IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-06-2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P. No.17890 of 2015
and
M.P. No.1 of 2015

V. Samanthi ...Petitioner

Vs.

1 State Government of Tamil Nadu
Rep. by its Secretary,
Department of Revenue
Fort St. George,
Chepauk, Chennai-5

2 The District Collector
Kanchipuram District

3 The Revenue Divisional Officer
Chengalpet Taluk,
Kanchipuram District

4 The Tahsildar
Thirukazhukundram Taluk
Kanchipuram District

5 The Assistant Engineer
Public Works Department
Irrigation Section,
Thirukazhukundram-603 109 ...Respondents

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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the fifth respondent's impugned proceedings dated 25.05.2015 and quash the same and further issue necessary direction to the respondents 1 to 4 for issuance of assignment order pertaining

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to the land measuring 100 m^2 under possession of the petitioner situated in Survey Field No.120, Bommarajapuram Village, Thirukazhukundram Taluk, Kanchipuram District in favour of the petitioner.

For petitioner : Mr. A. Prabhakaran

For respondents : Mr. P.S. Sivashanmugasundaram
Special Government Pleader

ORDER

(Order of the Court is made by SATISH K. AGNIHOTRI,J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for the respondents. With the consent of the learned counsel for the parties, the writ petition is taken up for final disposal, at the admission stage itself.

2 This writ petition is filed challenging the notice dated 25.05.2015 issued under Sub Rule (1) of Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 (for short "the Rules, 2007").

3 The petitioner, claiming to be a resident of Bommarajapuram Village, Thirukazhukundram Taluk, Kanchipuram District, submits that she is in legal possession and occupation of the property spread in Survey Field No.120 of Bommarajapuram Village, which has been classified as "water canal" leading to river Palar.

4 According to the learned counsel for the petitioner, the petitioner has been in possession of the aforesaid property for a long period and also made an application for assignment of the said land to the District Collector, which is still pending consideration, awaiting decision and the orders of the Collector. The impugned notice under provisions of Sub Rule (1) of Rule 6 of Rules, 2007, has been issued calling upon the petitioner to remove the encroachment within a period of 21 days and in default, it was intended to remove the encroachment and impose the cost of removal of encroachment.

5 It is further contended that the petitioner has been paying property tax and other statutory taxes. The petitioner is a poor villager, having no shelter to cover her head. Thus, the petitioner may be granted assignment of land in question. It is next contended that the Government is competent to alienate any part of tank

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poramboke land, which is under the control of Public Works Department without interfering with storage capacity and water quality and as such, a direction be issued to the authorities concerned to exercise power under the provisions of Section 12 of the Tamil Nadu Protection of Tanks & Eviction of Encroachment Act, 2007 (for short "the Act, 2007"), for assignment / alienation of the said property, which is admittedly on the water canal.

6 Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, appearing for the respondents submits that the petitioner has submitted a representation dated 30.05.2015 after the receipt of the impugned notice, which is pending consideration. The authorities will examine the said representation and decide the dispute on its own merit and pass appropriate orders. Thus, at this stage, no cause of action has arisen, seeking indulgence of this Court in the writ jurisdiction.

7 Heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

8 There is no denial or dispute by the petitioner herself that she is residing on the property, which is classified as water canal. Under the provisions of Act, 2007, the authorities of the Public Works Department are obliged to make survey of all tanks with reference to records available with the Revenue Department and thereafter, take necessary steps on the basis of the report of the survey officer for eviction of the encroachment. Section 12 of the Act, 2007 empowers the Government to alienate or assign any part of the tank poramboke land in public interest, without interfering with the storage capacity. The Rules framed thereunder provides for eviction of encroachment.

9 In the case on hand, it is an admitted position that the notice, as contemplated under Sub-rule (1) of Rule 6 of Rules, 2007, has been issued, affording an opportunity of hearing to the petitioner to submit an explanation putting forth her case. As found on a perusal of the record that explanation / representation, pursuant to the said notice, has been submitted by the petitioner. The only question which arises for consideration is as to whether this Court, in exercise of its power under Article 226 of the Constitution of India, can direct the State Government / respondents to alienate, assign the said property, which is admittedly a water canal, to the petitioner, who claims to be in possession of the same for a long period.

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10 The lakes, rivers, forests are national wealth. They belong to the community and the same have to be protected for the benefit of the people and for the posterity. It is apt to quote the observations of the Supreme Court rendered in Intellectuals Forum, Tirupathi Vs. State of A.P. and others[1], which reads as under :

> "86. The judicial wing of the country, more particularly this Court, has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution. This apart, the directive principles of State policy as also the fundamental duties enshrined in Part IV and Part IV-A of the Constitution respectively also stress the need to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures.
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> 91. It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body."

11 It is the bounden duty of each and every citizen, particularly the Government, to protect the national wealth, which is in the form of water canal, pond, tank, forest, etc., and as such, no such direction can be given which erodes the national wealth and causes climatic hazard to other people and also to the posterity. However, in the facts of the case, if, on enquiry, it is found that the petitioner is hapless poor person, having no land even for house site, the authorities are expected to consider the same and make an alternative arrangement so as to provide at least basic need of shelter. Needless to state that no eviction order can be passed without taking a final decision on the aforestated representation / explanation made by the petitioner.

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1 (2006) 3 SCC 549

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12 With the aforestated observations and directions, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1 The Secretary
Department of Revenue
State Government of Tamil Nadu
Fort St. George, Chepauk, Chennai-5

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Kanchipuram District

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Thirukazhukundram - 603 109

1 CC to M/s.A.Prabhakaran, Advocate SR.No. 30951

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JSV (CO)
PSI (01.07.2015)

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