

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.15963 of 2017

and

W.M.P.No.17266 of 2017

1.B.Kamaladevi
D/o.L.Murugan

2.N.Rathnamala
D/o.L.Murugan

... Petitioners

Vs

1.Government of Tamil Nadu
represented by its Secretary,
Public Works Department and
Water Resources Organisation,
Fort St.George,
Chennai - 600 009.

2.The Junior Engineer,
Public Works Department,
Irrigation Section, W.R.D.,
Padappai - 601 301.
Kancheepuram District.

3.The District Collector,
Kancheepuram District,
Kancheepuram.

4.The District Collector,
Chennai District.
(R4 suo motu impleaded as per
order dated 28.03.2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the "notice to both order for removal of encroachment" dated 09.05.2017 passed by the second respondent in Form III and quash the same.

For Petitioners: Mr.S.Parthasarathy
For Respondents: Mr.S.R.Rajagopal,
Additional Advocate General
assisted by Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN, J]

By consent, the writ petition is taken up for final disposal. Mr.S.R.Rajagopal, learned Additional Advocate General, assisted by Mr.A.N.Thambidurai, learned Special Government Pleader, appears for respondents.

2. Petitioners, in the affidavit filed in support of this writ petition, would aver among other things that they are Srilankan Repatriates and came to India on account of accord reached between India and Srilanka and taking note of their plight and situation, the third respondent, vide proceedings dated 08.05.1986 bearing No.3654855/86, had assigned the property at Door Nos.4/238 and 4/239 in Survey No.44/2, Village Natham, Dr.Kalaingar Karunanithi Street, Moovarasampet Village, Tambaram Taluk, Madipakkam Post, Chennai - 91, admeasuring an extent of 5 cents, which according to the petitioners, is classified as 'Grama Natham'. Petitioners would further aver that after the assignment, their father had put up a small thatched shed and subsequently, it was assigned in favour of her father by the Tahsildar, Saidapet, vide proceedings No.Na.Ka.Aa1/7273/88 dated 07.09.1988 as well as proceedings of the Collector, Chengalpattu District, in No.Aa.Thi.Na.Ka.Aaku 6772/72 dated 07.09.1988. Petitioners further claim that their father had settled the property in favour of their brother viz., Mr.M.Vimaldass vide registered document No.407/2004 and he, in turn, vide registered document No.4080 of 2011 dated 19.12.2011, settled the property in favour of petitioners and ever since they continue to remain in possession and enjoyment of the same. However, to the shock and surprise of the petitioners, the impugned notices purported to have been issued in Form-III, under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder, by the second respondent, in the name of father of petitioners and first petitioner and upon receipt of the same, they have also submitted a detailed representation dated 27.05.2017 pointing out that they remain in possession and enjoyment of the same in their own rights and further, they have not encroached any property, which is classified as water body/water course and prays for withdrawal of the same. Petitioners apprehending dispossession, pending consideration of

the said representation, came forward to file this writ petition challenging the legality of the impugned notice issued by the second respondent.

3. Mr.S.Parthasarathy, learned counsel appearing for the petitioners, had invited the attention of this Court to the typed set of documents as well the additional typed set of documents and would submit that Collector of Cheyur District in No.3.6.54855/86 dated 08.05.1986, has recommended for the assignment and based on the same, the office of the Tahsildar, Saidapet, vide proceedings dated 07.09.1988 had assigned the land admeasuring to an extent of about 5 cents in Block No.44/2A and the predecessors in title of the petitioners were in enjoyment of the same and after settlement, petitioners continue to be in possession and enjoyment of the same and the superstructure put up on the property is subjected to statutory levies and would further aver that it is wholly untenable to allege that the petitioners have encroached the water body/water course and even otherwise, the said land is situated far away from the water body/water course and prays for quashment of the impugned notices.

4. Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents has invited the attention of this Court to the counter affidavit of fourth respondent and would submit that the documents filed by the petitioners are nothing but fabricated and forged one and the assignment in favour of Srilankan Repatriates is concerned, such an assignment order would not have been passed by the Tahsildar, Saidapet and invited the attention of this Court to the alleged assignment and pointed out that only 5 cents of land have been assigned, which cannot be done and would point out that the seal of the Tahsildar also appears to be forged and in respect of the assignment order, no metal seal containing the emblem of the Tamil Nadu will be put and further pointed out that based on the forged documents, the petitioners cannot claim any right, title or possession and would further point out that since action is strictly taken under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and rules framed thereunder, interference may not be warranted and prays for dismissal of the present writ petition with exemplary costs.

5. This Court has considered the rival submissions and perused the materials available on record.

6. The counter affidavit of the respondents 2 and 4 would among other things, point out that survey has to be done by revenue authorities, who in-turn send required particulars in prescribed format to the concerned Department to carry out

eviction under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder. It is pointed out that the land is classified as water body and never was assigned and in the revenue records, the land in survey No.44/2A is still classified as 'tank' and in such an event, there is no possibility of assigning the said land. It is stated that the claim that the land is classified as 'village natham', is wholly false and the alleged assignment dated 07.11.1986 which in turn relates to the proceedings of the Collector of Chennai dated 07.09.1988 as well as earlier proceedings of third respondent dated 08.05.1986 are false and no supporting records are also available in the said offices.

