

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.9359 of 2017
and WMP.Nos.10332 & 10367 of 2017

1.P.Ramasamy
2.R.Lakshmi .. Petitioners
Vs.

1.The Assistant Engineer
Public Works Department
Noyyal (West Division)
Coimbatore.
2.The Assistant Executive Engineer
Tamil Nadu Electricity Board
Perur, Coimbatore. .. Respondents

Prayer : Writ Petition filed under Section 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, directing the respondents and calling for the records of the first respondent notice dated 23.2.2017 made under Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and quash the same as null and void, illegal, made with malafide intention and consequently forbear the second respondent from disturbing the petitioner's peaceful possession and enjoyment of the patta lands to an extent of 1.54 hectares in S.No.38, situated at No.12, Perur Revenue Village, Perur Taluk, Coimbatore District.

For Petitioner : Mr.N.Vanaraj
For Respondents : Mr.A.N.Thambidurai
Special Government Pleader [R1]

O R D E R

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

By consent, this writ petition is taken up for final disposal.

2. Mr.A.N.Thambidurai, learned Special Government Pleader appears on behalf of the first respondent.

3. The petitioners would claim that the first petitioner was allotted 4 acres of land in Perur Village in Old Survey Nos.299A and 279/1, New Survey Nos.38 and 48 respectively by the Assistant Land Revenue Settlement Officer, vide proceedings dated 17.10.1967 in S.R.No.2/1967 (ASO), under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963. The present New Survey Number is 38, corresponding to Old Survey No.299A. The petitioners claim that they are in possession and enjoyment of the said land for over 50 years, carrying on agricultural activities. The grievance expressed by the petitioners is that all of a sudden, without following the provisions of the said Act, notice under Form-III of the said Act has been issued by the first respondent and challenging the legality of the same, they came forward to file this writ petition.

4. The learned counsel appearing for the petitioners has drawn the attention of the Court to the typed set of documents and would submit that the land in question was assigned in favour of the first petitioner as early as in the year 1967 and since then the petitioners are doing cultivation in the said lands and after a lapse of very many years, the first respondent thought fit to classify the lands and whereby, without any supporting materials, whatsoever and based upon the impugned notice, their possession is sought to be disturbed and hence, pray for appropriate orders.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the first respondent would submit that the land in question is question was not assigned to the first petitioner, but only a recommendation has been made and it appears that based on the said recommendation, the petitioner had occupied the land and even as per the typed set of documents filed in support of the writ petition, the classification of the said land has been shown as "Eri Vaikkal/Canal" and in the light of the decision rendered by the Full Bench of this Court in T.K.Shanmugam, Secretary, C.P.I.(M) North Chennai District Committee v. State of Tamil Nadu, Rep. By its Secretary to Government, Department of Revenue [2015 (6) CTC 369], the petitioner is liable to be evicted after following the due process of law and prays for dismissal of the writ petition.

6. This Court has considered the rival submissions and has perused the materials placed before it.

7. The petitioner after receipt of the impugned notice issued by the first respondent, has submitted his response dated 03.03.2017 by Registered Post.

8. A Division Bench of this Court in the decision in T.S.Senthil Kumar v. Government of Tamil Nadu [2010 (3) MLJ 771] while upholding the provisions of the above said Act, observed as follows :

"20. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra Mysore vs. J.V. Bhat - 1975 (2) S.C.R. 407 and (ii) The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka, - 1991 (1) U.J. (S.C.) 628 = AIR 1991 SC 1117 = 1991 (2) SCC 604., where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to

have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment."

9. Though the petitioners pray for a larger relief, this Court without going into the merits of the claim projected by the petitioners, permits the petitioners to submit a detailed representation along with the authenticated supporting documents as well as a copy of this order to the first respondent, within a period of four weeks from the date of receipt of a copy of this order and the first respondent upon receipt of the same, is directed to consider the said representation on merits and in accordance with law, in the light of the above cited decision in T.S.Senthil Kumar v. Government of Tamil Nadu [2010 (3) MLJ 771] - the relevant portions have been extracted and pass appropriate orders within a period of ten weeks thereafter and communicate the decision taken, to the petitioners and till such time, the respondents shall defer further decision in terms of the impugned notice dated 23.2.2017. It is made clear that till the disposal of the representation by the first respondent, the petitioners shall not create any third party right or alter the

physical features of the property in question.

10. It is also brought to the knowledge of this Court that after passing the impugned notice, the second respondent has disconnected the electricity service connection to the residential premises of the petitioners and it shall be restored forthwith subject to payment of re-connection charges and fulfilment of other norms.

11. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1.The Assistant Engineer
Public Works Department
Noyyal (West Division)
Coimbatore.

2.The Assistant Executive Engineer
Tamil Nadu Electricity Board
Perur, Coimbatore.

+1cc to Mr.M.Vanaraj, Advocate, S.R.No.68946

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W.P.No.9359 of 2017

NM(CO)
GN(25/10/2017)

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