



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

CORAM:

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

W.P. (MD) No.22895 of 2017

and

W.M.P. (MD) Nos.19210 and 19211 of 2017

A.Mageshkannan

: Petitioner

Vs.

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

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari, to call 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 Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 relating to Petitioner's dwelling house and quash the same as arbitrary and illegal.

For Petitioner

: Mr.R.Paranjothi

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 come forward with the present Writ Petition seeking for the issuance of a Writ of Certiorari, to call for the records relating to the order of the Respondent in respect of Form III [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 Petitioner's dwelling house and quash the same as arbitrary and illegal.

2. Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondent.



3. No counter is filed on behalf of the Respondent.

4. By consent, the main Writ Petition itself is taken up for final disposal at the stage of admission.

5. The stand of the Petitioner is that the land in which his house is situated has never been a 'Water Body' at any point of time. In this background, the Respondent had affixed notice in Form -III under Sub-Rule (1) of Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 stating that he had encroached Pothiyankulam Tank in S.F.No.73/3 in Amarasimmendrapuram Village, Alangudi Taluk, Pudukkottai District. In fact, the Petitioner was directed to remove the encroachment and to vacate from the property in question, within 21 days from the date of receipt of notice, failing which, he was further informed that the encroachment would be removed at his costs. The clear-cut case of the Petitioner is that his thatched house is not situated in S.F.No.73/3, which is classified as Pothiyankulam Tank erroneously.

6. The Learned Counsel for the Petitioner urges before this Court that the Respondent had failed to appreciate that Pothiyankulam Tank was not at all surveyed and boundary stones were not fixed on permanent basis as per Rule 4(4) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007.

7. The Learned Counsel for the Petitioner points out that the Petitioner's land is not situated in Survey No.73/3 and, therefore, the impugned notice unerringly points out that there appears to be a 'Non-application of Mind' by the Respondent.

8. The other plea taken on behalf of the Petitioner is that the Respondent has not followed the Principles of Natural Justice by not providing an opportunity to the Petitioner.

9. Advancing his arguments, the Learned Counsel for the Petitioner takes an emphatic stand that the Respondent should have published a notice pointing out the boundaries of the tank, as specified in Section 6(3) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, before issuing the impugned eviction notice.

10. The Learned Counsel for the Petitioner proceeds to point out that the Respondent had failed to issue notice in Form-II of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, before issuing the impugned notice.

11. Conversely, it is the submission of the Learned Special Counsel appearing for the Respondent that on 21.11.2017 Form-I notice under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, was issued to and in favour



of the Petitioner and that Form-II as per the Rules was issued to the Petitioner on 21.11.2017. Besides the above, the Petitioner was issued with Form-III notice on 28.11.2017.

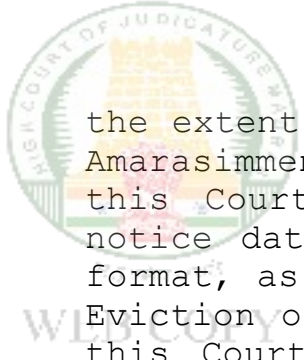
12. The Learned Special Government Pleader brings it to the notice of this Court that actually the Revenue Officials had surveyed Survey No.73/3 in Amarasimmendrapuram Village, Alangudi Taluk in Pudukkottai District, wherein the Petitioner had allegedly encroached a portion of Pothiyankulam Tank. After conduct of survey, the Petitioner was found to be an encroacher and as such, the Respondent had rightly issued Form-III notice to order for removal of encroachment as per Rules and the same does not suffer from any legal infirmities.

13. A cursory perusal of Form-III [Vide Sub-Rule (1) of Rule 6] of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 expressly provides a space for filling up extent in Survey Field Number, etc. Unfortunately, Form-III notice in question dated 28.11.2017 issued by the Respondent does not mention about the extent of encroachment in S.F.No.73/3 of Amarasimmendrapuram Village, Alangudi Taluk in Pudukkottai District and this omission, in the considered opinion of this Court, goes to the gross root of the case. The omission, indeed, affects the impugned notice dated 28.11.2017 addressed to the Petitioner.

14. By way of reply, the Learned Special Government Pleader comes out with an argument that in Form-I and Form-II notices issued earlier by the Respondent to the Petitioner, the extent of encroachment with necessary details, like Survey Number, Village, etc., were furnished to the Petitioner and as such, the Petitioner, by no stretch of imagination, can be construed to be an 'aggrieved person' in this regard.

15. At this stage, this Court aptly points out that Section 7 (1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 under the caption of '**Eviction of Encroachment**' enjoins that 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, etc. Furthermore, Section 6 of the Act, 2007 refers to '**Report of Survey Officer**'.

16. Be that as it may, in view of the candid fact that Form-III [Vide Sub-Rule (1) of Rule 6] 'Notice to Order For Removal Of Encroachment' as per Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007', dated 28.11.2017, does not refer to



the extent of encroachment made in Pothiyankulam in S.F.No.73/3 in Amarasimmendrapuram Village, Alangudi Taluk, Pudukkottai District, this Court comes to a consequent conclusion that the impugned notice dated 28.11.2017 is not in accordance with the prescribed format, as envisaged under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. On this simple score alone, this Court interferes with the impugned notice dated 28.11.2017 issued to and in favour of the Petitioner and sets aside the same, to secure the ends of justice. Resultantly, the Writ Petition succeeds.

17. In fine, the Writ Petition is allowed leaving the parties to bear their own costs. The impugned notice dated 28.11.2017 of the Respondent is set aside by this Court for the reasons assigned in this Writ Petition. Consequently, the connected Miscellaneous Petitions are closed.

18. Before parting with the case, this Court grants liberty to the Respondent to issue a fresh notice keeping in mind with the ingredients of the relevant provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and also the Rules, 2007, by providing enough opportunity to the Petitioner by following the Principles of Natural Justice. If any personal hearing needs to be given to the Petitioner to air his grievance(s), then it is open to the Petitioner to raise all Factual and Legal pleas before the Respondent, who, after issuance of fresh notice to the Petitioner, shall take note of the same, more particularly, advert to each and every point raised therein and answer the same by ascribing qualitative and quantitative reasons with a view to have an appearance of Justice.

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.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 93205

+1cc to Mr.K.BAALASUNDHARAM Advocate in SR. No.92825

SML

JS/SV.MMS/SAR.1/02.01.2018/4P-4C