

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.3518, 3883, 1981 to 1984, 1964, 1965,
1625 to 1629, 1633 to 1636, 1397, 2743, 2744 and 2900 of 2018

Vetri Daniel ... Petitioner in WP.NO.3518/2018
Rajammal ... Petitioner in WP.NO.3883/2018
Kalamani ... Petitioner in WP.NO.1981/2018
Suganthi ... Petitioner in WP.NO.1982/2018
Karunaiammal ... Petitioner in WP.NO.1983/2018
Vasanthamani ... Petitioner in WP.NO.1984/2018
Chellammal ... Petitioner in WP.NO.1964/2018
Kamala ... Petitioner in WP.NO.1965/2018
Jyothimani ... Petitioner in WP.NO.1625/2018
Dhanalakshmi ... Petitioner in WP.NO.1626/2018
Kilda ... Petitioner in WP.NO.1627/2018
Pushpa ... Petitioner in WP.NO.1628/2018
Vasanthi ... Petitioner in WP.NO.1629/2018
Kavitha ... Petitioner in WP.NO.1633/2018
Rani W/o.Sekar ... Petitioner in WP.NO.1634/2018
Rani W/o.Murugesan ... Petitioner in WP.NO.1635/2018
Rajathi ... Petitioner in WP.NO.1636/2018
P.Prabhu ... Petitioner in WP.NO.1397/2018
R.Sakthivel ... Petitioner in WP.NO.2743/2018
Alamelu Mangai ... Petitioner in WP.NO.2744/2018
K.Avinashiappan ... Petitioner in WP.NO.2900/2018

vs.

1. The District Collector,
Tiruppur Collectorate,
Tiruppur District.

... 1st Respondent in WP.Nos.3518,3883,1981 to
1984,1964,1965,1625 to 1629,
1633 to 1636,1397,2743 to 2744, 2900/2018

2. The Tahsildar,
Avinashi,
Tiruppur District.

...2nd Respondent in Wp.NOs.3518,1964,3883,1965,1625
to 1629,1633 to 1636,1397,2743,2744,2900 of 2018

3. The Assistant Engineer (PWD),
Water Resources Organization,
Irrigation Division,
Tiruppur.

... 2nd Respondent in WP.Nos.1981 to 1984
3rd Respondent in WP.Nos.3518,3883,1964,1965,1625
to 1629,1633 to 1636,1397,2743,2744,2900/2018

4. Avinashi Town Panchayat,
rep. by Executive Officer,
Avinashi,
Tiruppur District.

... 4th Respondent in WP.Nos.3518,1964,1965
& 3883/2018

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records of the Notice dated 22.12.2017, 25.01.2018 and 27.12.2017 respectively issued by the 3rd Respondent in Form 3 under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules made under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and to quash the same (in WP.3518,3883,1964,1965,1625 to 1629,1633 to 1636,1397,2743,2744 & 2900/2018)

calling for the records in the order of eviction dated 22.12.2017 passed by the 2nd Respondent and quash the same (in WP.1981,1982,1983,1984/2018)

For Petitioner

: Mr.V.R.Thangavelu

* **for WP.3518,3883,1964,1965,1625
to 1629,1633 to 1636,1397, 2743,
2744 and 2900 of 2018**

**Mr.M.Radhakrishanan
for WP.1981 to 1984.**

For Respondents

in all W.Ps.

: Mr.A.N.Thambidurai,
Special Government Pleader

C O M M O N O R D E R

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

Petitioners have come forward with these Writ Petitions seeking to quash the Notice issued by the 3rd Respondent in Form-III under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules made under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007.

2. According to the Petitioners, the subject matter of the lands in Writ Petitions in W.P.Nos.3883, 1981 to 1984 and 2900 of 2018, are 'Natham' and with regard to the other Writ Petitions, the lands are 'Thoppu'. The lands in Sub-Division Nos.80 and 81 of Avinashi Town Panchayat, are classified as 'Palm Thope', 'Nandhavanam', 'Natham', 'Natham lane' and 'Cart Track' and that no water channel exists there. Even assuming for the sake of argument that water channel exists in the said lands, it is the case of the Petitioners that none of them have encroached the same and that major portion of the lands have been bifurcated and that the Petitioners have constructed their respective residence. It is the further case of the Petitioners that since none of them have encroached the River Bund, Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules made thereunder will not be applicable to their case.

3. Citing a Division Bench decision rendered by this Court in the case of T.S.Senthil Kumar vs. Government of Tamil Nadu, reported in (2010) 3 MLJ 771, learned counsel for the Petitioners submitted that the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 has been upheld by this Court in the said judgment. According to the learned counsel, a notice under Form-III could be issued only if the details as to the extent of area encroached and its boundaries are known to the Petitioners. He further submitted that even assuming that the issue on hand comes under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules mentioned supra, the details of the extent of land encroached has not been mentioned in Form-III and hence, on that score alone, this Court is empowered to interfere with the same.

