

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.12.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP.No.32149/2017 & WMP.No.35315/2017

M.Emmanuel

... Petitioner

Versus

1.The Junior Engineer, PWD  
Irrigation Section, WRD,  
Pdappai 601301.

2.The Tahsildar  
Sholinganallur Taluk  
Sholinganallur,  
Kancheepuram District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus calling for the records of the 1<sup>st</sup> respondent notice dated 21.11.2017 in Form III under Rule 6[1] of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, and quash the same as null and void and consequently forbear the respondent from anyway disturbing the petitioner's peaceful possession and enjoyment of the land comprised in Survey No.301 and Nanmangalam Village, Sholinganallur Taluk, bearing old No.2/50, New No.6/71, Balaraman First Cross Street, Nanmangalam, Chennai 600 117.

For Petitioner : Mr.K.Sakthivel

For R1&R2 : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 and 2.

2 The father of the petitioner got into possession of some portion of the land in Survey No.301 in Nanmanglam Village, Sholinganallur Taluk, Kancheepuram District, having present address at Old No.2/50, New No.6/71, Balaraman First

Cross Street, Nanmangalam, Chennai 600 117, for very many decades and after his demise, the petitioner has succeeded to the estate and is residing along with his family and the superstructure put up by him is also subjected to statutory levies.

3 Mr.K.Sakthivel, learned counsel for the petitioner would submit that the predecessor in title, viz., Mrs.Prema, wife of Mani, was issued with a notice u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, stating that the land admeasuring to an extent of 0.01.0 cents out of the total extent of 1.45 acres, is classified as "Rudraboomi" [cremation ground] and however, the

present impugned notice in Form III issued by the 1<sup>st</sup> respondent under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, deals with the land in Survey No.305, classified as "water body". He would submit that immediately after the receipt of the notice, the petitioner has submitted his response dated 29.11.2017 pointing out that on an earlier occasion, the 2<sup>nd</sup> respondent has issued a notice u/s.7 of the Tamil Nadu Land Encroachment Act, 1905 [Act 3 of 1905] and the predecessor in title alleging that the land in Survey No.301 is a cremation ground and whereas, the present notice pertains to Survey No.305 in which the petitioner is not at all in possession and prayed for dropping of the further proceedings and despite such a reasoned reply, attempts are being made to dispossess the petitioner from the land and superstructure in question and therefore, the petitioner is constrained to approach this Court by filing the present writ petition.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that even as per the own admission of the petitioner, the father of the petitioner was an encroacher of the land in question and the superstructure has been put up without any planning permission and action is taken by the 1<sup>st</sup> respondent strictly in accordance with law.

5 The Court has considered the rival submissions and also perused the materials placed before it.

6 In the light of the stand taken by the petitioner that he is not in possession of the extent of the land in Survey No.305, in which the petitioner is not a resident and that he is in possession of certain extent of land in Survey No.301 of Nanmangalam Village which according to the Tahsildar, Alandur, has been classified as cremation ground and without going into the merits of the claim projected by the petitioner, directs the 1<sup>st</sup> respondent to take into consideration the representation dated 29.11.2017 submitted by the petitioner and after affording an opportunity of personal hearing, shall consider and dispose of the said representation

on merits and in accordance with law and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till such time, the respondents 1 and 2 shall defer further decision to evict or dispossess the petitioner from the land and superstructure in question. It is also made clear that till the disposal of the representation submitted by the petitioner by the 1<sup>st</sup> respondent, the petitioner shall not create any third party rights in respect of the land and superstructure in question and shall also not alter the physical features of the same.

8 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Junior Engineer, PWD  
Irrigation Section, WRD,  
Pdappai 601301.

2.The Tahsildar  
Sholinganallur Taluk  
Sholinganallur,  
Kancheepuram District.

+1cc to Mr.K.SAKTHIVEL Advocate, S.R.No. 88455

+1cc to the Government Pleader, S.R.No. 89029

WP.No.32149/2017

TR(05/01/2018)

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