7. It is also pertinent to point out, at this juncture, that in the registered settlement deed dated 11.02.2004 relied upon by the petitioners, the extent of the land got increased to 3300 sq.ft. though according to the petitioners, the original assignment of land admeasuring an extent of only 5 cents.

8. In the subsequent settlement deed said to have been executed in favour of the petitioners dated 19.12.2011, the extent of land was mentioned as 3520 sq.ft. and the petitioners are unable to explain how the extent of the land got increased as and when a new document comes into being.

9. It is also the case of the petitioners that as per the assignment order dated 07.09.1988, vide proceedings of the Tahsildar, Saidapet, as well as the proceedings of the Collector, Chengalpattu District, dated 07.09.1988, the land was assigned in their favour, whereas the alleged proceedings of Collector, Kancheepuram District, dated 08.05.1989 has also been relied upon.

10. In the considered opinion of this Court, in the light of the alleged discrepancies pointed out and also the stand taken by the official respondents in their counter affidavit, this Court, in exercise of power under Article 226 of the Constitution of India, cannot adjudicate upon the said disputed question of fact.

11. The fact remains, according to the respondents, that the land in survey No.44/2 is still continue as a water body as per revenue records and action in accordance with law has been taken by issuing impugned Form-III notice dated 09.05.2017, for which the petitioners have also submitted their representations.

12. Though the petitioners pray for larger relief, this Court, in the light of the above facts and circumstances of the case, is of the view that it would

be suffice to direct the third respondent to consider the

representation submitted by the petitioners within a stipulated time.

In the result, this writ petition is disposed of directing the third respondent to consider the petitioners' representation dated 27.05.2017, after affording the petitioners an opportunity of personal hearing and it is also open to the petitioners to submit relevant and authenticated documents to the third respondent for consideration and the third respondent shall pass orders on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till such time, the said official shall defer further action in terms of the impugned notice. It is also made clear that the petitioners, till the disposal of the said representation, shall not create any third party rights in respect of the site/superstructure in question and shall not alter the physical features also. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

gm

To

1.The Secretary,
Government of Tamil Nadu
Public Works Department and
Water Resources Organisation,
Fort St.George,
Chennai - 600 009.

2.The Junior Engineer,
Public Works Department,
Irrigation Section, W.R.D.,
Padappai - 601 301.
Kancheepuram District.

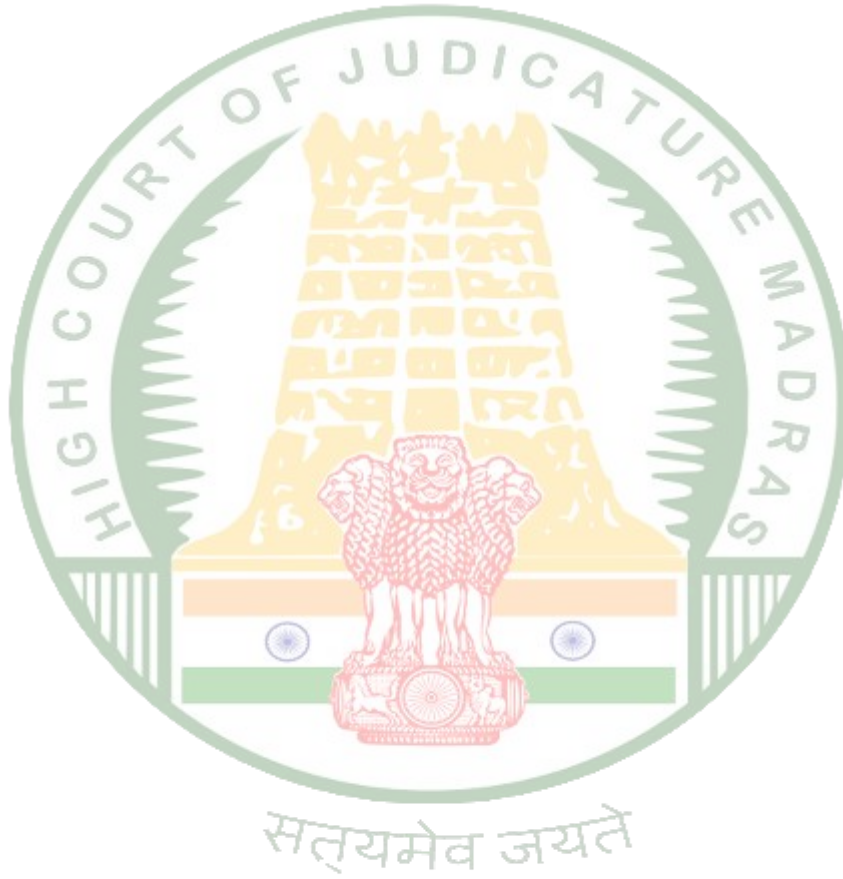
3.The District Collector,
Kancheepuram District,
Kancheepuram.

4.The District Collector,
Chennai District.

+1cc to Mr.S.Parthasarathy, Advocate SR.No.38020
+1cc to Government Pleader SR.No.38701

W.P.No.15963 of 2017

SPD(CO)
GN(02/07/2018)



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