

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.5662 and 5663 of 2018
and
W.M.P.Nos.7004 and 7005 of 2018

Mohan .. Petitioner in W.P.No.5662 of 2018

Mohammed Iqbal .. Petitioner in W.P.No.5663 of 2018

Vs.

The Assistant Engineer,
Public Works Department
(Water Resource Organisation),
Adayar Irrigation Division,
St.Thomas Mount, Chennai-16.

.. Respondent in both the Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorari to call for records with respect to the proceedings of the respondent in Seyalmurai Aana No.Adayar/E11, dated 05.02.2018 and quash the same.

For petitioners : Mr.R.Nalliyappan

For respondents : Mr.A.N.Thambidurai, Spl.G.P.

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioners have come forward with the above Writ Petitions praying for issuance of Writs of Certiorari to call for records with respect to the proceedings of the respondent in Seyalmurai Aana No.Adayar/E11, dated 05.02.2018 and quash the same.

2. According to the petitioners, relating to the subject matter in issue, some of the persons have approached this Court by filing Writ Petitions in W.P.Nos.15554 to 15557 and 15363 to 15366 of 2017, in which, this Court, by order dated 13.12.2017, observed that the land is said to be 300 metres away from the

Adayar River and in the Revenue Records, it is shown as 'stony ground'. In that case, a notice under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Rules, was issued and that this Court, while considering the request of the petitioners in the said batch of Writ Petitions, permitted those persons to give representation and till a decision is taken on the said representation, the authorities were directed to defer further decision in terms of the said Act and the Rules made thereunder. It was further observed by this Court that if the officials are of the opinion that action has got to be initiated under the said Act, they are at liberty to entrust the same to the jurisdictional Revenue Tahsildar to carry out the said exercise. It was also observed by this Court in the said batch of Writ Petitions that till the disposal of the said representation, the petitioners shall not create any third party rights in respect of the site and superstructure therein and that the physical features of the land in question shall also not be altered. Further, the local body was authorised to carry out the inspection as to whether the superstructure put up by the petitioners in those batch of cases, were authorised or not/deviated, and pending result of the same, liberty was granted to initiate appropriate proceedings against the petitioners therein.

3. According to the petitioners herein, the authority who has issued the notice, has no jurisdiction to pass appropriate orders and that it is 'stony ground' and that the land is not in the river/river bank. It is submitted by the learned counsel for the petitioners herein that the land is a patta land and that the construction had been made and that there is no encroachment in any place, much less the tank or bund. According to the petitioners, in the representation, dated 20.12.2017, addressed to the respondent, the petitioners have stated that the land in S.No.235 belongs to the Government Poramboke and that it does not belong to the Public Works Department. There is no question of alienation or encroachment in the water bund as stated supra and that the petitioners need not be disturbed. Even in the said representation, it is stated that S.No.235 in the Revenue Records of the Revenue Department is only 'Kallankuthu', but by mistake, it is referred to as "Thandukarai". Detailed explanation has been given by the petitioners in the said representation.

4. According to the petitioners, as per the Register of the Revenue Department, the limits of PWD shall be examined and regularised as per the Records and the Revenue Department has got such power, but the petitioners' area in S.No.235 has not been inspected till date. The authorities, as per the order of this Court in the said batch of Writ Petitions, caused notice calling upon the persons including the petitioners, to appear for the enquiry in terms of the said Act/Rules and personal

enquiry was conducted, wherein it was found that the area is classified as Adayar River/river bank/stream in the Revenue Records. None of the persons who participated in the enquiry, have produced any patta issued by the Revenue Department. It only confirms that the persons have encroached the river bund as stated supra. In terms of the order of this Court in the said batch of Writ Petitions and based on the enquiry conducted, it is found that the petitioners have encroached the land(s) in question and by the impugned communication, dated 05.02.2018, the petitioners have been given 15 days' time to remove the encroachment of their own, failing which, appropriate action would be initiated.

5. According to the learned Special Government Pleader appearing for the respondents, some of the encroachers have been provided with alternative sites and the details of the encroachers have been taken and bio-metric process is taking place and that if the encroachers produce details, they will be accommodated in alternative sites. In this case, the petitioners being encroachers in the bank/bund/lake, would not be entitled to the relief sought for.

6. Further, in the impugned communication dated 05.02.2018, it is stated by the respondent that as per the order of this Court in the earlier round of litigation, alternative sites have been identified to be given to the persons. According to us, if the enumeration process is on, it is for the encroachers to participate and if they fulfil the conditions, it is open for them to accept the alternative sites. Since it is a finding of fact recorded by the authority that the land in question is located near Adayar River/River bank/stream and that the petitioners have encroached the tank/river, the contention of the petitioners that they have patta in respect of the property and that they are not encroachers and the authority who has initiated action, has no jurisdiction to take action, cannot be accepted. As stated in the said communication, dated 05.02.2018, if the petitioners are not going to vacate the place(s) within a period of 15 days from the date of receipt of a copy of this order, it is open for the authorities to remove the encroachment. We also make it clear that if the petitioners are not going to participate in the enumeration process, if not already participated, it is needless to mention that the place (s) that might be allotted to the petitioners, can be allotted to any other person(s) based on the seniority in the list and that the petitioners cannot have grievance and contend at a later point of time that they have not been given the alternative sites, if they are otherwise eligible.

7. With the above observations and directions, the Writ Petitions are disposed of. No costs. Consequently, W.M.Ps. are closed.

CS

Sd/-
Assistant Registrar
/TRUE COPY/

Sub-Assistant Registrar

To

The Assistant Engineer,
Public Works Department
(Water Resource Organisation),
Adayar Irrigation Division,
St.Thomas Mount, Chennai-16.

+2CC to Mr.P.Nalliyappan, Advocate in SR.NOs. 19144, 19145

+1CC to Government Pleader Advocate SR.NO. 20071

W.P.Nos.5662 and 5663 of 2018

KAN [CO]
MLT-27/03/2018



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