

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/7/2015

C O R A M

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

W.P.Nos.21301 to 21303 of 2015
and
M.P.Nos.1,1 and 1 & 2, 2 and 2 of 2015,

A. Jaganathan ... Petitioner in W.P.No.21301 of 2015
S. Rajendran ... Petitioner in W.P.No.21302 of 2015
P. Pandiyan ... Petitioner in W.P.No.21303 of 2015

Vs

1. State of Tamil nadu
rep. By its Secretary to Government
Public Works Department
Fort St. George
Chennai 9.
 2. The District Collector
Collectorate
Kancheepuram District.
 3. The Tahsildar
Tambaram
Kancheepuram District.
 4. The Assistant Engineer
Water Resources Organisation
Public Works Department
Government of Tamil Nadu
Chennai-5
- ... Respondents in all wp's

Prayer in W.P.No.21301 of 2015: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records relating to notice dated 17/6/2015 under Rule 6 in Form III of the fourth respondent herein in respect of the

petitioner's property at No.6, Bharathidasan Second Street, Rajakilpakkam, Tambaram Taluk, Kancheepuram District in Survey No.46/1A1 and quash the same.

Prayer in W.P.No.21302 of 2015: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records relating to notice dated 17/6/2015 under Rule 6 in Form III of the fourth respondent herein in respect of the petitioner's property at No.5, 2nd Street, Bharathidasan Nagar, Parasakthi Nagar Extension, Selaiyur Post, Rajakilpakkam, Tambaram Taluk, Kancheepuram District in Survey No.46/1A1 and quash the same.

Prayer in W.P.No.21303 of 2015: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records relating to notice dated 17/6/2015 under Rule 6 in Form III of the fourth respondent herein in respect of the petitioner's property at No.7, Second Street, Bharathidasan Nagar, Parasakthi Nagar Extension, Rajakilpakkam, Selaiyur, Tambaram Taluk, Kancheepuram District in Survey No.46/1A1 and quash the same.

For petitioners ... Mr.AR.L.Sundaresan
in all wp's Senior Counsel
for M/s.AL.Ganthimathi

For respondents ... Mr.P.S.Sivashanmugasundaram
in all wp's 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.)

All the petitioners are having commonality of facts as they are residing in the villages situated in Tambaram Taluk, Kanchipuram District on the purported water canal. Thus, these writ petitions are being taken up together and decided by this common order.

2 All these petitions arise from the separate but identical notices dated 17th June, 2015 issued under Sub Rule (1) of Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 (for short "Rules, 2007").

3 The petitioners claiming to be residents of Rajakilpakkam Village, Tambaram Taluk, Kancheepuram District, submit that they are in legal possession and occupation of the properties spread in Survey No.46/1A1, which has been classified as 'Yeri Poramboke'. According to the learned counsel for the petitioners, the petitioners have been in possession of the said properties for a long period and also made representation 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 notices under provisions of Sub Rule (1) of Rule 6 of Rules, 2007, have been issued calling upon the petitioners to remove the encroachment within a period of 21 days, in default, it was intended to remove the encroachment and impose the cost of removal of encroachment.

4 It is further contended that the petitioners have been paying property tax and other statutory taxes. The petitioners are poor villagers, having no shelter to cover their heads. 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 "Act, 2007"), for assignment / alienation of the said property, which is admittedly on water canal.

5. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, appearing for the respondents submits that the petitioners have preferred representations after the receipt of the impugned notices, which is pending consideration. The authorities will examine the said representation, if any 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.

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

7. There is no denial or dispute by the petitioners themselves that they are residing on the properties, which is classified as 'yeri poramboke'. Under the provisions of Act, 2007, the authorities 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. Rules framed thereunder provides for eviction of encroachment.

8. In the case on hand, it is an admitted position that the notices, as contemplated under sub rule (1) of rule 6 of Rules, 2007, have been issued, affording an opportunity of hearing to the petitioners to submit an explanation putting forth their cases. As found on perusal of the record that explanations / representations, pursuant to the said notices, have 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 properties, which is admittedly a 'yeri poramboke', to the petitioners, who claim to be in possession of the same for a long period.

9. 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.

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."

10. It is the bounden duty of each and every citizen, particularly the Government, to protect the national wealth, which is in the form of 'yeri poramboke', 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 people having no land even for house sites, the authorities are expected to consider the same and make an alternate 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 aforesaid representations / explanations made by the petitioners.

1 (2006) 3 SCC 549

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

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mvs.
To

1. The Secretary to Government
State of Tamil nadu
Public Works Department
Fort St. George
Chennai 9.
2. The District Collector
Collectorate
Kancheepuram District.
3. The Tahsildar
Tambaram
Kancheepuram District.
4. The Assistant Engineer
Water Resources Organisation
Public Works Department
Government of Tamil Nadu
Chennai.

+3 cc to M/s. A.L.Ganthimathi, Advocate, srs.36008, 36009, 36010
+1 cc to Govt. Pleader sr.35958.

W.P.Nos.21301 to 21303 of 2015

svi(co)
kra(27/07)

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