



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P.(MD)No.22882 of 2017

and

W.M.P(MD)Nos.19191 and 19192 of 2017

P.Kumar

: Petitioner

.vs.

The Junior Engineer,
P.W.D/WRO,
GAC,Ayangudi Section,
Subramaniapuram,
Aranthangi Taluk,
Pudukkottai District.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records relating to the order of the respondent in respect of FORM III(See Sub-Rule(1) of Rule 6) dated 28.11.2017 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 relating to the Petitioner's dwelling house and to quash the same as arbitrary and illegal.

For Petitioner : M/s.K.Baalasundharam
For Respondent : Mr.M.Govindan
Special Govt.Pleader

O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records relating to the order of the respondent in respect of FORM III(See Sub-Rule(1) of Rule 6), dated 28.11.2017 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 relating to the Petitioner's dwelling house and to quash the same as arbitrary and illegal.



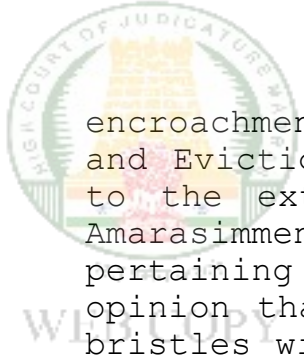
3. By consent, the main Writ Petition itself is taken up for final disposal.

4. According to the Learned Counsel for the Petitioner, the Respondent failed to appreciate that the Petitioner's land is not at all situate in S.No.73/2 and therefore, it is contended on behalf of the Petitioner that the impugned notice exhibits non-application of mind. The Learned Counsel for the Petitioner projects an argument that as per Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, the Survey Officer must prepare a chart and register, pointing out the boundaries of tanks and such information is necessary for identifying the limits of tank. The Learned Counsel for the Petitioner proceeds to point out that the Second Respondent should have published the impugned notice, dated 28.11.2017 pointing out the boundaries of the tank as specified under Section 6(3) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 before issuing the impugned Eviction Notice.

5. At this stage, a perusal of Form-III Notice (under Sub-Rule (1) of Rule 6) to order for removal of encroachment addressed to the Petitioner shows that the Petitioner had encroached in Survey Field No.73/2 in Amarasimmendrapuram Village, Alangudi Taluk, Pudukkottai District and in fact, he was informed that a portion of Pothiyankulam Tank was encroached, but the extent was not filled up in the impugned notice and so to say, it is left blank. It appears that Form No.I Notice of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 contains details, statement of area encroached and the same is referred to in S.Nos.1 to 10. In fact, S.No.8 of the aforesaid Form-I Notice mentions the extent of encroachment. Indeed, Form No.II (vide Sub-Rule (2) of Rule 5) of the "Rules", 2007 relates showing the Index Map of Tanks and Boundaries. Apart from that, Form III of the Rules 2007 (Vide Sub-Rule (1) of Rule 6) speaks of 'Notice to order for removal of encroachment' and in fact, it points out the extent to be mentioned for the removal of encroachment in question. Unfortunately, in the instant case, in Form III, the extent of measurement portion has been left blank.

6. It is to be borne in mind that Section 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 deals with 'Eviction of Encroachment' and a mere glance of the same indicates lucidly that the Officer shall issue a notice in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before the date specified in the notice.

7. In this connection, the Learned Special Government Pleader points out that already the Petitioner was served with Form No.I and II Notice, in which, necessary details were furnished to him and also the extent of encroachment made by him was also described/mentioned. However, the omission to mention the extent of



encroachment in Form-III Notice of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 does not expressly refer to the extent of encroached portion in Survey Filed No.73/2 in Amarasimmendrapuram Village, Alangudi Taluk, Pudukkottai District pertaining to Pothiyankulam Tank, this Court is of the earnest opinion that the said Form-III Notice pertaining to the Petitioner bristles with legal infirmity inasmuch as the extent of measurement of the area/portion which is in occupation of the Petitioner was not mentioned in the said notice, dated 28.11.2017. As such, this Court is left with no other option, except to interfere with the said notice issued by the Respondent and sets aside the same to secure the ends of justice. Consequently, the Writ Petition succeeds.

8. In fine, the Writ Petition is allowed. The impugned Form III Notice, dated 28.11.2017 issued by the Respondent is set aside by this Court, for the reasons assigned in this Writ Petition. No costs. Consequently, connected Miscellaneous Petitions are closed.

9. Before parting with the case, this Court makes it abundantly clear that allowing of the present Writ Petition on technical grounds will not preclude the Respondent/The Junior Engineer, P.W.D/WRO, GAC, Ayandudi Section, Subramaniapuram, Aranthangi Taluk, Pudukkottai District to issue fresh Form-III Notice after satisfying with the legal requirements and Rules and Regulations of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, of course, in the manner known to Law and in accordance with Law.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Junior Engineer,
P.W.D/WRO, GAC, Ayangudi Section,
Subramaniapuram,
Aranthangi Taluk,
Pudukkottai District.

+ 1 CC TO Mr.K.BAALASUNDHARAM, ADVOCATE IN SR No. 92606
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 93202

VSN

TE/MR-KKR/SAR-4 : 29/12/2017 : 3P/4C

ORDER MADE IN
W.P. (MD) No.22882 of 2017 and
W.M.P (MD) Nos.19191 and 19192 of 2017
13.12.2017
(2/7)