

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/6/2015

C O R A M

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

W.P. Nos.18925 to 18929 of 2015
and

M.P. Nos.1, 1, 1, 1 and 1 & 2, 2, 2, 2 and 2 of 2015

R. Gurusamy ...Petitioner in W.P.No.18925 of 2015
S. Nagaraj ...Petitioner in W.P.No.18926 of 2015
PO.Aadigan ...Petitioner in W.P.No.18927 of 2015
M. Rajendran ...Petitioner in W.P.No.18928 of 2015
M. Chandrasekar ...Petitioner in W.P.No.18929 of 2015

Vs

1. The State of Tamil Nadu
rep. By The Secretary to Government
Public Works Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009.

2. The District Collector
Tiruvallur
Tiruvallur District.

3. The Deputy Tahsildhar
o/o. The Tahsildhar
Uthukottai
Thiruvallur District.

WEB COPY

4. The Assistant Executive Engineer
(Aaru & Eri Neer Pasanam)
Public Works Department
Uthukottai
Thiruvallur District.

...Respondents

Prayer in W.P.No.18925 of 2015: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the third respondent relating to the impugned show cause notice under reference No.Naa.Ka.1/2015/A1 dated 31/3/2015 issued by the third respondent in respect of the petitioner's land of 1 Hectare 30 Ares in Survey No.558, Uthukottai Village, Arani river and quash the same.

Prayer in W.P.No.18926 of 2015: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the third respondent relating to the impugned show cause notice under reference No.Naa.Ka.1/2015/A1 dated 31/3/2015 issued by the third respondent in respect of the petitioner's land of 52.5 Ares in Survey No.558, Uthukottai Village, Arani river and quash the same.

Prayer in W.P.No.18927 of 2015: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the third respondent relating to the impugned show cause notice under reference No.Naa.Ka.1/2015/A1 dated 31/3/2015 issued by the third respondent in respect of the petitioner's land of 20 Ares in Survey No.558, Uthukottai Village, Arani river and quash the same.

Prayer in W.P.No.18928 of 2015: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the third respondent relating to the impugned show cause notice under reference No.Naa.Ka.1/2015/A1 dated 31/3/2015 issued by the third respondent in respect of the petitioner's land of 2 Hectares 20 Ares in Survey No.558, Uthukottai Village, Arani river and quash the same.

Prayer in W.P.No.18929 of 2015: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the third respondent relating to the impugned show cause notice under reference No.Naa.Ka.1/2015/A1 dated 31/3/2015 issued by the third respondent in respect of the petitioner's land of 1 Hectare 2 Ares in Survey No.558, Uthukottai Village, Arani river and quash the same.

For petitioners : M/s.R.Maheswari
For respondents : Mr. P.S. Sivashanmugasundaram
Special Government Pleader

C O M M O N O R D E R

(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 petitions are taken up for final disposal, at the admission stage itself.

2 These writ petitions are filed challenging the notice dated 31/3/2015 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 petitioners, claiming to be a resident of Uthukottai Village, ----- Taluk, Tiruvallur District, submit that they are in legal possession and occupation of the property spread in Survey Field Nos.558 of Uthukottai Village, which has been classified as "water canal" leading to river Arani.

4 According to the learned counsel for the petitioners, the petitioners had been in possession of the aforesaid property for a long period and also made applications for assignment of the said land to the District Collector, which are still pending consideration, awaiting decision and the orders of the Collector. The impugned notices under provisions of Sub Rule (1) of Rule 6 of Rules, 2007, had been issued calling upon the petitioners 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 petitioners had been paying property tax and other statutory taxes. The petitioners are a poor villager, having no shelter to cover their head. Thus, the petitioners may be granted assignment of land in question. It is next contended that the Government is competent to alienate any part of tank 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 submit that the petitioners had submitted a representation dated 15/6/2015 after the receipt of the impugned notices, which are pending consideration. The authorities will examine the said representations 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 petitioners themselves that they are 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 petitioners to submit an explanation putting forth his case. As found on a perusal of the record that explanation / representation, pursuant to the said notices, had been submitted by the petitioners. 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 petitioners, who claims to be in possession of the same for a long period.

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 others¹, 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.

x x x x x x x x x x x x x x

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 petitioners are 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 orders can be passed without taking a final decision on the aforesaid representations / explanation made by the petitioners.

¹ (2006) 3 SCC 549

12 With the aforesaid observations and directions, these writ petitions stand disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ra.

To

1. The Secretary to Government
State of Tamil Nadu
Public Works Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009.
2. The District Collector
Tiruvallur
Tiruvallur District.
3. The Deputy Tahsildhar
o/o. The Tahsildhar
Uthukottai
Thiruvallur District.
4. The Assistant Executive Engineer
(Aaru & Eri Neer Pasanam)
Public Works Department
Uthukottai
Thiruvallur District.

2 CCs to M/s.R.Maheswari, Advocate SR.No. 32395

1 CC to the Government Pleader, SR.No. 32345

W.P. Nos.18925 to 18929 of 2015

GGK (CO)

PSI (05.08.2015)