

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.28987 of 2018 and
WMP Nos.33886 and 33889 of 2018

- 1.K.Kamalakaran
- 2.Parvathi
- 3.Annamalai
- 4.Dhamodaran

...Petitioners

-vs-

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Revenue,
Fort St.George, Chennai - 600 009.
- 2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Public Works, Fort St.George, Chennai.
- 3.The District Collector,
Chennai District, Chennai.
- 4.The District Collector,
Thiruvallur District, Thiruvallur.
- 5.The Tahsildar,
Ambattur, Chennai.
- 6.The Section Officer,
Department of Public Works,
Redhills, Chennai -52.

..... Respondents

Writ 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 6th respondent proceeding in Notice No.121/P.A/2018 dated 23.10.2018 quash the same and consequently direct the 6th respondent not to demolish in respect of the plots in Survey No.4.

For Petitioners : Mr.S.Senthil Vel
For Respondents : Mr.J.Pothiraj
Special Govt.Pleader

O R D E R

[Order of the Court was delivered by
R.SUBRAMANIAN,J.]

The challenge in this writ petition is to the notice issued by the 6th respondent under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007. The 6th respondent had issued the impugned notice invoking the powers under Section 6 of the Act.

2. The grievance of the petitioners is that no show cause notice was issued to them before the impugned notice requiring them to remove the alleged encroachment within a period of 21 days as contemplated under Section 6 of the Act.

3. The learned counsel appearing for the petitioners would contend that even though the Act does not contemplate issuance of a Show Cause Notice and a hearing before invoking the powers under Section 6 of the said Act, a Division Bench of this Court in T.S.Senthil Kumar v. Government of Tamil Nadu and others [(2010) 3 MLJ 771] while upholding the validity of the enactment held that the authorities shall follow the principles of natural justice and give an opportunity of hearing to the alleged encroachers before passing orders of eviction under Section 6 of the Act.

4. The provisions of the Act were challenged as unconstitutional on the ground that no opportunity of hearing was provided under the statute to the aggrieved persons. While deciding the said question, the Division Bench had observed as follows:-

" 20.In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases in Mysore vs. J.V. Bhat 1975 (2) S.C.R. 407 and (ii)The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka, [AIR 1991 SC 1117], where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act

which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions:-

(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, 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 offices of Village Administrative Officer, Village Panchayat Office 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."

5. Before doing so, the Division Bench had observed that there is nothing in the Act which specifically indicate that the encroachers do not have a right to be heard before orders of eviction are passed under the Act.

6. On notice, Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents on instructions would state that the authorities are willing to withdraw the impugned notices and take appropriate proceedings by following the directions issued by the Division Bench in the decision in T.S.Senthil Kumar (cited supra).

7. In the light of the above statement made by the learned Special Government Pleader, the writ petition is disposed of with a direction to the authorities to take action for removal of encroachment strictly in accordance with the guidelines issued by the Division Bench in in T.S.Senthil Kumar (cited supra). No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
The State of Tamil Nadu,
Department of Revenue,
Fort St.George, Chennai - 600 009.

2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Public Works, Fort St.George, Chennai.

3.The District Collector,
Chennai District, Chennai.

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Thiruvallur District, Thiruvallur.

5.The Tahsildar,
Ambattur, Chennai.

6.The Section Officer,
Department of Public Works,
Redhills, Chennai -52.

+1cc to Mr.S.Senthil Vel, Advocate SR.No.13442

+1cc to Government Pleader SR.No.76517

W.P.No.28987 of 2018

CA(CO)

GMV (30/11/2018)



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