

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2018

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.15393/2018 & WMP.No.18284/2018

N.Asaithambi

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Petitioner

Versus

1 The District Collector
Tiruvallur District, Tiruvallur.

2 The Commissioner
Avadi Municipality
Avadi, Chennai.

3 The Tahsildar
Avadi Taluk, Avadi.

4 The Assistant Engineer
Public Works Department
Adyar Irrigation Circle
St. Thomas Mount,
Chennai 600 016.

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Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the orders passed by the 4th respondent in his impugned order Form III Section 6[1] dated 14.03.2018 and quash the impugned order as illegal and direct the 4th respondent not to demolish the house building of the petitioner.

For Petitioner : Mr.K.Anbarasasn
For RR 1,3,4 : Mr.R.Udhayakumar, AGP
For R2 : Mr.P.Srinivas

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1, 3 and 4 and Mr.P.Srinivas, learned Standing counsel accepts notice on behalf of the 2nd respondent.

2 The petitioner claims to be a resident of S.No.713/1B, Paruthipattu Village, Avadi Taluk, Tiruvallur District and he claims to have put up a semi-permanent superstructure and residing along with his family members for over 46 years and he has been issued with Family / Ration Card, Aadhar Cards, Electricity service connection and the said area has also been provided with basic amenities/facilities and the petitioner is also a recipient of freebies schemes floated by the Government of Tamil Nadu. The petitioner would further claim that he is an illiterate and there are very many residents like him, who had encroached upon the land and residing there for very many years and all of a sudden, without affording any opportunity whatsoever, the

impugned Form-III Notice came to be issued under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the Rules framed thereunder.

3 The learned counsel for the petitioner would submit that on receipt of the said notice, the petitioner and other residents, who are similarly placed, had sent a joint representation dated 28.05.2018, pointing out the said fact and also sent a legal notice dated 04.06.2018 to the respondents, requesting them, not to initiate any action and despite receipt and acknowledgment, immediate and necessary steps are being taken to dispossess the petitioner from the site and superstructure in question and left with no other option, the petitioner is constrained to approach this Court by filing the present writ petition.

4 The learned Additional Government Pleader appearing for the respondents 1,3 and 4 would submit that the petitioner and other residents of the locality have slowly encroached upon the water body and started obliterating the same by putting up the debris etc, and on the land reclaimed, had started putting up superstructures without any planning permission or approval and biometric enumeration has been done and 61 persons have been identified and they will be given

alternate accommodation in the Perumbakkam tenements of the Tamil Nadu Slum Clearance Board and prays for dismissal of this writ petition.

5 The Court heard the submissions of Mr.P.Srinivas, learned Standing counsel appearing for the 2nd respondent and perused the materials placed before it.

6 A Division Bench of this Court in the judgment reported in **2010 [3] MLJ 771 [T.S.Senthilkumar Vs. The Government of Tamil Nadu rep.by its Secretary, Public Works Department, Chennai-9 and others]**, has upheld the vires of the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and while upholding the same, had given certain guidelines and it is relevant to extract paragraph No.20[f]:-

"20[f]:- *We uphold the fact while we provide for observance of principles of natural justice within the Act itself, as under:-*

[i] *When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the officers of Village Administrative Officer, Village Panchayat Officer and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in*

his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

[ii] *On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.*

[iii] *Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment."*

7 This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 4th respondent to consider the joint representations of the petitioner and others dated 28.05.2018 as well as the legal notice dated 04.06.2018 sent on behalf of the petitioner in the light of the above directions and give a disposal in accordance with law within a period of four 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 4th respondent shall defer further decision in terms of the impugned notice dated 14.03.2018. It is also made clear that till

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AP

the disposal of the representation by the 4th respondent, shall not create any third party rights in respect of the site and superstructure in question and shall also not alter the physical features of the same.

7 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

[MSNJ] [GKIJ]
05.07.2018

Internet : Yes

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