

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

C O R A M

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P.NO.22097 OF 2015

AND

M.P.NO.1 OF 2015,

1. Dhanalakshmi
2. Balakrishnan

... Petitioners

Vs

1. The Government of Tamil nadu
rep. By the Secretary to Government
Public Works Department
Fort St. George
Chennai 9.
2. The District Collector
Kancheepuram.
3. The Tahsildar
Tambaram.
4. The Executive Engineer,
PWD, Kancheepuram.
5. The Assistant Engineer, PWD,
Irrigation Section, Water Resources Organisation
Padappai, Kancheepuram District.
6. The Commissioner,
Sembakkam Municipality,
Kancheepuram District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records on the file of the 5th respondent in proceedings No. Nil, dated 18-06-2015 and quash the proceedings therein as illegal, incompetent, without jurisdiction and further direct the respondent No.2 to issue patta to the occupants of the property in S.No. 46/1A1 of Rajakilpakkam, Tambaram Taluk, Kancheepuram District

For petitioners ... Mr.V. Raghavachari

For respondents ... Mr.P.S.Sivashanmugasundaram
Special Government Pleader-R1 to R5
Mr. R. Ravichandran
Addl. Govt. Pleader - R6

O R D E R

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

With the consent of the learned counsel for both parties, this writ petition is taken up for final disposal at the admission stage itself.

2 By this writ petition, the petitioners assail the notice dated 18th 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") and further seeks a direction to the second respondent to issue patta to her for the property in S.No. 46/1A1 of Rajakilpakkam, Tambaram Taluk, Kancheepuram District.

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 property spread in Survey No.46/1A1, which has been classified as 'tank'. According to the learned counsel for the petitioners, the petitioners have been in possession of the said property for a long period and also made representation for assignment of the said land to the Government, which is still pending consideration awaiting decision and the orders of the Government. The impugned notice under provisions of Sub Rule (1) of Rule 6 of Rules, 2007, has 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 on the petitioners.

4 The petitioners are poor villagers, 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 "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 representation after the receipt of the impugned

notice, which is pending consideration. The authorities will examine the said representation, if any and decide the dispute on its own merit and in accordance with law. 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 property, which is classified as 'tank'. 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. Rules framed thereunder provides for eviction of encroachment.

8. 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 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 properties, which is admittedly a 'tank', to the petitioner, who claims 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 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

1 (2006) 3 SCC 549

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."

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 having no land even for house site, 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 aforestated representation / explanation made by the petitioners.

11 With the aforestated observations and directions, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

सत्यमेव जयते

Sub Asst. Registrar

To

1. The Secretary to Government
Government of Tamil nadu
Public Works Department
Fort St. George
Chennai 9.

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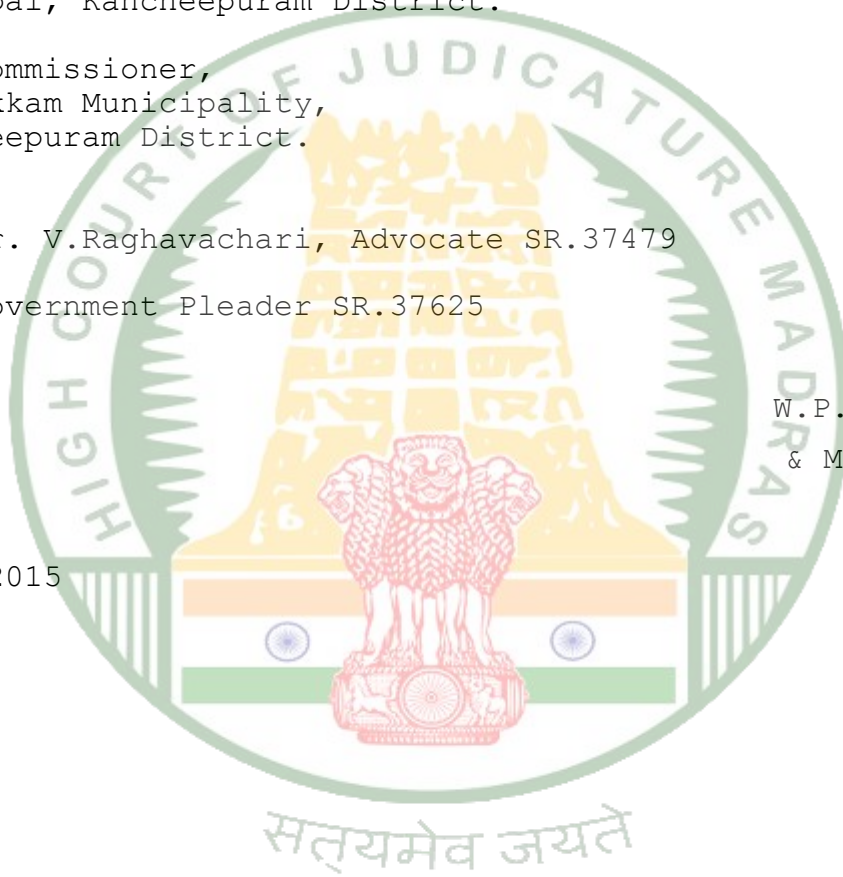
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Padappai, Kancheepuram District.
6. The Commissioner,
Sembakkam Municipality,
Kancheepuram District.

+1cc to Mr. V.Raghavachari, Advocate SR.37479

+1cc to Government Pleader SR.37625

W.P.No.22097 of 2015
& M.P.No.1 of 2015

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