

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.30227 of 2018&
W.M.P.No.35279 of 2018

M.H.Shukarno

...Petitioner

Vs

The Assistant Engineer,
PWD, Water Resource Department,
Cooum River Division,
Chepauk, Chennai-600 005.

...Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to quash the proceedings pursuant to notice dated 17/09/2018 issued by respondent under section 7 of the Land Encroachment Act III of 1905.

For Petitioner : Mr.S.Pugaleanthi
For Respondents : Mr.S.N.Parthasarathy
Government Advocate

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]
By consent, the writ petition is taken up for final disposal and disposed of by this order.

2. The petitioner in the affidavit filed in support of this writ petition would aver among other things that Raja Ram Mehtha Nagar was originally owned and possessed by the Madras State NGO.s' Co-operative Society Limited (Registered No.X-430) which plotted out and obtained layout sanction in LPH/DTP No.117 of 1960 and the petitioner would further submit that one Mrs.P.J.Rani, was his Vendor and was a member of the said Society and the said Society after obtaining loan had purchased the land admeasuring to an extent of 131 grounds and 150 sq.ft

of land in S.No.1 of Vadaagaram Village.

3. After obtaining the permission to layout the land, road, street, park, etc., have come into place and insofar as the predecessor in title of the petitioner was concerned, she was allotted Plot No.32, wherein superstructure bearing Door No.49 had come into being and the petitioner claims to have purchased the said property in the year 2010 in his wife's name Mrs.Jennath Begum by Sale Deed dated 18.03.2010. However, the petitioner claims to be the tenant even prior to the said purchase in respect of the said superstructure. The petitioner would further aver that on an earlier occasion, attempts were made to dispossess the petitioner and others who are all similarly placed namely V.N.Kuppuswamy, M.Shahul Hameed, C.Savarimuthu, D.Krishnan, S.Thangam, Maryet Grace, A.K.Ramaswamy and they had filed O.S.No.482 of 1997 on the file of the Court of XIII Assistant City Civil Judge praying for declaration declaring that they are the owners of the land measuring about 30 feet in breadth running south-north on the eastern boundary of the layout abutting Cooum river situated at T.S.No.62 of Vadaagaram Division, Metha Nagar, Chennai-29 Egmore-Nugambakkam Taluk along with compound wall marked as A B C D in the sketch attached to the plaint and also for permanent injunction and pending disposal of the suit, they obtained an ad-interim injunction in I.A.No.1158 of 1997. It is further averred by the petitioner that the suit after contest, came to be decreed vide judgment and decree dated 16.02.2001 and no further challenge has been made to the said suit and it has become final.

4. The petitioner would further claim that in the light of the fact that the petitioner cannot be claimed to be an encroacher, such being the fact, the sole respondent has issued the impugned notice, as if the petitioner had encroached upon the water body and challenging the said impugned notice, the petitioner came forward to file this writ petition.

5. In response to the said impugned notice, the petitioner has also submitted his response dated 26.09.2018 and it was also received and acknowledged by the respondents. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that in the light of the overwhelming materials placed, the petitioner or his wife cannot be deemed to be an encroacher and therefore, prays for enjoyment of the property in question.

6. Per contra, Mr.S.N.Parthasarathy, learned Government Advocate who accepts notice on behalf of the sole respondent would submit that admittedly, the land of the predecessor in title had abutted the Coovam River, even as per the description

of the properties (referred supra). Therefore, action has been rightly taken to remove the encroachment, especially on account of ensuing monsoon by taken into account the major disaster happened in 2015 mega floods and prays for dismissal of this writ petition.

7. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

8. The Vires of the Tamil nadu Protection and Eviction of Encroachment Act, 2007, came to be challenged in WP.No.20021 of 2018 (T.S.Senthil Kumar Vs. Government of Tamil Nadu, rep. By its Secretary, Public Works Department, Chennai-9 and others reported in 2010 (3) MLJ 771) and Division Bench of this Court in which one of us is party (M.SATHYANARAYANAN.,J) had upheld the virus of the said Act and it is relevant to extract hereunder Paragraph No.20 of the said judgment:

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 cited supra Mysore vs. J.V. Bhat - 1975 (2) S.C.R. 407 and (ii) The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka, - 1991 (1) U.J. (S.C.) 628 = AIR 1991 SC 1117 = 1991 (2) SCC 604., 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.

9. This Court taking into consideration the above facts and circumstances and without going into the merits of the case projected by the petitioner either in his reply dated 26.09.2018 or in this writ petition directs the respondent to consider and dispose of the said reply / representation submitted by the

petitioner within a period of four weeks from the date of receipt of a copy of this order and till such time, the respondent shall defer further decision in terms of the impugned notice dated 17.09.2018. It is also made clear that the petitioner, till the disposal of the reply / representation submitted by him, shall not alter the physical features of the land and superstructure in question and shall not create any third party rights in respect of the said property.

10. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TO

The Assistant Engineer,
PWD, Water Resource Department,
Cooum River Division,
Chepauk, Chennai-600 005.

+1cc to Mr.S.Pugaleanthi, Advocate, S.R.No.80292

WP.No.30227 of 2018

JP(CO)
GSP(10/12/2018)

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