



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.12.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)Nos.24234 to 24239 of 2017 and
W.M.P(MD)Nos.20352 to 20358 of 2017

P.Vasantha	.. Petitioner in WP(MD)No.24234/2017
Baluchamy	.. Petitioner in WP(MD)No.24235/2017
Karuppanan	.. Petitioner in WP(MD)No.24236/2017
Vellaichamy	.. Petitioner in WP(MD)No.24237/2017
Muthudurai	.. Petitioner in WP(MD)No.24238/2017
Pitchai	.. Petitioner in WP(MD)No.24239/2017

-vs-

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Assistant Engineer,
Public Works Department / Water Resource Organisation,
Parthipanoor Reservoir Section,
Paramakudi,
Ramanathapuram.

3.Tahsildar,
O/o. The Tahsildar,
Illayankudi Main Road,
Paramakudi,
Ramanathapuram District. .. Respondents in all the Writ Petitions

Writ Petitions are filed under Article 226 of the Constitution of India, seeking a Writ of Certiorari to call for the records of impugned notice passed by the Respondent No.2 U/s 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 dated 22.12.2017 in respect of the property of house in Ward No.B, Block No.5, Survey No.2 in Paramakudi, Ramanathapuram District.

For Petitioner

: Mr.S.M.A.Jinnah

For Respondents

: Mr.T.S.Mohamed Mohideen,
Addl. Govt. Pleader

COMMON ORDER

[Order of the Court was made by S.VAIDYANATHAN, J.]

As the issue involved in all these cases is one and the same, the Writ Petitions are taken up for disposal by a common order, with the consent of the learned counsel on either side.

2. These writ petitions have been filed, seeking to quash the impugned notices passed by the Respondent No.2 under Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 dated 22.12.2017 in respect of the properties in Ward No.B, Block No.5, Survey No.2 in Paramakudi, Ramanathapuram District.

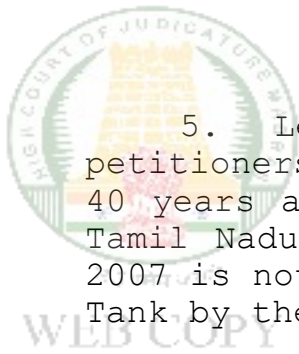
3. Mr.T.S.Mohamed Mohideen, learned Additional Government Pleader takes notice for the respondents.

4. For the sake of brevity, facts are being taken up from W.P. (MD) No.24234 of 2017, which read as follows:

(i) It is stated by the petitioner that her father-in-law had been residing in the said Survey Number in a thatched roof, which is classified as Water Land near riverside and after the death of her husband, she started living in the said property, which is duly assessed to house tax and electricity connection has also been provided to it;

(ii) While so, a notice was issued on 26.05.2005 by the Public Works Department (PWD), calling upon her to vacate her dwelling house without any prior notice, which forced her to file a writ petition in W.P.(MD) Nos.4879 and 4950 of 2005 and the same were disposed of on 16.04.2007, remitting the case to the competent authority for fresh consideration. Subsequently, on 12.04.2013, another notice under Section 6 of the Tamil Nadu Encroachment Act, 1905 was issued by the Revenue Inspector, Paramakudi for vacating the house within 15 days, pursuant to which, the petitioner filed a writ petition in W.P.(MD) Nos.7965 and 7966 of 2013, which were disposed of by this Court on 03.05.2013, granting liberty to the petitioner to file an appeal to the District Collector within 30 days with further direction not to dispossess the petitioner from the premises.

(iii) To add fuel to the fire, on 10.07.2013, the Tahsildar, Paramakudi sent a letter to the petitioner, simply rejecting her appeal, which necessitated to once again file a writ petition in W.P.(MD) No.13505 of 2013, in which, this Court was pleased to direct the 1st respondent therein to entertain the appeal and dispose of the same as per law with an interim order of not to dispossess her from the premises. When the matter stood thus, all of a sudden, the 2nd respondent has issued the impugned order dated 22.12.2017 under Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 for commencing eviction process and arranged heavy machineries for demolition of the dwelling house. Aggrieved by the same, the petitioner is before this Court.



5. Learned counsel for the petitioners would submit that the petitioners are in occupation of the land in question for more than 40 years and the impugned order issued under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 is not at all sustainable, as the land is not earmarked for any Tank by the 2nd respondent.

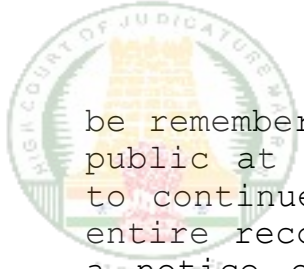
6. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the petitioners are only encroachers on the public land and residing in the Government land in question for so many years without any title, does not entitle them to claim right over the property, as, such unauthorized encroachments create big havoc/problems during rainy season and therefore, these writ petitions are to be dismissed, in limine.

