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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD)No.21896 of 2016

and

W.M.P(MD).No.15656 of 2016

M.Raja

.. Petitioner

Vs.

1.The Commissioner,
Panchayat Union,
Arimalam, Thirumayam Taluk,
Pudukkottai District.

2.Muthuraman

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari to call for the records pertaining to the notice in Na.Ka.1748/2016/A2 dated 04.11.2016 passed by the 1st respondent and quash the same.

For Petitioner : Thiru.K.Balasundharam
Senior Counsel for Mr.R.Paranjothi

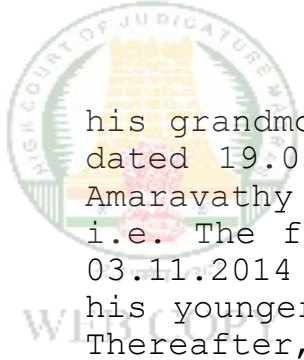
For Respondents : Mr.Aayiram K.Selvakumar
(Government Advocate for R1)

ORDER

(Order of the Court was delivered by **M.V.MURALIDARAN, J.**)

This writ petition has been filed for issuance of Writ of Certiorari to call for the records pertaining to the notice in Na.Ka.1748/2016/A2 dated 04.11.2016 passed by the 1st respondent and quash the same.

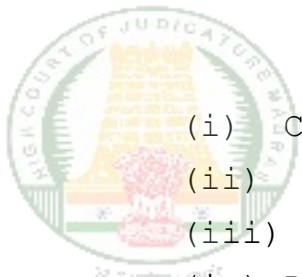
2. The case of the petitioner is that the land situated in old S.No.62/4, new S.No.165 measuring to an extent of 80x27 feet in Yembal Village, Avudaiyarkoil Taluk, Pudukkottai District, was originally purchased by his grandmother viz., Amaravathy Ammal and



his grandmother Amaravathy Ammal executed a registered mortgage deed dated 19.05.1939 in favour of one Chidhambaram Chettiar. The said Amaravathy ammal died in the year 1989 leaving behind her only son i.e. The father of the petitioner viz., Muthumanickam, who died on 03.11.2014 leaving himself and his younger sister viz, Shanthi and his younger brothers viz., Ilaiyaraja, Kumararaja and Bharathiraja. Thereafter, assignment patta was also granted in favour of his family members. The petitioner has constructed a house in their ancestral property, after getting necessary permission from Yembal Panchayat in the year 2002 by demolishing the old house constructed by their grandmother and he has obtained electricity service connection and paying the tax to the property.

3. It is further case of the petitioner that the above said S.No.165 has been classified as Major Inam Punjai in the Princely State Adangals. But, in the revenue accounts, it has been wrongly classified as S.No.165 corresponding to old S.No.62/4 of Yembal as Andakudi Kanmai in village account. On the basis of the wrong classification, the Thasildar has issued notice dated 27.05.2016 under Section 5 of the Land Encroachment act, 1905 referring W.P.No.26722 of 2013 dated 08.10.2016 of this court and W.P.(MD).No.367 of 2016 dated 09.03.2016 of Madurai Bench of this Court filed by the second respondent. On receipt of the notice, immediately the petitioner given the explanation to the notice dated 07.05.2016 in person. But, the Tahsildar did not consider his explanation and passed impugned order dated 15.06.2016 and also the authorities came to the said survey number and orally required him to vacate the house and also an attempt was made to disconnect his electricity connection. Hence, he filed a writ petition in W.P.(MD) No.16544 of 2016 before this Court stating inter alia that the Tahsildar, Avudaiyarkoil Taluk, has no jurisdiction to issue notice, after the enactment of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and his building has been in existence even prior to the year 1939. Hence, this Court by its order dated 01.09.2016 directed the Tahsildar, Avudaiyarkoil Taluk to decide as to his jurisdiction to issue notice regarding water body. This Court also further ordered that till appropriate order is passed under Section 6 of the Land Encroachment Act 1905, the petitioner "shall not be evicted", but till date, the Tahsildar, Avudaiyarkoil has not passed any order as to his jurisdiction to issue notice regarding water body.