4. Learned counsel for the Petitioners further drew the attention of this Court to an unreported Division Bench decision of the Madurai Bench of this Court (in which one of us, M.Venugopal,J. is a member) dated 14.12.2017 in W.P.(MD) No.23003 of 2017 (P.Rengasamy vs. The Junior Engineer, P.W.D, Pudukottai District), wherein, it is held that, when Form-III Notice does not refer to the extent of encroachment made, the Court can interfere and hold that the impugned notice is not in accordance with the prescribed format, as envisaged under the Tamil Nadu Protection of Tanks and Eviction of Encroachment

Rules, 2007. For better understanding, relevant portion of the said order is extracted hereunder:

"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.73/1 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."

5. Per contra, learned Special Government Pleader appearing for the Respondents submitted that the entire land in question is classified as Forest land and that Nalluru River is flowing and that the Petitioners have given a different subdivision number and projected as if, they have not encroached the Tank. According to him, it is not necessary that the details of the area encroached vide Form-I and the Map as contemplated vide Form-II in terms of Rule 5 of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Rules, 2007 need to be furnished. It is an overall survey and if the parties, on receipt of notice under Form-III, demand the same, certainly, it would be made available to the parties concerned to enable them to give a reply.

6. Learned Special Government Pleader further submitted that the total extent of the water channel has been reduced from 44 metres to 5 metres and that having encroached the Tank, Petitioners cannot contend that there is no encroachment. According to him, there is no violation of any of the provisions of the Act or Rules and that it is only a notice under Form-III and that the Petitioners could give a reply to the Notice and after considering the same, the authorities would pass appropriate orders.

7. In reply, learned counsel for the Petitioners contended that the impugned notice is issued without following the principles of natural justice and it is totally contrary to Section 7(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

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

9. It is not in dispute that Form-III notice as contemplated under Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 has been issued. On a reading of the Division Bench order dated 14.12.2017 made in W.P.(MD) No.23003 of 2017, it is clear that the extent of the encroached land has to be mentioned in Form-III Notice. In the case on hand, even though the Survey number and the place has been mentioned in the impugned notice, the total extent of the land that has been encroached has not been mentioned. Whether the Petitioners have encroached the Tank or not and whether Survey Nos.80 and 81 are classified as Palm Thope (Forest land), where Nalluru river is said to be flowing and whether a different Survey Number has been mentioned for the purpose of getting an order from this Court, are all disputed questions of fact, which cannot be gone into by this Court. The said questions need to be decided only based on merits and it is for

the authorities concerned to consider the same and pass appropriate orders.

10. The contention that the impugned order is issued to the Petitioners without affording them an opportunity of hearing, cannot be accepted. As has already been held by a Division Bench of this Court in T.S.Senthil Kumar's case (cited supra), Rule 6, though not specifically mentioned, contemplates two conditions, firstly, it is a notice under Form III, which contains all the details and secondly, if there are any objections, the authorities concerned will have to furnish a copy of Form-I and Form-II to the aggrieved persons and thereafter, pass a detailed order after affording an opportunity of hearing to the parties and the complainant, if any.

11. At this juncture, it is pertinent to reiterate that the Madurai Bench of this Court in its decision dated 14.12.2017 (cited supra), has clearly observed in paragraph 18, that an opportunity of hearing has to be given to the Petitioner before final orders are passed.

12. The contention of the Petitioners that they should initially be given notice vide Form-II, and only after hearing their objections, a notice under Form-III has to be issued, cannot be accepted. Form-II and Form-III are issued only for the purpose of maintaining records in the Office. If the contention of the Petitioner is going to be accepted, finality cannot be reached and one litigation or the other will come in the way, thereby preventing removal of encroachments. Even a reading of Form-II will make it very clear that if any encroachment is made based on the Map that has been prepared, it is an offence, for which persons can be imprisoned and also fine can be imposed in terms of Section 7 of the Act. Form-II and Form-III are independent of each other. However, while passing an order under Form-III, it will not preclude the official Respondents in furnishing a copy of Form-I and Form-II in order to enable the aggrieved encroachers to ascertain the area of encroachment and give a reply with regard to Form-III.

13. A reading of Section 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 makes it very clear that it is for the Survey Officer to survey the Tanks, prepare a chart and a Register, pointing out the boundaries of the Tanks and hand over the same to an Officer of the Public Works Department, having control over such Tanks and within one month from the date of handing over of the charge and Register, publish a notice in such manner as may be prescribed, pointing out the boundaries of the Tank. For surveying the extent of the Tank, there is no need of issuing a notice in Form-II to the aggrieved persons and hear them. If at all any encroachment is made, it is for the authorities to remove the same. In case,

the lands belonging to the Petitioners are going to be taken away, then they may raise any objection, when a notice under Form-III is issued.

