

IN THE HIGH COURT OF JUDUCATURE AT MADRAS

Dated: 28.08.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.21905 of 2018
and
W.M.P.No.25705 of 2018

1.K.Sathish
2.B.Babu
3.Sundararagavan
4.P.Ponnusamy
5.Nalini Devi
6.R.Rajathi
7.Ezhumalai
8.Sudhakar
9.S.Durai Narashiman
10.V.Narashima Rao Petitioners

vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Ministry of Public Works Department,
Fort St.George,
Chennai-600 009

2.The Principle Secretary,
Public Works Department/
Irrigation Department,
Fort St.George,
Chennai-600 009

3.The District Collector,
Tiruvallur,
Tiruvallur District.

4.The Assistant Engineer,
Public Works Department/
Irrigation Department,
St.Thomas, Adyar, Chennai-600 016

5.The Tahsildar,
Avadi,
Chennai-600 054

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified Mandamus, calling for the records pertaining to the order of 4th Respondent in Proceedings No.Adyar/E 11, dated 11.08.2018, directing the Petitioners for eviction from their residences and quash the same and allow the Petitioners to reside in Survey No.301/1 in Periyar Nagar, Tirunintravur Village, Chennai-602 024.

For Petitioners : Mrs.Rita Chandrasekaran
For Respondents : Mr.R.Udhayakumar, A.G.P.

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioners and the Learned Additional Government Pleader for the Respondents.

2.No counter is filed on behalf of the Respondents.

3.According to the Petitioners, they are residents of Periyar Nagar and they came into possession of the property in Survey No.301/1, at Periyar Nagar, Thirunintravur Village and put up a superstructure. The property is subject to statutory levies. As a matter of fact, the Petitioners, along with their family are residing there ever since the year 1991 onwards. They possess Ration Card, Voter Identity Cards and they are paying Taxes regularly.

4.The grievance of the Petitioners is that to their shock and surprise, the 4th Respondent/Assistant Engineer, Public Works Department, Irrigation Department, St.Thomas, Adyar, Chennai-16, had issued the Impugned Notice, dated 11.08.2018, under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, stating that as per direction of this Court and in pursuance of an enquiry made from 6.8.2018 and 07.08.2018, they were required to vacate the premises within seven days.

5. At this juncture, the Learned Counsel for the Petitioners submits that in the year 2015, one Devendran filed W.P.No.37069 of 2015, seeking to issue a Writ of Mandamus restraining the Respondents from opening any of the locks of the Thirunintravur lake comprised in Survey Nos.300 and 301, measuring an extent of 835 acres and further direct them to take immediate measures of safety of residents of Muthamil Nagar, Periyar Nagar and Swadeshi Nagar at Thirunintravur. The 4th Respondent had filed a counter to the said Writ Petition, stating that these lands were alienated to the Tamil Nadu Slum Clearance Board for construction of dwelling flats.

6. It is further represented on behalf of the Petitioners that the residences of the Petitioners are in no way connected with the lake and that the Slum Clearance Board Residences and Swadesi Nagar are only located near the lake. Further, the residences of Periyar Nagar are located at the back side of the Slum Clearance Board. Thirunintravur Town Panchayat Map had clearly marked the lake area, in which, Periyar Nagar did not come under the lake area.

7. The Learned Counsel for the Petitioners contends that the 4th Respondent acted in compliance with the order dated 29.07.2016 in W.P.No.3466 of 2016 and had erroneously reached the conclusion that the land in Survey No.301/1 at Thirunintravur Village, Avadi Taluk, is classified as 'Water body'; whereas, it is not so and the sites, on which the superstructure of the Petitioners are located, lie far away from the Water body and located behind the Slum Clearance Board Flats. Without taking note of the long possession and enjoyment of the Petitioners on the land in question, the 4th Respondent is threatening them with eviction.

8. Continuing further, the Learned Counsel for the Petitioners brings it to the notice of this Court that the Respondents filed their counter in W.P.No.29003 of 2017 etc. batch cases, stating that they had given an alternate accommodation by the Tamil Nadu Slum Clearance Board tenements at Perumbakkam with financial assistance and also other amenities. The residents of Periyar Nagar, as per Order of this Court, appeared before the 4th Respondent with all documents showing their long possession and also showing that the land did not come under 'Water Body'. The 4th Respondent had ignored the

same and issued the Impugned Order dated 11.08.2018, whereby and whereunder the Petitioners were asked to vacate the premises. There are more than 50 families are residing in the said area. Indeed, the Petitioners addressed a Representation seeking issuance of Patta, as per G.O.Ms.No.854/06. Apart from that, there are several families residing there for more than 20 years and that the Petitioners are hapless and poor persons, having no land even for a house site and besides the same, they are all having school going children.

