

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

AND

THE HON'BLE Mrs.JUSTICE S.RAMATHILAGAM

W.P.Nos.23288 and 23289 of 2018 and

W.M.P.Nos.27171 and 27172 of 2018

Kuttiammal

...Petitioner in W.P.No.23288 of 2018

Loganathan

...Petitioner in W.P.No.23289 of 2018

vs.

1. The District Collector,
Thiruvallur District,
Thiruvallur

2. The Tahsildar,
Avadi Taluk,
Thiruvallur District

3. Tamilnadu Public Works Department,
[Water Resources Department]
represented by Division Officer,
Sengundram Irrigation Division,
Sengundram,
Chennai - 600 052 ... Respondents in both the Petitions

Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records of the 3rd Respondent with respect to the Impugned Notice No.40/SA.PA/ ENCROACHMENT/2018 dated 27.07.2018 issued in Form III Under Section 6(1)(i) of Tamilnadu Protection of Tanks and Eviction of Encroachment Act to the Petitioners and quash the same.

For Petitioners : Mr.S.Sai Shankar

For Respondents : Mr.J.Pothiraj

Special Government Pleader

C O M M O N O R D E R

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

Heard the Learned Counsel for the Petitioners and the Learned Special Government Pleader for the Respondents. No counter is filed on behalf of the Respondents.

2. According to the Petitioners, the 3rd Respondent without issuing any Show Cause Notice and without conducting any enquiry, came to a wrong conclusion that their land is a 'Water Body'. Also that, the 3rd Respondent had not called them for an enquiry and directly issued Form III Notice dated 27.07.2018 under Section 6(1)(i) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. Further, the 3rd Respondent had directed the Petitioners to remove the alleged encroachment within a period of 21 days from the date of receipt of Form III Notice dated 27.07.2018.

3. At this stage, the Learned Counsel for the Petitioners submits that in the Impugned Form III Notice dated 27.07.2018, there is no mention of the extent, eventhough it is mentioned that Survey No.365 is a Big Eri, Catchment Area, belonging to the Public Works Department.

4. At this juncture, this Court cites the Order dated 14.12.2017 in W.P.[MD] No.23003 of 2017 wherein at Paragraph No.16, it is observed as under:

"16. Be that as it may, in view of the candid fact that Form-III [Vde 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. Etc.,

5. The said order in W.P.[MD] No.23003 of 2017 is squarely applicable to the facts of the present case. As such, this Court by following the order passed in W.P.[MD] No.23003 of 2017, sets aside the Impugned Form III [See Sub-Rule (1) of Rule 6] Notice dated 27.07.2018 and allows the Writ Petition because of the simple reason, the said notice does not refer to the extent of encroachment made in Survey No.365, Vellanur, Big Eri Catchment Area said to be belonging to that of the Public Works Department.

6. Before parting with the case, this Court grants liberty to the 3rd Respondent to issue a fresh Notice keeping in mind the true letter and spirit of the ingredients of the relevant

provision of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and also the Rules, by providing sufficient opportunity to the Petitioners by adhering to the 'Principles of Natural Justice'. If situation so warrants and if any personal hearing / opportunity requires to be provided to the Petitioners to submit their grievances, then, it is open to the Petitioners to raise all factual and legal pleas before the 3rd Respondent, who after issuance of notice to the Petitioners shall take note of the same, especially, advert to each and every fact / plea, both on legal and factual raised therein, should answer the same by assigning qualitative and quantitative reasons with a view to have appearance of Justice. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
Thiruvallur District,
Thiruvallur
2. The Tahsildar,
Avadi Taluk,
Thiruvallur District
3. Tamilnadu Public Works Department,
[Water Resources Department]
represented by Division Officer,
Sengundram Irrigation Division,
Sengundram,
Chennai - 600 052

+1cc to the Government Pleader, S.R.No. 62107

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GN(24/09/2018)