14. We are of the view that Form-III notice impugned in the present Writ Petitions, is a final order. However, following the Division Bench decision dated 14.12.2017 (cited supra), Form-III notice impugned in the present Writ Petitions is interfered only on the ground that the extent of area that is said to have been encroached by the Petitioners is not mentioned therein. It is made clear that if any fresh notice is issued by the authorities, after receipt of the documents required by them in Form-I and Form-II, the Petitioners will have to put forth their defence, both factual and legal, only before the concerned authorities, as this Court is not an alternative forum to decide the disputed questions of fact. On receipt of notice vide Form-I/Form-II, if anyone approaches this Court, electricity supply to the premises in question shall be disconnected, till a final decision is taken by the Authority concerned.

These Writ Petitions are allowed with the above observation (s). No costs. Consequently, W.M.P.Nos.4296, 4759, 2491 to 2494, 2476, 2477, 2042 to 2046, 2050 to 2053, 1766, 3388, 3390 and 3568 of 2018 are closed.

Sd/-

Assistant Registrar(CS II)

13.04.2018

***Corrected as per order of
this Court dated 04.06.2018
given by Thiru.M.Radhakrishnan
Advocate for petitioner in
W.P.No.1981 to 1986 of 2018**

//True Copy//

-s/d-

**Assistant Registrar(CS-II)
dated 16.08.2018**

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
Tiruppur Collectorate,
Tiruppur District.
2. The Tahsildar,
Avinashi,
Tiruppur District.

**To be substituted to the order
Already despatched on 05.06.2018**

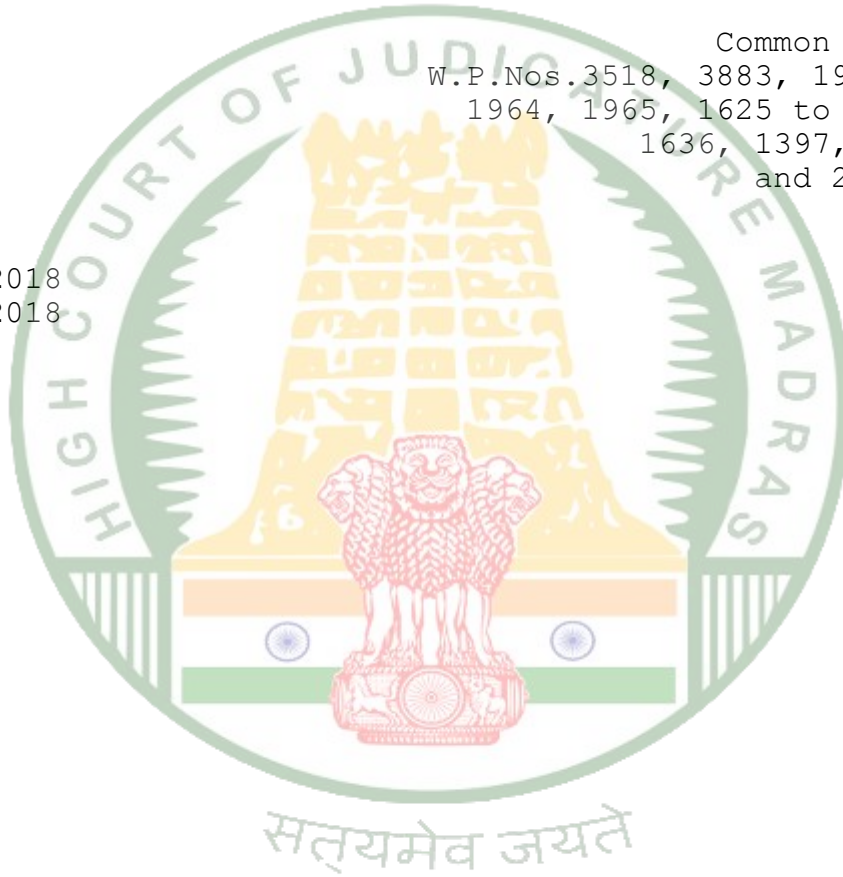
3. The Assistant Engineer (PWD),
Water Resources Organization,
Irrigation Department,
Tiruppur.

4. The Executive Officer,
Avinashi Town Panchayat,
Avinashi, Tiruppur District.

+17cc to M/s.V.R.Thangavelu, Advocate sr.no.18068
+1cc to Government Pleader in sr.no.18110

Common Order in
W.P.Nos.3518, 3883, 1981 to 1984,
1964, 1965, 1625 to 1629, 1633,
1636, 1397, 2743, 2744
and 2900 of 2018

CNR (CO)
NR/14/05/2018
CS/20/08/2018



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