9.The Learned Counsel for the Petitioners draws the attention of this Court to the Letter of the Secretary to Government, dated 19.10.2007, addressed to the District Collector, Thiruvallur (3rd Respondent) to the effect that Ex-servicemen Residential Association made a request to the Government to regularise the encroachment of the land in Tirunintravur Village Survey No.301/1 and assign the land to them. Also the District Collector, Thiruvallur District was directed to examine and decide the applicability of the guidelines issued in the Government Order under reference of his Letter.

10.The Learned Counsel for the Petitioners strenuously takes a plea that after issuance of Eviction Notice dated 18.09.2017, Thirunintravur Special Grade Town Panchayat called for tender Notice on 27.11.2017 for providing 'Bitmen Road' and construction of storm water drainage and drinking water pipe in their residences. In fact, the Government had laid 'Pucca Tar Road' two months back. Further the Electricity Board had also provided the three phase connection to the Petitioners' residences. Hence, the Petitioners have filed the present Writ Petition, praying for passing of an order by this Court in calling for the records relating to the Order of the 4th Respondent in Proceedings No.Adyar/E 11 dated 11.08.2018, directing them for eviction from their residences and to quash the same.

11.Per contra, it is the submission of the Learned Additional Government Pleader for the Respondents that the eviction Proceedings had started from the year 2015 and that the Government remained unsuccessful in not able to evict the Encroachers from the encroached portions. Furthermore, the Petitioners do not have any semblance of documents to establish their claim that the properties in which they are residing belong to them. Moreover, it is the fervent plea of the Learned

Additional Government Pleader for the Respondents that 'Water Bodies' cannot be re-classified for any other purpose. The Petitioners were provided with adequate/sufficient opportunity of hearing, as per Order dated 19.12.2017 in W.P.No.29003 etc. batch. As a matter of fact, the Electricity Card, Ration Card and other documents produced by the Petitioners, in the course of enquiry, that took place on 06.08.2018 and 07.08.2018 were taken into account by the 'concerned Authority'. In fact, in the Impugned Order it is clearly mentioned that the Survey No.301/1 in Thirunintravur Village, Avadi Circle of Thiruvallur District, the total extent of 337.07.5 hectare is mentioned as 'Thirunindravur Esa Lake' and that the same is under the control and maintenance of the Public Works Department. Apart from that, it is categorically mentioned in the Impugned Order that in the Porambokke lake, without any documents, the concerned persons had encroached. It is also stated that no documents were filed by the concerned persons to show that the lands in the Survey Number, in which, they had constructed houses, belong to them and as such, the encroachment was affirmed and hence, seven days' time from the date of receipt of copy of the Notice was provided to the affected persons to remove the encroachments voluntarily, failing which, the concerned persons were duly informed that the encroachments would be removed by taking action in accordance with Law and also that the expenses for removal of such encroachments will be recovered from them.

12. In this connection, it may not be out of place for this Court to make a pertinent mention that in the orders dated 03.07.2015, 23.07.2015 and 02.11.2015, between Raghu vs. State Government of Tamil Nadu (W.P.No.19463 of 2015); Dhanalakshmi and another vs. The Government of Tamil Nadu, represented by the Secretary to Government, Public Works Department and five others (W.P.No.22097 of 2015) and Ranganathan, Jayagandhi, Devendran, Devendran and Ramadasu vs. The State of Tamil Nadu, represented by the Secretary, Public Works Department, Chennai-9 and two others (W.P.Nos.34866 to 34870 of 2015), respectively, this Court had observed the following:

"It is the bounden duty of each and every citizen, particularly the Government, to protect the national wealth, which is in the form of water canal, pond, tank, forest, etc., and as such, no such direction

can be given which erodes the national wealth and causes climatic hazard to other people and also to the posterity. However, in the facts of the case, if, on enquiry, it is found that the petitioner is hapless poor person, having no land even for house site, the authorities are expected to consider the same and make an alternative arrangement so as to provide at least basic need of shelter. Needless to state that no eviction order can be passed without taking a final decision on the aforesaid representation/explanation made by the petitioner."

13. It is to be pointed out that in the Impugned Notice/Proceedings of the 4th Respondent, dated 11.08.2018, there is a mention about the Orders passed in W.P.Nos.37069 of 2015, 3466 of 2016, 30573 of 2015, 30185 of 2017, 29003 to 29006 of 2017, 28580 to 28585 of 2017, 28992 of 2017 and 30186 of 2017 and based on the orders passed by this Court, the Petitioners were directed to appear for an enquiry as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

14. In reality, Form-III (see sub-rule (1) of Rule 6) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 speaks of 'Notice to Order for Removal of Encroachment'. Rule 2(d) deals with 'Officer' meaning the Assistant Engineer or Junior Engineer or Overseer of the Water Resources Organisation of Public Works Department in charge of the tanks lying in his jurisdiction for the purpose of enforcing the provisions of the Act and the Rules. Rule 2(g) enjoins 'tank poramboke' meaning the land liable to submersion when a tank is full either at full tank level or maximum water level, as the case may be, and includes all the land components form part and parcel of the tank with its appurtenances; Rule 2(e) relates to 'Register' meaning a document containing information regarding the survey number, area encroached, etc., contained in Form-I. Section 7 of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 pertains to 'Eviction of Encroachment'.

