

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.NO.34515 OF 2014
and M.P.No.1 of 2014

Samadanam .. Petitioner

Vs.

The Junior Engineer,
(P.W.D) Water Resources Department,
Irrigation Division,
Katpadi, Vellore District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records relating to impugned notice dated 01.12.2014 issued by the Respondent in terms of Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules, 2007 and to quash the same.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : Mr.P.S.Siva Shanmugasundaram
Special Government Pleader

O R D E R

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

The Petitioner has filed the instant Writ of Certiorari in calling for the records pertaining to the impugned notice dated 01.12.2014 issued by the Respondent as per Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules, 2007 and to quash the same.

2.According to the Petitioner, she is in possession of 1.07 Ares (2.60 Acres) in Survery No.210/2, Sembarayanallur Village which is classified as Eri Poromboke in revenue records. She has been in possession and enjoyment of the property in question along with her family for over six decades and in the said land, she has raised mango, sappota, tamarind, jack fruits, guava and nelli trees. Also, there is a well connected with oil engine in the said land in her possession. Her family is eking out its livelihood from the yield of the said trees all these years. Further, she has a dwelling house close by and living with her family. Moreover, a

CSI Church is in existence in the said extent of land and her husband is the trustee of the Church. As a matter of fact, the Church enjoys service connection and she is paying tree tax to the Sembaranallur Village Panchayat.

3.The stand of the Petitioner is that she is paying 'B Memo Charges' in respect of the above said lands in her possession. Indeed, the Respondent issued a notice purportedly under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules, 2007, in Form II under Rule 5 Sub Rule 3 on 14.11.2014 stating that the lands shown belongs to the Water Resources Organisation of the Public Works Department and any encroachment within the boundaries is liable for eviction under Section 7 of the Act.

4.It comes to be known that the Petitioner was issued with another notice dated 01.12.2014 in Form III as per Sub Rule (1) of Rule 6 of the Rules stating that she had encroached upon the aforesaid lands belonging to the Water Resources Organisation of the Public Works Department and further, that she should remove the encroachment from the said piece of land within 21 days, failing which the same would be removed by the Respondent.

5.Being dissatisfied with the action taken by the Respondent, the Petitioner has filed the present Writ Petition before this Court.

6.At this stage, the Learned counsel for the Petitioner urges before this Court that the Respondent has no jurisdiction to initiate action under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and Rules made thereunder because of the reason that the land which is in enjoyment of the Petitioner does not fall within the four corners of the expression of 'Tank Poromboke' as defined in Rule 2g of the Rules under the Act. Further, it is also contended that if at all action could be taken, then it can be only under the Tamil Nadu Land Encroachment Act, 1905, of course after following the due procedures.

7.The Learned counsel for the Petitioner submits that in view of the fact that the land in possession of the Petitioner is classified as 'Eri Poromboke' in revenue records, any action for eviction could be initiated by the authorities namely, the Collector, Tahsildar or any other authorised Revenue Officer in terms of Section 7 of the Tamil Nadu Land Encroachment Act by issuing show cause notice before ever the unauthorised occupant is summarily evicted in terms of Section 6 of the Act.

8.The Learned counsel for the Petitioner strenuously contends that the Respondent not being a 'Revenue Authority' is not authorised to initiate action in respect of the land in occupation of the Petitioner and therefore, the impugned notice is without jurisdiction and the same is invalid in law.

9.The Learned counsel for the Petitioner projects an argument that even if the land would be construed as public premises within the definition of the Tamil Nadu Public Premises Eviction of unauthorised occupants under Act 1 of 2007 only an Estate Officer appointed as per Section 3 of the Act by notification has the power to take summary proceedings under eviction and the Respondent is not shown to be an 'Estate Officer' authorised to initiate action under the Act. Therefore, the impugned notice is an illegal one and also without jurisdiction.

10.Finally, it is the submission of the Learned counsel for the Petitioner that even assuming that the Officer has powers to initiate action he should have followed the procedure under Tamil Nadu Land Encroachment Act/Public Premises Act in view of Section 11 of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act which clearly declares that the provision of the Act shall be in addition to and not in derogation of the other law for the time being in force etc.

11.In response, the Learned Special Government Pleader appearing for the Respondent submits that the Petitioner had encroached and put up dwelling house, planted trees in Survey No.210/2 which is classified as PWD Tank as per revenue records and as such, the land in question comes within the jurisdiction and control of the Respondent. That apart, it is also represented on behalf of the Respondent that the Petitioner had encroached an area of 1.07 hectares and further, in front of the house had put up an arch which is as Church entrance and in fact, no Church is there as stated in the Writ affidavit of the Petitioner.

12.At this juncture, a perusal of the Form III notice (vide Sub Rule 1 of Rule 6) to order for removal of encroachment issued by the Junior Engineer of P.W.D, Water Resources Department indicates that the Petitioner had encroached an extent of 1.07 hectares in Survey No.210/2, Sembarayanallur Village, Katpadi Circle, Vellore District and the said land belongs to P.W.D. Water Resources Department. Further, the Petitioner was directed to remove the encroached land voluntarily within 21 days from the date of receipt of the notice, failing which she was informed that the Respondent would remove the encroachments and collect the necessary expenses incurred thereto.

13.From the aforesaid impugned notice dated 01.12.2014 of the Respondent addressed to the Petitioner, it is quite evident that the Petitioner was not provided with an adequate opportunity to put forward her objections/remarks. In short, by not providing an adequate opportunity to the Petitioner to present her version of the matter, the impugned notice dated 01.12.2014 was issued by the Respondent against the Principles of Natural Justice. In the considered opinion of this Court on this simple ground alone, this Court sets aside the impugned notice of the Respondent dated 01.12.2014.

14. In the result, the Writ Petition is disposed of, directing the Respondent to issue a fresh notice to the Petitioner calling upon her to submit an explanation within a time specified thereto and upon receipt of the said notice, the Petitioner is directed to submit her explanation within a time specified by the Respondent and soon after the receipt of the explanation, the Respondent is directed to look into the same and to pass a Reasoned, Speaking Order on merits in a Fair, Just, Objective and Dispassionate manner (of course after providing due opportunity to the Petitioner by adhering to the Principles of Natural Justice including the opportunity of providing personal hearing if the Petitioner so demands) within a period of six weeks from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP
To
The Junior Engineer,
(P.W.D) Water Resources Department,
Irrigation Division,
Katpadi, Vellore District.

+ 1 cc to Government PleaderSr.1079
+ 1 cc to Mr.S. Kalyanaraman, Advocate SR.10560

VSN(CO)
Eu 13.03.15

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