7. Heard the learned counsel for the parties and perused the material documents available on record.

8. It is no doubt true that encroachments on public properties severely obstruct and upset the planned development, ecology and also sanitation, which needs to be preserved and protected at any cost. Unless stringent actions are adopted, there could not be no solution for prevention of such unauthorized encroachments. Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised, as no person has right to encroach by erecting a structure or otherwise on footpaths and pavements or other places reserved or earmarked for a public purpose.

9. The learned counsel for the petitioners has cited a judgment of the Hon'ble Division Bench of this Court, consisting of Justice M.Venugopal and Justice Abdul Qudhdose, to emphasize that the respondents were earlier directed not to disturb the possession of the petitioners. A careful scrutiny of the said judgment would unfold that such order was passed on the basis of the representation before the Bench that appeals filed by the petitioners are pending before the Appellate authority, as the petitioners have projected, as if the proceedings have been initiated under the Tamil Nadu Land Encroachment Act, 1905, which has appeal provision. However, a close reading of the proceedings now initiated against the petitioners would go to show that the proceedings are pending under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, not under the the Tamil Nadu Land Encroachment Act, 1905, as visualized by the petitioners. Admittedly, there is no appeal remedy provided under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and therefore, the question of filing appeals does not arise at all.

10. It is stated that the petitioners are said to have been residing in the lands in question for more than 40 years and their children are pursuing their studies, but at the same time, it is to



be remembered that sympathetic view cannot be taken, when it affects public at large and therefore, the petitioners cannot be permitted to continue to reside in the Tank area. After verification of the entire records, the authorities concerned have decided to cast such a notice of eviction to the petitioners, which cannot be faulted with, at any stretch of imagination. A Hon'ble Division Bench of this Court, while dealing with the similar issue, in the case of M/s.Aara Silk, Chennai vs. The Principal Director, Southern Command, IDES Guest House, Cross Road, Pune, Maharashtra State and another in Writ Petition No.29985 of 2016 decided on 29.09.2016, was pleased to hold as under:

"22. In view of the decisions cited supra, this Court is of the view that the violated portions have got to be razed to the ground. In terms of the provisions of the Cantonment Act, the police shall give full protection for the demolition of the building and the petitioner is given a week's time from today, to remove the belongings in the building, otherwise, it will be construed that the belongings have been vacated by the petitioner. This Writ Petition is dismissed with the above direction and observation.

23. Since the petitioner has played fraud with regard to construction of building, by grossly violating the sanction plan, this Court imposes fine of a sum of Rs.50,000/- (Rupees Fifty Thousand only) on the petitioner to be payable by him in favour of Government Higher Secondary School for the Blind, Poonamallee, Chennai - 600056, 044-26272080 within a period of one week from the date of receipt of a copy of this order. Consequently, connected W.M.P.No.25954 of 2016 is closed.

11. In the present case on hand, from the records available on record, it is apparent that it is a clear case of encroachment on the Tank. Hence, the petitioners are liable to be evicted forthwith. Though it is a fit case to impose costs on the petitioners for filing litigations one after the other, considering their long residence in the locality, this Court refrains itself from such imposition. Hence, finding no merits in these writ petitions, they are dismissed as devoid of merits.

12. At this juncture, the learned counsel for the petitioners would submit that since the petitioners' children are studying in various schools, the petitioners may be permitted to reside in the property till the end of the academic year and they undertake to vacate the premises on or before 1st of May 2018. Learned counsel also prayed for consideration of allotment of alternative sites to the petitioners on humanitarian grounds.



13. With regard to the alternative site, it is for the Government to decide and this Court has no power to issue such direction to the Government in a case of this nature. Since the children of the petitioners' are stated to be studying, some leniency is shown to the petitioners and they are directed to vacate the premises on or before first of May 2018 and if they fail to vacate the premises as undertaken above, the respondents are entitled to seek the assistance of Police Force for removal of encroachers.

14. It is made clear that if the encroachers are not evicted within the stipulated period as stated supra, suitable disciplinary proceedings will have to be taken against the officials, who are responsible for evicting the encroachers. It is also made clear that failure on the part of the immediate higher ups in initiation of disciplinary action against the erring officials, responsible for removal of encroachment, will result in dismissal of such higher ups themselves. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar

To:

1. The District Collector,
Ramanathapuram District, Ramanathapuram.
2. The Assistant Engineer,
Public Works Department / Water Resource Organisation,
Parthipanoor Reservoir Section,
Paramakudi, Ramanathapuram.
3. Tahsildar,
O/o. The Tahsildar,
Illayankudi Main Road,
Paramakudi, Ramanathapuram District.

+One cc to The Special Government Pleader, SR.no.95159
ssl/gk/ar/aeb
RL/5C/5P/KKR/SAR1/29/1/2018

W.P. (MD) Nos.24234 to 24239 of 2017