15. In the present context, it is incumbent on the part of 'concerned Authorities' to protect the 'Water Bodies' from encroachment and damages. If the 'Tanks' and its components are not protected and restored to its original position, then, there is a possibility in regard to the environmental degradation, depletion of ground water, reduction in the cultivation area etc. Only with this objective, the Government of Tamil Nadu has brought in The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act No.8 of 2007) together with Rules 2007.

16. Be that as it may, considering the fact that the Petitioners were found to be encroachers, as per Proceedings of the 4th Respondent, dated 11.08.2018 and also taking note of the fact that the Petitioners are said to be hapless poor persons, possessing no land even for house site, this Court directs the Petitioners to submit an individual representation to the 'concerned Authorities' seeking an alternative accommodation, within one week from the date of receipt of copy of this Order. The 'concerned Authority', soon after receipt of copy of the individual Representation of the Petitioners, is to consider the said Representation of the Petitioners, within a period three weeks thereafter. If the Petitioners are found eligible for alternate accommodation, then their case may be considered in a humane and sympathetic manner. Till final Orders are passed by the 'concerned Authority', the Petitioners shall not be Displaced/Disturbed.

With the above observations/directions, the Writ Petition shall stand disposed of. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mks

To

1. The Secretary,
State of Tamil Nadu,
Ministry of Public Works Department,
Fort St. George,
Chennai-600 009

WEB COPY

2.The Principle Secretary,
Public Works Department/
Irrigation Department,
Fort St.George,
Chennai-600 009

3.The District Collector,
Tiruvallur,
Tiruvallur District.

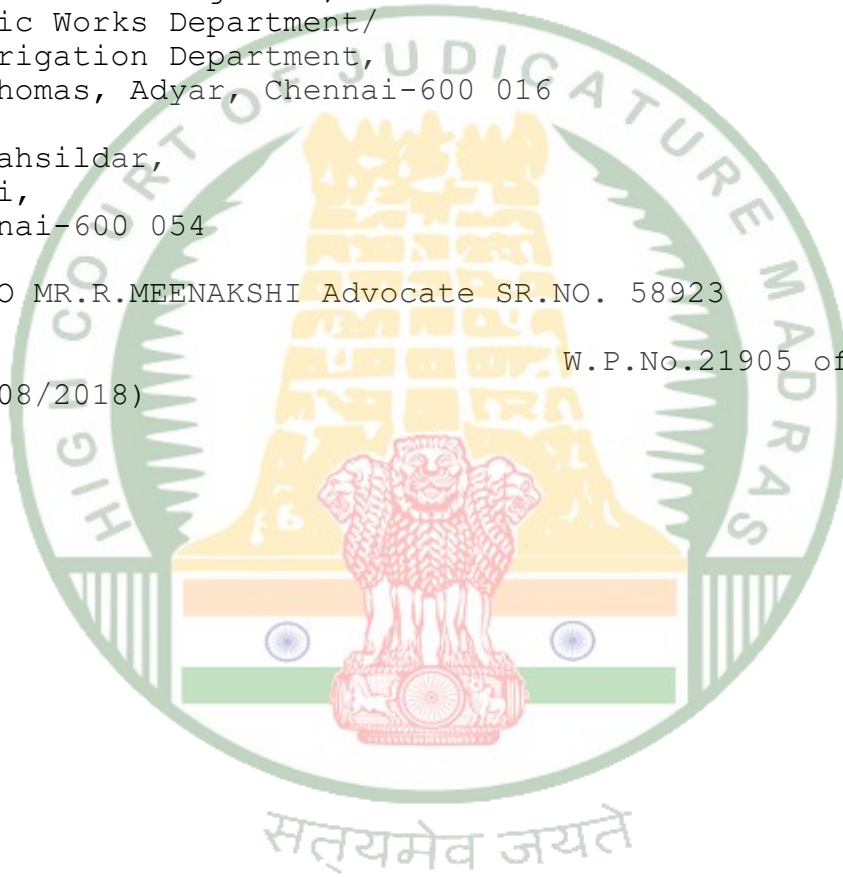
4.The Assistant Engineer,
Public Works Department/
Irrigation Department,
St.Thomas, Adyar, Chennai-600 016

5.The Tahsildar,
Avadi,
Chennai-600 054

+1 CC TO MR.R.MEENAKSHI Advocate SR.NO. 58923

W.P.No.21905 of 2018

ASK(29/08/2018)



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