



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.P. (MD) No.17539 of 2017
and
W.M.P (MD) No.14066 of 2017**

S.Thangasamy : Petitioner

.vs.

The Assistant Engineer,
Public Works Department,
Kallanai Kalvai Sub-Division,
Pattukottai,
Thanjavur District.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari to call for the records pertaining to the impugned notice dated 24.08.2017 issued by the respondent herein and quash the same as illegal.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mr.M.Govindan,
Special Government Pleader

O R D E R

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

The Petitioner has filed the present Writ Petition praying for passing of an order by this Court in calling for the records relating to the impugned notice dated 24.08.2017 issued by the Respondent and to quash the same as a illegal one.

2.Heard both sides. No counter-affidavit is filed on behalf of the Respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3.By consent, the main Writ Petition itself is taken up for final disposal.

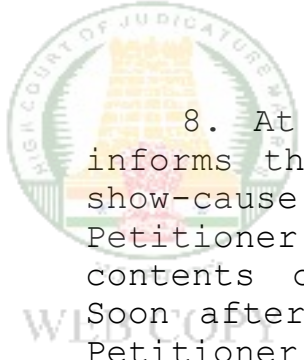


4. Assailing the validity, legality and the correctness of notice dated 24.08.2017 issued by the Respondent, the Petitioner has filed the present Writ Petition by taking a plea that the notice dated 24.08.2017 of the Respondent suffers from legal infirmity because of the latent and patent reason that the notice in question was issued by the Respondent in a mechanical fashion as per Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, directing the removal of encroachment in Survey No.34 at Kargavayal village within 21 days period, failing which, the same will be removed by the Official of the Respondent by levying cost for such removal of encroachment.

5. The Learned Counsel for the Petitioner projects a legal argument that immediately after receipt of the impugned notice dated 24.08.2017 of the Respondent, the Petitioner is now assailing the same on the ground that the Respondent has not followed the mandatory procedure adumbrated in Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, before taking any action and also that, no notice was issued to the Petitioner for appearance of an enquiry, also that, no such procedure ordered by this Court was followed by the Respondent.

6. Advancing his argument, the Learned Counsel for the Petitioner points out that only after completion of the survey of the Tanks and preparing the Chart and the Register as per Rule 3 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, report shall be handed over to the Officer concerned, who is having control over such Tanks. That apart, on receipt of Chart and Register in connection with the encroachment, the same shall be handed over to the Officer concerned and on receipt of the same, the said Officer shall within one month from the date of handing over the Chart and Register, publish a notice in Form-II together with a map of the Tank in the Notice Board of the Office of the Village Administrative Officer, Village Panchayat Office and Water Resources Organisation concerned. Thereafter only, the Respondent has the power to issue an eviction notice under Rule 6 (1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. The main grievance of the Petitioner is that the Respondent had not adhere to the afore stated mandatory Rules and simply issued the impugned notice dated 24.08.2017 in question without application of mind. Hence, the Petitioner has filed the present Writ Petition.

7. The Learned Counsel for the Petitioner draws the attention of this Court to Form - I of Clause (e) of Sub-Rule (1) of Rule 2 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and Form - II of Sub-Rule (2) of Rule 5 of the Rules, 2007 and Form - III of Sub-Rule (1) of Rule 6 of the Rules, 2007.



8. At this juncture, the Learned Special Government Pleader informs this Court that the impugned notice can be treated as a show-cause to the Petitioner and accordingly, it is open to the Petitioner to file necessary objections/remarks/response to the contents of notice dated 24.08.2017 issued by the Respondent. Soon after the receipt of remarks/objections to be filed by the Petitioner, within the time to be stipulated by this Court, the Respondent shall take action and pass orders in the subject matter in issue after providing adequate opportunity to the Petitioner and others concerned, of course, after adhering to the principles of natural justice and also in the manner known to law and in accordance with law.

9. This Court finds enough force in the submission made on behalf of the Respondent. As such, this Court without going into the merits of the matter simply directs the Assistant Engineer, Public Works Department, Kallanai Kalvai Sub-Division, Pattukottai, Thanjavur District, to receive the objections from the Petitioner and further, in this regard, the Petitioner is directed to construe the notice of the Respondent dated 24.08.2017 as a show-cause and is directed to submit his explanation to the said notice dated 24.08.2017 within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Respondent is directed to look into the objections of the petitioner in a fair, open, unbiased and just manner and that too, in a dispassionate fashion and to pass a speaking order on merits advertent to all the factual and legal pleas raised by the petitioner in his objections. If need be, it is open to the Petitioner to submit documents before the Respondent, which he relies upon in support of his case. The Respondent shall take into account even the documentary evidence if any produced by the Petitioner and in any event, the Respondent is to pass an order within a period of four weeks thereafter. Till such time, the Petitioner shall not be evicted from the subject matter of the property.

10. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

The Assistant Engineer,
Public Works Department,
Kallanai Kalvai Sub-Division,
Pattukottai,
Thanjavur District.

+ 1 cc TO Mr.B.Jameel Arasu , Advocate in SR No. 82493
+1cc to The Special Government Pleader in SR.No.82544

pm

AE/KP/SAR2/26.10.2017/4P/4C

**ORDER MADE IN
W.P. (MD) No.17539 of 2017
11.10.2017**