

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.14714 of 2018

M.Mariyappan

...Petitioner

Vs.

1. The District Collector
Dharmapuri,
Dharmapuri District.
2. The Executive Engineer,
Public Works Department,
Dharmapuri District.
3. The Assistant Engineer,
Public Works Department,
Water Resources Management
Irrigation Division,
Pennagaram, Dharmapuri District.
4. The Tahsildar,
Pennagaram Taluk,
Dharmapuri District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the first respondent to consider the petitioner representation letter to the respondents dated on 29.05.2018.

For Petitioner : Mr.M.Senthamizh Selvan

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

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

By consent, the writ petition is taken up final disposal.

2. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice for the respondents.

3. The petitioner claims that he is in possession of 80 cents of land in Aragasanahalli Village in S.Nos.186/2B, 187/3B and 196/1a7. The petitioner would further state that one Mr.N.Ganesan, had filed WP.No.34014 of 2017 against the respondents herein as well against one Ms.G.Vijaya praying for disposal of his representation dated 30.10.2017, for removal of encroachment and vide order dated 24.01.2018, the Division Bench of this Court had directed the respondents 1 to 4 to remove the encroachment in the river bed within a period of 30 days from the date of receipt of copy of that order and also observed that if necessary, police aid

also to be obtained. The 6th respondent in the said writ petition, subsequently, filed W.P.No.9422 of 2018, praying for issuance of writ of certiorari to quash the letter of the 3rd respondent dated 15.03.2018, in and by which, action has been taken to remove the encroachment under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and rules framed thereunder and it was disposed of on 17.04.2018, by granting liberty to the petitioner therein to submit her response to the said notice in the form of detailed representation by enclosing relevant and authenticated documents with further direction directing the 3rd respondent to consider the same within a stipulated time and till such time, the respondents 2 and 3 were deferred from taking defer further decision in terms of notice dated 15.03.2018.

4. The learned counsel appearing for the petitioner would submit that the petitioner did not encroach any land classified as water body / water course and without following due process of law, attempts are being made to dispossess him from the land in question. In this regard, he has also submitted his representation dated 29.05.2018 with copies marked to the rest of the respondents and therefore prays for appropriate orders.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that action will be taken under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and rules framed thereunder and would further contend that the apprehension expressed by the petitioner is wholly unfounded and the writ petition is also prematured.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. It is a settled position of law, that before evicting the petitioner and the alleged pretext of encroachment, due process of law should be followed.

8. In the light of the submission made by the learned Special Government Pleader on instructions that the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed there under will be invoked, in the event of encroaching upon the land classified as water body / water course, this Court is of the considered view that it would be suffice to direct the 3rd respondent to follow the due process of law, and in the event of encroachment being noted, shall

remove the same and communicate the decision taken to the concerned persons which may include the petitioner also. With the above direction, the writ petition stands disposed of. No costs.

{M.S.N.J} {G.K.I.J}

19.06.2018

Index : No
Internet: Yes
Speaking Order

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To

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M.SATHYANARAYANAN, J.
AND
G.K.ILANTHIRAIYAN,J.
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