4. The writ petitioner also states that subsequent to the order passed by this Court in W.P.(MD)No.16544 of 2016, the Tahsildar, Avudaiyarkoil Taluk, issued notice in Na.Ka.No.1071/2016/A1, dated 09.09.2016 for enquiry. Pursuant to the aforesaid notice, the writ petitioner appeared before the Tahsildar, Avudaiyarkoil on 16.09.2016 and on the subsequent, the petitioner came for hearing and submitted the copies of the following documents:



- (i) Copy of the patta
- (ii) Copy of the Princely State in the year 1920;
- (iii) Partition Deed in the year 1954;
- (iv) Documents in the year 1974 and 1979;
- (v) Rice Mill licence;
- (vi) Receipt issued for rice mill by Panchayat;
- (vii) EB Bill;
- (viii) Andakudi Kanmai FMB;
- (ix) Writ Order
- (x) Copy of the plaint of Munsif Court, Aranthangi;
- (xi) Notice No.5 and 7

(xii) Copy of the petition filed by Mr.Muthuraman, till date the Tahsildar, Avudaiyarkoil Taluk, has not passed any order about his jurisdiction to issue notice regarding the water source, but on the contra has passed an order in Na.Ka.No.1071/2016/A1 dated 21.10.2016, by stating that the patta cannot be granted to the Rice mill.

5. The further case of the writ petitioner is that the first respondent/The Commissioner, Panchayat Union, Arimalam, Thirumayam Taluk, Pudukkottai District has instructed Yembal Police to give necessary Police protection to evict him from his property, in his proceedings dated Na.Ka.A2/1748/2016 dated 21.09.2016. Therefore, pursuant to the above order of the first respondent, the Yembal Police Authority is directed to vacate him from the premises at the earliest possible and also gave a photocopy of the aforesaid proceedings of the first respondent on the evening of 26.09.2016. When the petitioner came to know about the illegal instructions of the first respondent to the Yembal Police, he has met the 1st respondent and submitted the order copy of this Court in W.P.(MD) No.16544 of 2016 dated 01.09.2016. Even thereafter the first respondent was very much interested in evicting the petitioner illegally from his property, at the instance of the second respondent herein. The first respondent has issue notice in Na.Ka.1748/2016/A2 dated 04.11.2016 directed the petitioner to remove the alleged encroachment in S.No.165 in Yembal Village, Avudaiyarkoil Taluk, Pudukkottai District, referring W.P.No.367 of 2016. The first respondent is not at all empowered to issued notice under the provision of Tamil Nadu Protection of Water Tanks and Eviction of Encroachment Act, 2007.

6. Since the first respondent viz, The Commissioner, Panchayat Union, Arimalam, Thirumayam Taluk, Pudukkottai District, has no jurisdiction to issue notice, even under Section 6 of the Land Encroachment Act, 1905 and under a provision of Tamil Nadu Protection of Water Tanks and Eviction of Encroachment Act, 2007.



Challenging the said notice, he has filed the present writ petition before this Court.

7. On receipt of the notice, the first respondent appeared through Government Advocate viz., Mr.Aayiram K.Selvakumar, but no counter has been filed and there was no appearance for the second respondent.

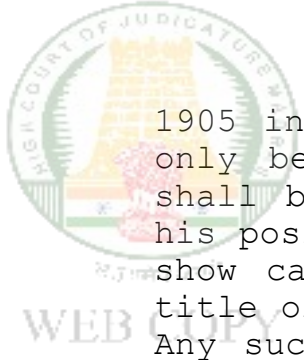
8. We heard Mr.K.Balasundharam, learned Senior Counsel for Mr.R.Paranjothi, learned counsel for the petitioner and Mr.Aayiram K.Selvakumar, learned Government Advocate appearing for the first respondent and perused the records. No appearance for the second respondent.

9. On perusal of the records through the typed set of papers filed by the writ petitioners, we came to know that earlier notice dated 27.05.2016 under Section 7 of Land Encroachment Act, 1905 has been issued by the Tahsildar, Avudaiyarkoil Taluk, Pudukkottai District, that was challenged by the writ petitioner before this Court in W.P.No.16544 of 2016.

