements and also, for fixing the boundaries of the lands and the said application is pending for action.

4.The stand of the Petitioner is that the aforesaid poromboke lands are water body poromboke and therefore, there could not be any encroachments. Moreover, as per Field Map (FMP), a water channel passing through the aforesaid lands and that the encroachers stealthily closed the water channel and also, there are unregistered sale transactions in respect of these

encroachments to third parties and therefore, they make a claim of ownership over the said lands. Also that because of the closure of the water channel and obstructions to its normal flow, the rain water is now passing into his lands and he was put to irreparable loss and hardship in utilising his patta lands.

5. It is represented on behalf of the Petitioner is that the State Government with a view to protect the water body and water tank lands, enacted "Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007". In fact, Section 3 of the Act enjoins "The Government may direct that a survey be made, with reference to the records available with the Revenue Department, of tanks in every district for the purpose of determining their limits in respect of area and that proper charts and registers be prepared setting forth the channel and all boundaries and marks and all other matters necessary for the purpose of identifying such limits. Section 4 of the Act speaks of "(1) The Government or any other officer authorized by it may, by order, appoint any officer not below the rank of Taluk Surveyor as Survey Officer for surveying the tanks within such local limits as may be specified in such order. (2) The Survey Officer shall carry out the survey of tanks in such manner as they be prescribed. (3) The Survey Officer shall be assisted by such officers of the Public Works Department having control over such tanks. Section 5 of the Act is concerned with "The Survey Officer and Officers assisting the Survey Officer shall have power to enter upon any land and to do all acts necessary for the survey of tanks. Section 6 relates to (1) The Survey Officer shall after the completion of the survey of tanks, prepare a chart and a register pointing out the boundaries of the tanks and such other information necessary for the purpose of identifying the limits of tank. (2) The Chart and the register prepared under sub-section (1) shall be handed over to an Officer of the Public Works Department, having control over such tanks, as may be specified by the Government. (3) The officer referred to in sub-section (2), shall within one month from the date of handing over of the charge and register, publish a notice in such manner as may be prescribed pointing out the boundaries of the tank. Section 7 deals with "(1) If the officer specified in sub-section (2) of Section 6 is of opinion that any person has encroached upon any land within the boundaries of the tank and that the encroacher should be evicted, the officer shall issue a notice in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before a date specified in the notice. (2) Where, within the period specified in the notice under sub-section (1), the encroacher has not removed the encroachment and has not vacated the land within the boundaries of the tank, the officer

referred to in sub-section (2) of Section 6 shall remove the encroachment and take possession of the land within the boundaries of the tank encroached upon, by taking such police assistance as may be necessary. Any police officer whose help is required for this purpose shall render necessary help to that officer. (3) Any crop or other product raised on the land within the boundaries of the tank shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by the encroacher after a notice under sub-section (1), be liable to forfeiture." At this stage, it is brought to the notice of this Court that the validity of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 in question was upheld by this Court, on 10.02.2010.

6. It transpires that the Petitioner had made a representation dated 16.06.2014 addressed to the Secretary to Government, Revenue Department, Chennai-600 009 to remove the encroachments with a copy being marked to the concerned authorities. Indeed, the Joint Secretary of Revenue Department, Government of Tamil Nadu in his letter No.22265/e K1(1)/2014-1 dated 26.06.2014, directed the First Respondent/District Collector, Vellore District, Vellore to look into the matter and take appropriate action in regard to removal of encroachments. Later, the District Collector, Vellore District, Vellore/First Respondent issued a communication dated 22.07.2014 addressed to the Second Respondent/Tahsildar, Wallajah Taluk, Vellore District requiring him to take action.

7. Proceeding further, the plea of the Petitioner before this Court is that he made similar representations addressed to the Third Respondent/Executive Engineer, (P.W.D) Water Resources Organisation, Upper Palar Division, Vellore, Vellore District and Fourth Respondent/Assistant Engineer, (P.W.D) Water Resources Organisation, Upper Palar Division, Ranipet, Vellore District in communication dated 13.06.2014, the Fourth Respondent requested the Second Respondent/Tahsildar, Wallajah Taluk, Vellore District to demarcate the measurements through surveyor in respect of the place belonging to the PWD Department with a view to remove the encroachments made by private parties in S.No.76/2 and 31 Veppur channel, Wallajah Circle and till date, no action has been taken by the Respondents concerned. Hence, the Petitioner has filed the present Writ Petition.

8. In view of the fact that the Petitioner had made a representation dated 16.06.2014 addressed to the First

Respondent/District Collector, Vellore District, Vellore (with a copy being marked to the concerned authorities on the subject of removal of encroachments made in river poromboke, channel poromboke, water body etc.,) and also, this Court bearing in mind the fact that the Government had directed the First Respondent/District Collector, Vellore District, Vellore through letter dated 26.06.2014 to take appropriate action in the subject matter in issue and later, the First Respondent had issued communication dated 22.07.2014 to the Second Respondent requiring him to take necessary action and inspite of the same, till date, no action has been taken by the authorities concerned, at this stage, this Court simpliciter in the interest of Justice, Equity, Fair play and Good Conscience and even as a matter of Prudence directs the Respondents 1 to 4 to look into the representation of the Petitioner dated 16.06.2014 in a Fair, Just, Objective and Dispassionate manner and to dispose of the same by passing a reasoned, speaking order ascribing necessary qualitative and quantitative process of reasoning ofcourse after issuing notice to the concerned persons (as specified in Form-III of the Rules) and also hearing their objections if any by providing adequate opportunity keeping in tune with the Principles of Natural Justice (untrammelled and uninfluenced with any of the observations made by this Court in this Writ Petition) within a period of six weeks from the date of receipt of copy of this order.

8. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

DP

To

1.The District Collector,
Vellore District, Vellore.

2.The Tahsildar,
Wallajah Taluk,
Vellore District.

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3.The Executive Engineer,
(P.W.D) Water Resources Organisation,
Upper Palar Division,
Vellore, Vellore District.

4.The Assistant Engineer,
(P.W.D) Water Resources Organisation,
Palar Dam Section
Ranipet, Vellore District.

1 cc to Government pleader, Sr. 6985

1 cc to M/s.S. Kamadevan, Advocate, Sr. 7626

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CA (CO)
kk 27/2



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