

IN THE HIGH COURT OF JUDUCATURE AT MADRAS

Dated: 27.08.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL

AND

THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.21912 of 2018

and

W.M.P.No.25715 of 2018

R.Marappan

... Petitioner

vs.

1.Assistant Engineer,
Sendamangalam Irrigation Division,
Public Works Department,
Water Sources Organizatikon,
Sendamangalam.

2.Tahsildar,
Sendamangalam Taluk,
Sendamangalam
Namakkal District

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the Respondents and their subordinates or any other officials tracing power under them from evicting the petitioner pursuant to the notice dated 03.07.2018, issued by the First Respondent against the Petitioner, without conducting enquiry by considering the petitioner's reply dated 12.07.2018.

For Petitioner : Mr.R.Neelakandan

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 Petitioner and the Learned Additional Government Pleader for the Respondents.

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

3.According to the Petitioner, he is the absolute owner of the property measuring the total extent of Hectare 2.22.5 Ares comprised in Survey Nos.286/10 (H 0.53.5 A), 286/11 (H 0.11.5) and 286/12 (H 1.57.5 A) in Thuthikulam Revenue Village, in Sendamangalam Taluk and Namakkal District. Their family purchased the property in the year 1981 and they have been in

possession and enjoyment of the same ever since the date of purchase. There was a Well with Electricity Service Connection together with 7 ½ HP Motor Pump Set, 20 Coconut Trees and a Tiled House measuring an extent of 1050 sq.ft.on the said property in Survey No.286/11.

4.The clear cut case of the Petitioner is that there was a partition among the family members during the year 1986 and he was allotted with the property in question. Later, Patta bearing No.197 was granted in his favour by the Second Respondent/Tahsildar, Sendamangalam Taluk, Namakkal District, specifically mentioning that the aforestated Survey Numbers and their extents proved his possession and enjoyment of the said property. He had also planted 28 coconut trees, 3 Mango Trees, one Guava Tree and one Amla Tree in the said lands immediately after purchase. There are 48 coconut trees standing on his land. He has put up a motor room measuring an extent of 100 sq.ft.in Survey No.286/11. He is also cultivating Surgarcane crops in the said lands.

5.The grievance of the Petitioner is that the First Respondent/Assistant Engineer, Sendamangalam Irrigation Division, Public Works Department, issued a Notice on 03.07.2018, requiring him to vacate from the portion of Omasamudhram Lake comprised in Survey No.305 within 21 days as if he had encroached upon the same. He was also informed that if he is not vacating from the place in question within the time granted, he will be evicted and the expenses incurred thereon will be recovered from him. He had submitted his 'Reply' for the Impugned Notice dated 03.07.2018 on 12.07.2018, explaining his stand that he is the owner of the property having a total extent of Hectare 2.22.5 Ares comprised in Survey Nos.286/10 (H 0.53.5 A), 286/11 (H 0.11.5 A) and 286/12(H 1.57.5 A) in Thuthikulam Revenue Village, in Sendamangalam Taluk.

6.Per contra it is the submission of the Learned Additional Government Pleader for the Respondents that the Impugned Notice dated 03.07.2018 was issued by the First Respondent/Assistant Engineer, Sendamangalam Irrigation Division, Public Works Department, after following the due procedure enshrined under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and Rules made thereunder. Also it is represented on behalf of the Respondents that the Respondents will dispose of the 'Reply' of the Petitioner dated 12.07.2018 within a time frame to be determined by this Court.

7.Considering the fact that the Petitioner was issued with the Impugned Notice dated 03.07.2018, for which, he had given a 'Reply' dated 12.07.2018 to the 'concerned Authority', at this stage, this Court, without traversing upon the merits of the matter, simpliciter (and also not expressing any opinion in

one way or other), directs the First Respondent/Assistant Engineer, Sendamangalam Irrigation Division, Public Works Department, Water Sources Organization, Sendamangalam, to look into the 'Reply' of the Petitioner dated 12.07.2018, within a period of two weeks from the date of receipt of copy of this Order. Thereafter, the First Respondent is directed to pass a reasoned speaking Order on merits, after providing necessary opportunity to the Petitioner, by adhering to the Principles of Natural Justice. If the Petitioner makes a request for 'Personal/Oral Hearing', then that request may be considered by the First Respondent in a humane and sympathetic manner. It cannot be gainsaid that the First Respondent has to pass final Orders for the Impugned Notice dated 03.07.2018, after advertng to the factual and legal points, if any, raised by the Petitioner, in the 'Reply' dated 12.07.2018, within a period of four weeks from the date of receipt of copy of this Order. Till final Orders are passed by the First Respondent, the possession of the Petitioner from the subject property shall not be disturbed.

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

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msh

To

1. Assistant Engineer,
Sendamangalam Irrigation Division,
Public Works Department,
Water Sources Organization,
Sendamangalam.

2. Tahsildar,
Sendamangalam Taluk,
Sendamangalam
Namakkal District

+1 CC to Mr. R. Neelakandan, Advocate sr 58246.

+1 CC to Govt. Pleader sr 58853.

W.P.No.21912 of 2018

SP(11/09/2018)