10. Considering the case along with other writ petition in W.P.No.13714 of 2016, this Court has passed an order stating that since it is referred that the land in question comes under Tamil Nadu Protection of Water Tanks and Eviction of Encroachment Act, 2007 and that notice was issued under Section 7 of the Land Encroachment Act, 1905, the writ petitioner has filed an explanation stating that the Tahsildar has no jurisdiction to issue notice under Section 6 of the Land Encroachment Act, 1905 and the land comes under the Tamil Nadu Protection of Water Tanks and Eviction of Encroachment Act, 2007. But, such objection was not considered by the Tahsildar, Avudaiyar Kovil Taluk.

11. Considering bothsides, the Hon'ble Division Bench of this Court has passed the order in W.P.(MD)Nos.13713 and 16544 of 2016 dated 01.09.2016 wherein the relevant portion of the order reads as follows:-

"3. Therefore, the notice issued under Section 7 is purely provisional in content and scope and its a forerunner for action to be initiated under Section 6. Under Section 6, any person unauthorizedly occupying and land for which he is liable to pay assessment under Section 3 or under Section 3-A may be summarily evicted by the Collector or subject to his control by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf and any crop or other product raised on the land shall liable to be forfeited. The procedure for eviction was also specified under Sub-section (2) thereof. Because of the summary nature of the proceedings, all those who have received notices either under Section 7 or 6 of the Land Encroachment Act,

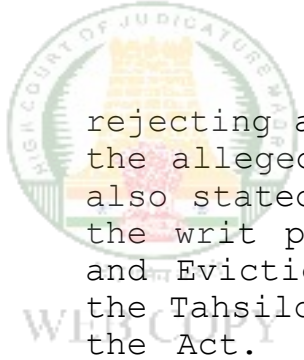


1905 invariably rush to this Court. But however, it would only be appropriate to recognise that even an encroacher shall be afforded fair and reasonable opportunity to defend his position by explaining to the authority who has drawn the show cause notice as to the manner of his acquiring right, title or interest or even possession of the land in question. Any such objection must be dealt with fairly and reasonably and for reasons to be disclosed in the order, then alone an order under Section 6 of the Land Encroachment Act, 1905 can be passed. Even then, a reasonable time should be afforded to the individual concerned, to retrieve his belongings from the land allegedly encroached upon him.

4. In the instant case, a series of contentions are canvassed by the learned counsel for the petitioners. It is contended that the provisions contained under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 which get attracted but not the provisions of the Land Encroachment Act, 1905. Even such an explanation when offered pursuant to the show cause notice issued under Section 7, the authority is bound to deal with the same first and then pass an appropriate speaking order for rejecting any such plea and then alone legitimately proceed against the alleged encroacher for removal. In case, it goes without saying if the objection of the writ petitioners that it is the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, which will get attracted, the Tahsildar will refrain from passing any order under Section 6 and on the other hand, refer the matter to the competent authority under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 for getting rid of the alleged encroachment. Till an appropriate order is passed under Section 6 and communicated to the petitioners and a reasonable time is also afforded thereafter either for preferring an appeal under Section 10 of the said Act or otherwise to deal with it, the petitioners shall not be evicted. However, under the guise of this order, the petitioners shall also not make further encroachment."

12. As per the order in the above writ petition, it is made clear that if the objection given by the writ petitioner, that should be considered by the Tahsildar in respect of jurisdiction. But, it is the case of the writ petitioner, till date no order has been passed by the Thasildar.

13. This Court has specifically passed an order on 01.09.2016, stating that when the explanation afforded by the writ petitioner pursuant to the show cause notice issued under section 7 of the Land Encroachment Act, 1905, the authority is bound to deal with the same first and then, pass an appropriate speaking order for



rejecting any such plea and then alone, legitimately proceed against the alleged encroacher for removal. The Hon'ble Division Bench has also stated that in case it goes without saying if the objection of the writ petitioner that it is the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, which will get attracted, the Tahsildar will refrain from passing any order under section 6 of the Act. On the other hand, refer the matter to the competent authority under the Tamil Nadu Protection of Water Tanks and Eviction of Encroachment Act, 2007 for getting rid of the alleged encroachment. Without passing any order by the Tahsildar, Avudaiyar Kovil Taluk, Pudukkottai District, who is the second respondent, in the above writ petition and kept pending but it is the bounden duty of the second respondent to pass appropriate order but no order was passed till date.

