

IN THE HIGH COURT OF JUDUCATURE AT MADRAS

Dated: 14.09.2018

Coram:

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

W.P.No.22772 of 2018
and
W.M.P.No.26609 of 2018

J.Sendhamarai Kannan Petitioner

vs.

1.The District Collector,
Villupuram District,
Villupuram.

2.The Tahsildar,
Gingee Taluk,
Villupuram District.

3.The Assistant Engineer,
Public Works Department/
Water Resource Department,
Irrigation Section, Vallam
@ Gingee-604 202

.... 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 Notice issued by the 3rd Respondent under Form-III (Rule 6(1), dated 19.04.2018 and quash the same and consequently, direct the 3rd Respondent not to evict the Petitioner from the land in S.Nos.194 and 73 at Othavadai Street, Pallikulam Village & Post, Gingee Taluk, Villupuram District.

For Petitioner :Mr.V.Sakthivel

For Respondents :Mr.R.Udyakumar,A.G.P.

ORDER

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

Heard both sides.

2.No counter is filed on behalf of the Respondents 1
to 3.

3. According to the Petitioner, the Petitioner himself and 20 other families are residing at Othavadai Street, Pallikulam Village in S.Nos.194 and 73 for the past 40 years, without any disturbance and interference. The Government had issued Ration Card and Aadhar Card to him and the said families of Villagers. He is paying the House Tax till date to the concerned Authority of Village Panchayat, without any default. The Tamil Nadu Electricity Board has also provided an Electricity Connection to one and all. He is in possession and enjoyment of the property till date without any interference. While that being so, the 3rd Respondent had issued Form-III (Rule 6(1)) notice, dated 19.04.2018, to him and other families, by stating that Survey Nos.194 & 73 are Water Sources, belonging to the Water Resources Department and that he had encroached a portion of Arukavur 'Zhisha' Lake and therefore, he was called upon to remove the encroachment in the aforesaid lands measuring an extent of 62.29.0 square metre, failing which, the encroachment would be removed by the 3rd Respondent Department and the expenses incurred thereto will be recovered from him.

4. The main grievance of the Petitioner is that the Third Respondent had not considered his Representation dated 03.05.2018, wherein he had explained his position/Stand. Further, the plea of the Petitioner is that he and other Villagers are residing in the land in question for 40 years and for so many years they were not affected by the rain session, because of the fact that they are not residing in Part of the Lake. In short, it is the contention of the Learned Counsel for the petitioner that the 3rd Respondent, without analysing the exact position of the Land in question, based his opinion in the subject matter and issued the Impugned Notice dated 19.04.2018, which is per se illegal one.

5. Per contra, it is the submission of the Additional Government Pleader for the Respondents 1 to 3 that the Representation/Explanation of the Petitioner dated 03.05.2018 (for the Impugned Notice dated 19.04.2018) will be considered by the 3rd Respondent within a time frame to be determined by this Court.

6. Considering the fact that the Petitioner was issued with the Impugned Notice [(Rule 6(1)], dated 19.04.2018, under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules, 2007, for which, a detailed Reply/Representation was submitted by him, at this stage, this Court simpliciter directs the 3rd Respondent to look into the Representation of the Petitioner dated 03.05.2018 and to dispose of the same by providing an opportunity of hearing to the Petitioner, after adhering to the Principles of Natural Justice and to pass a reasoned speaking Order, in a free, fair, just, unbiased and in a dispassionate manner, within four weeks from the date of receipt of copy of this Order. It is open to the Petitioner

to raise all 'factual' and 'legal' pleas before the 3rd Respondent, who shall consider the same and deal with the same in the final Order to be passed by him. The said Order shall be passed by the 3rd Respondent uninfluenced and untrammelled with any of the observations made by this Court, in this Writ Petition. Till the passing of final Orders by the Third Respondent, the Petitioner shall not be displaced/disturbed from the subject property in issue.

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

msk

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Villupuram District,
Villupuram.
- 2.The Tahsildar,
Gingee Taluk,
Villupuram District.
- 3.The Assistant Engineer,
Public Works Department/
Water Resource Department,
Irrigation Section, Vallam
@ Gingee-604 202

+1cc to Mr.V.Sakthivel, Advocate SR.NO.63995
+1cc to Government Pleader SR.NO.64164

RJ(CO)
sm:4.10.2018

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