

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.22389/2017 & WMP.No.23479/2017

C.Kennady

Petitioner

Versus

The Junior Engineer,
Public Works Department,
Irrigation Section, Water Resources
Department, Padappai-601391.

Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent in Form III Notice dated 28.06.2017 issued under Rule 6[1] of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Rule, 2007, to quash the same and forbearing the respondent from interfering with the peaceful possession and enjoyment of the petitioner property measuring an extent of acre 1.12 [cents] [Hectare 0.45.5] comprised in Survey No.186 in Arasankazhan Village, formerly Tambaram Taluk, now Sholinganallur Taluk, Kancheepuram District.

For Petitioner : Mr.R.Chandrasudan

For Respondent : Mr.R.Vijayakumar, AGP

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ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the sole respondent.

2 The petitioner, in the affidavit filed in support of

this writ petition, would aver among other things that he and his wife K.Maraiselvi, are the owners of the landed property admeasuring to an extent of 1.12 acres [0.45.5 Hectares] comprised in Survey No.186, Arasankazhan Village, formerly Tambaram Taluk, now Sholinganallur Taluk, Kancheepuram District, and it was purchased by them through a registered Sale Deed dated 10.09.2012 bearing Doc.Nos.6883 and 6884/2012, registered on the file of the office of the Sub Registrar, Selaiyur. The petitioner would further aver that prior to the purchase, the predecessor in title, viz., K.S.Nagarajan, had purchased the same from Annammal, through a registered Sale Deed bearing Doc.No.4746/2006 dated 01.06.2006. The petitioner also aver that ever since the purchase of the property, he and his wife are in absolute possession and enjoyment of the same. The patta and other revenue documents continue to be in the name of the predecessor in title, viz., Annammal and they are taking steps to mutate the revenue records. However, to the shock and surprise of the petitioner, the respondent has issued the impugned notice in Form III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the Rules framed thereunder, calling upon the petitioner to vacate the land falling under Survey No.72/2 of Arasankazhan Village, Sholinganallur Taluk within 21 days from the date of receipt of the notice, failing which, precipitative action will be taken against him and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that the petitioner and his wife are the owners of the land in S.No.72/3 and the predecessor in title, viz., Annammal, had also been issued with the patta and whereas, the impugned notice issued to him pertains to SF.No.72/2 and since the petitioner and his wife apprehend dispossession, he is constrained to approach this Court by filing the present writ petition.

4 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondent would submit that the respondent is strictly adhering to the provisions of law and discharging his duties lawfully.

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

6 It is relevant to extract section 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, which reads thus:-

"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 that purpose shall render necessary help to that officer.

[3] Any crop or 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."

7 Though the said provision does not contemplate an opportunity of hearing before ordering eviction, in the light of the stand taken by the petitioner and his wife that they are the owners of 1.12 acres of land in S.No.72/3 of Arasankazhan Village, Sholinganallur Taluk, Kancheepuram District and also the revenue documents continue to be in the name of the predecessor in title, viz., Annammal, and further that the civil rights of the petitioner and his wife are also involved, this Court is of the view that the impugned notice shall be treated as a show cause notice by the petitioner and is at liberty to submit his response/reply to the same.

8 Accordingly, the impugned notice dated 28.06.2017 shall be treated as a show cause notice and the petitioner and his wife are permitted to submit their response/reply along with the relevant and necessary documents within a period of two weeks from the date of receipt of a copy of this order and the respondent, upon receipt of the same, shall give an opportunity of personal hearing to the petitioner or his authorised representative and pass orders on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner and till such time, shall defer further decision in pursuant to the impugned

notice dated 28.06.2017.

9 The writ petition stands disposed of subject to the above observations and direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

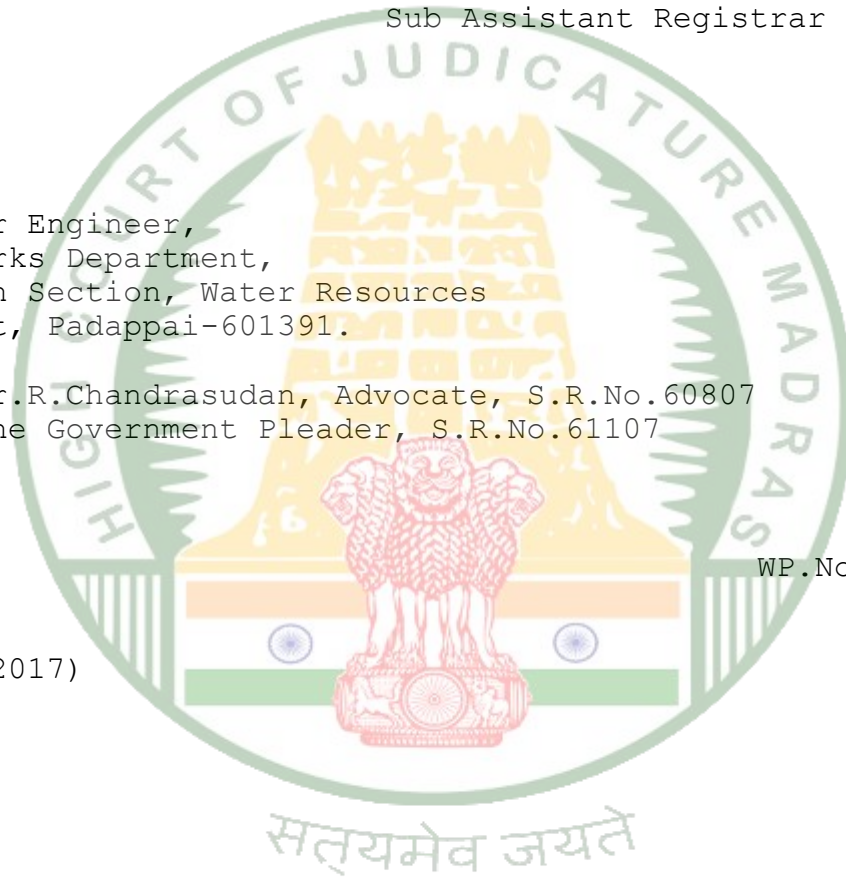
The Junior Engineer,
Public Works Department,
Irrigation Section, Water Resources
Department, Padappai-601391.

+1cc to Mr.R.Chandrasudan, Advocate, S.R.No.60807

+1cc to the Government Pleader, S.R.No.61107

WP.No.22389/2017

GN(08/09/2017)



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