14. But, on the other hand, the first respondent viz., The Commissioner, Panchayat Union, Arimalam, Thirumayam Taluk, Pudukkottai District, has issued the present impugned notice under section 6 of the Tamil Nadu Land Encroachment Act 1905, and also Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

15. The first respondent, who is not the competent authority without properly examined the Acts and Rules and also jurisdiction vested with him had simply issued the impugned notice under the Tamil Nadu Land Encroachment Act, as well as Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

16. If the first respondent come to a conclusion that the land comes under the provision of Tamil Nadu Land Encroachment Act, the Revenue Authority alone is having power to issue notice under the Tamil Nadu Land Encroachment Act, which comes under the Encroachment Act. As per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and as per Section (6) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, the Survey Officer shall, after completion of the survey of tanks, prepare a chart and register pointing out the boundaries of the tanks and the other informations necessary for the purpose of identifying the limits of tank shall be handed over to an officer of the Public Works Department, having control over such tanks, as may be specified by the Government. The officer referred to in Sub Section (2), shall within one month from the date of handing over of the chart and register, publish a notice in such manner, as may be prescribed or pointing out the boundaries of the tank. 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. If the encroacher has not removed the encroachment, the officer shall remove the encroachment and take possession of the land, and the land shall be handed over to the Government.



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.

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17. As per the above, the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 the Public Works Department alone have take necessary steps to remove the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. But, in this case, the first respondent has no way connected in respect of removal of encroachment but had issued the present impugned order totally against the law and principles of natural justice.

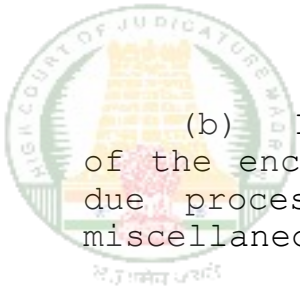
18. By order dated 01.09.2016 in W.P.Nos.13713 and 16544 of 2016, this Court has clearly passed an order that the competent person under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 alone should take necessary action for the eviction, by giving fair opportunity to the writ petitioner. But the first respondent, ignoring the orders passed by this Court in the above writ petition dated 01.09.2016 and also violating the Act of the Tamil Nadu land Encroachment Act 1905 and under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, has issued the present impugned order, which is not maintainable and is liable to be quashed.

19. Time and again, this Court and the Hon'ble Apex Court categorically held that the authority concerned, who is intend to remove the encroachment from the encroached property, they should have follow the appropriate procedure as per the Act and Rules. Apart from this, in the present case on hand, the Hon'ble Division Bench of this Court very categorically held that the Tahsildar, Avudaiyar Kovil Taluk, Pudukottai District, has to pass necessary orders on the objection of the petitioner, but till date the Tahsildar has not passed any orders.

20. On the other hand, the incompetent authority namely, the first respondent herein has issued the impugned order under the above said Acts. Therefore, it is made clear that the competent authority have right to remove the encroachment made in the said encroached property and accordingly they can pass suitable orders by following due process of law. Therefore, with the above observation, we are inclined to quash the impugned order passed by the first respondent, accordingly, the same is quashed.

21. In the result

<https://hcservices.ecourts.gov.in/hcservices/> It petition is allowed by setting aside the order passed by the first respondent dated 04.11.2016;



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(b) If the competent authorities want to proceed for removal of the encroachment they should take necessary steps by following due process under the competent law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Panchayat Union,
Arimalam, Thirumayam Taluk,
Pudukkottai District.

+1cc to Mr.K.Balasundharam, Advocate Sr.No. 69344

W.P. (MD) No.21896 of 2016**16.11.2016****(2/2)**

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MKV-CM-MSA-SAR 3/6.3.2017/8P-3C