

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/9/2015

C O R A M

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

W.P.No. 28911 of 2015

a n d

M.P.No.1 of 2015

1. K. Sarangapani
 2. K. Sekar
 3. R. Jayakrishnan
 4. V. Subramani
 5. Smt.Periyayi
 6. K. Uthirakumar
 7. V. Kasi
 8. A. Pandurangan
 9. M. Mani
 10. M. Pachaiappan
 11. M. Singaravel
 12. S. Govindan
 13. S. Sanniyasi
 14. Smt.Amudha Kuppusamy
- ... Petitioners

Vs

1. The District Collector
Villupuram District
Villupuram.
2. The Tahsildar
Genjee Taluk
Genjee
Villupuram District.
3. The Assistant Engineer
Public Works Department
Water Resources Department
Irrigation Section
Genjee.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records relating to the impugned notice dated 26/8/2015 issued by the third respondent under Form III of Rule 6 (1) of Tamil Nadu

Protection of Tanks and Eviction of Encroachment Act, 2007, directing the petitioners herein to remove the encroachment made in Mazhavanthangal Periya Eri in Survey No.137/1 in Mazhavanthangal Village, Genjee Taluk, Villupuram District, within 21 days from the date of receipt of notice and quash the same and consequently direct the respondents herein not to interfere or disturb the peaceful possession and enjoyment of the petitioners house property in Survey No.137/1, Mazhavanthan Village, Villupuram District.

For petitioners ... Mr.K.M.Ramesh

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

O R D E R

(Delivered by SATISH K. AGNIHOTRI,J.)

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

2 This writ petition is filed from the separate but identical notices dated 26 August, 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 the residents of Mazhavanthangal Village & Post, Genjee Taluk, Villupuram District, submits that they are in legal possession and occupation of the property spread in Survey No. 137/1 of Mazhavanthangal Village, which has been classified as "Eri".

4. According to the learned counsel for the petitioners, the petitioners have been in possession of the aforesaid property for a long period and they had not been given an opportunity to state that they are not residing on the water body. 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 encroachments and impose the cost of removal of encroachment.

5. It is further contended that the petitioners have been paying house tax to the Panchayats. The petitioners are a poor agriculturalists, 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 "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 if the petitioners submits a representation to the respondents, 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 petitioners themselves that they are residing on the property, which is classified as 'Eri'. 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 notices, as contemplated under Sub-rule (1) of Rule 6 of Rules, 2007, have been issued. No opportunity of hearing has been given to the petitioners to submit an explanation putting forth their cases. As found on a perusal of the record that no opportunity has been given to the petitioners to state that they are not residing on the water body. 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 'Eri', 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

1 (2006) 3 SCC 549

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 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 order can be passed without taking a final decision.

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

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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mvs.

To

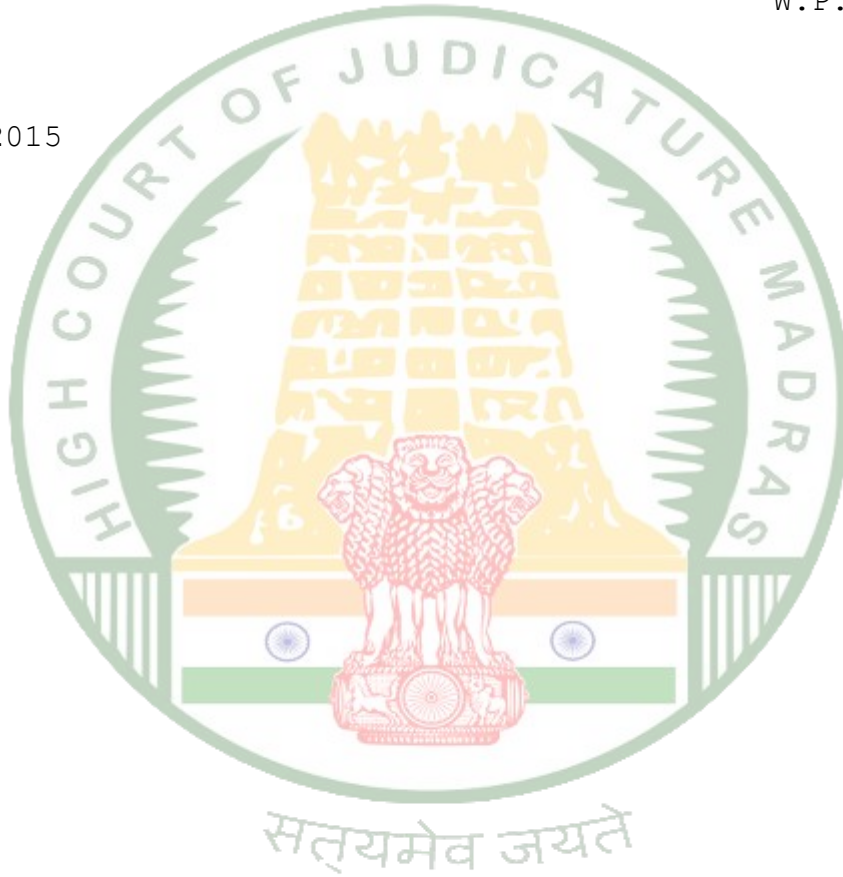
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Water Resources Department
Irrigation Section
Genjee.

1 cc to Mr.K.M.Ramesh, Advocate Sr.No.50304
1 cc to Government Pleader.Sr.No.50484

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