



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.18706 of 2016

and

W.M.P.(MD) Nos.13532 & 13533 of 2016

Perumal

...Petitioner

-vs-

1.The District Collector
Theni District, Theni

2.The Executive Engineer
Water Resources Organization
(PWD), Manchalaru Water Division
Periyakulam, Theni District

3.The Assistant Engineer
Water Resources Organization
(PWD), Irrigation Section
Andipatti, Theni District

4.The Thasildar
Andipatti, Theni District

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned order, dated 22.09.2016, passed by the second respondent herein and quash the same.

For Petitioner : Mr.R.Vijayakumar

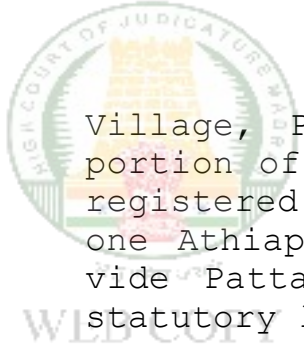
For Respondents : Mr.A.K.Baskarapandian
Spl. Govt. Pleader

O R D E R

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

Mr.A.K.Baskarapandian, learned Special Government Pleader, takes notice on behalf of the respondents and with the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner, in the affidavit filed in support of the writ petition, would submit among other things that out of 82 Cents comprised in Survey Nos.1748/1B and 1748/2A of Andipatti



Village, Periyakulam Taluk, Theni District, he had purchased a portion of 42 Cents on the western side of the said land, under a registered Sale Deed, dated 16.04.1992, from the family members of one Athiappan Servai and he has also obtained Patta in his name vide Patta Nos.2088 and 2618 and he has been paying necessary statutory levies in respect of the said land.

3. The petitioner would further submit that the land in Survey No.1748/1A has been classified as "ஏத்தக் கோவில் கண் மாய் (உப்பு ஓடை)" and according to him he has not encroached upon any portion of the land in Survey No.1748/1A and he claims to be in possession and enjoyment of the land in Survey Nos.1748/1B and 1748/2A1 only and in the circumstances, to his shock and surprise, he received a notice, dated 22.09.2016, from the second respondent stating among other things that he had encroached upon the water body in Survey No.1748/1A and he was called upon to remove the encroachment within a period of seven days from the date of receipt of the said notice and challenging the legality of the said notice, he has filed this writ petition.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder and would submit that Section 7 of the said Act speaks about eviction of encroachment and Rule 6 of the said Rules speaks about the procedures to be followed while ordering eviction of encroachment and admittedly the mandate casts upon the second respondent while issuing the impugned notice and hence prays for interference.

5. Per contra, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents, would submit that the mandatory procedures have been scrupulously complied with and then only the impugned notice has been issued calling upon the petitioner to vacate the encroachment.

6. This Court has carefully considered the rival submissions and perused the materials produced.

7. It is relevant to extract here Section 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007:

"7.Eviction of encroachment :- (1) If the officer specified in sub-section (2) of Section 6 is of opinion that any person has encroached upon any land within the boundaries of the tank and that the encroacher should be evicted, the officer shall issue a notice in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before a date specified in the notice.



(2) Where, within the period specified in the notice under sub-section (1), the encroacher has not removed the encroachment and has not vacated the land within the boundaries of the tank, the officer referred to in sub-section (2) of Section 6 shall remove the encroachment and take possession of the land within the boundaries of the tank encroached upon, by taking such police assistance as may be necessary. Any police officer whose help is required for this purpose shall render necessary help to that officer.

3. Any crop or other product raised on the land within the boundaries of the tank shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by the encroacher after a notice under sub-section (1), be liable to forfeiture."

8. It is also relevant to extract here Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007:

"6. Eviction of Encroachment.-(1) If any person has encroached upon any land of the tank, the officer referred to in sub-rule (3) of Rule 4, shall prepare a notice in Form-III and call upon the person concerned to remove the encroachment.

(2) Notwithstanding anything contained in sub-rule (1), such notice shall be served by delivering a copy either to the encroacher or to a member of his family at his usual place of abode, or to his authorised agent, or by affixing a copy thereof in some conspicuous part of his last known residence or in any part of the area encroached upon or in any of the offices of the Village Chavadi, Village Panchayat, District Collector, Revenue Divisional Officer, Tahsildar, Village Administrative Officer, Panchayat Unions and in the Section, Sub-Division and Divisions concerned of the Water Resources Organisation of the Public Works Department as the officer deems fit and proper.

(3) If the encroacher has not removed the encroachment within the period specified in the notice referred to in sub-rule (1), the officer shall inform the area Station House Officer of Police Department, in writing to provide adequate Police personnel, as may be necessary and shall remove the encroachment or obstructions or any building or any crop or any product raised on the



land or anything deposited and forfeit them and take possession of the land as specified in sub-sections (2) and (3) of Section 7 of the Act,

(4) The officer shall also impose the cost of eviction against such person, by preferring a Complaint against such person with the competent Judicial Magistrate for recovery."

9. A perusal of the impugned notice would disclose that only seven days notice has been given and the petitioner was called upon to remove the encroachment within the said period. In the considered opinion of this Court, the impugned notice is not in consonance with the above said statutory provisions and therefore on that sole ground the impugned notice warrants interference of this Court.

10. In the result, the writ petition is allowed and the impugned notice, dated 22.09.2016, issued by the second respondent is quashed and the second respondent is directed to issue a fresh notice in the light of the above statutory provisions and on receipt of the same, the petitioner shall submit his response and also co-operate for expeditious completion of the enquiry. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To:

- 1.The District Collector, Theni District, Theni.
- 2.The Executive Engineer, Water Resources Organization,
(PWD), Manchalaru Water Division, Periyakulam, Theni District.
- 3.The Assistant Engineer, Water Resources Organization,
(PWD), Irrigation Section, Andipatti, Theni District.
- 4.The Thasildar, Andipatti, Theni District.

+1cc to M/s.R.Vijayakumar, Advocate in SR.56724

+1cc to the Special Government Pleader, in SR.57039

W.P. (MD) No.18706 of 2016

and

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28.09.2016

krk

PBK/GSV-PM 06.10.2016 ::4P-7C: