

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.11.2018

Coram

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL  
AND  
THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

W.P.No.29699 of 2018 and  
W.M.P.No.34633 of 2018

P.Rangan

.. Petitioner

Vs.

1. The District Collector,  
Thiruvallur District
2. The Assistant Engineer,  
Public Works Department - Irrigation,  
Redhills, Chennai - 600 052
3. The Tahsildar,  
Ambattur Taluk,  
Thiruvallur District
4. The Section Officer,  
Public Works Department - Irrigation,  
Redhills, Chennai - 600 052

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the proceedings of the 4<sup>th</sup> Respondent in Notice No.121/B.A./2018/dated 23.10.2018 and quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.G.Sakthivel  
For Respondents : Mr.J.Pothiraj  
Special Government Pleader

O R D E R

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

Heard both sides.

2. According to the Petitioner, he had purchased the vacant land in Survey No.33/1, Srinivasa Nagar, Pattaravakkam Village,

Ambattur Taluk, Thiruvallur District, measuring an extent of 1575 Sq.Ft from one Lakshmi in the year 2004. He had constructed a residential house on it and residing there with his family. He has electricity connection, in possession of family card, has a gas connection and spent all his hard earned money in building a house.

3. The grievance of the Petitioner is that the 4<sup>th</sup> Respondent on 23.10.2018 had issued a Notice to him stating that his house was constructed on 'Water Body' and it is an encroachment and directed him to remove the same within 21 days. He was further informed that if he failed to remove the encroachment by the time specified, the authorities will remove the same.

4. The prime contention of the Learned Counsel for the Petitioner is that the Impugned Notice dated 23.10.2018 issued by the 4<sup>th</sup> Respondent is an illegal one because of the fact that the said Officer is not competent to issue the Impugned Notice.

5. The other contention projected on the side of the Petitioner is that without issuing a prior notice, the 4<sup>th</sup> Respondent had come to the conclusion that he had encroached upon the 'Water body', hence he has filed a Writ Petition seeking to call for the records pertaining to the proceedings in Notice No.121/B.A./2018 dated 23.10.2018 to quash the same, as an illegal one.

6. Per contra, it is the submission of the Learned Special Government Pleader for the Respondents 1 to 4 that the Petitioner had encroached the Korattur Lake Poramboke in Menambedu Village at Survey Nos.1,2,4 and 28 Pattaravakkam Survey No.33, which belong to the Public Works Department and had constructed a house, company and therefore, he was required to remove the encroachment within 21 days from 23.10.2018 etc.,

7. At this juncture, this Court cites the Division Bench decision reported in [2010] 3 MLJ 771 between T.S.Senthil Kumar V. Government of Tamilnadu rep. By its Secretary, Public Works Department, Chennai-9 and Others wherein it is observed as under:

"It is not necessary to hold a Statute as unconstitutional when the statute does not debar observance of principles of natural justice, but the authorities shall observe them while exercising those statutory powers. Therefore, when there are provisions in the statute for issuance of notice to the aggrieved persons, and on receipt of objections, the encroacher to give objections to be considered by authorities before passing appropriate orders, such statute cannot be held unconstitutional."

further, at Page Nos.793 and 794 at Paragraph No.20, it is observed as under:

"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 V. J.V.Bhat - 1975 (2) S.C.R. 407 and (ii) The Scheduled Caste & Weaker Section Welfare Association V. State of Karnataka [supra], 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.

8. In view of the principle laid down in the aforesaid decision, viz., T.S.Senthil Kumar V. Government of Tamilnadu, rep. By its Secretary, Public Works Department, Chennai - 9 and others reported in [2010] 3 MLJ 771 and also considering the fact that the Section Officer of PWD, Red Hills Irrigation Division, Chennai - 52 is a Competent Officer, as per Tamilnadu Protection of Tanks and Eviction of Encroachments Act, 2007, this Court holds that the Section Officer of the PWD, who issued Impugned Notice is very much competent and it cannot be cited by any means that he is an Incompetent Officer to issue the impugned order.

9. Be that as it may, this Court opines that 'Principles of Natural Justice' are not the ethics of a Statute. The adherence to the 'Principles of Natural Justice' by providing an opportunity of hearing to the Petitioner is an unwritten code in an Administrative or Execution or Quasi Judicial Authority is to adhere to the 'Principles of Natural Justice' even though there is no express provision in a particular Statute / Act / Rules.

10. Inasmuch as the Section Officer, Public Works

Department, Red Hills [Irrigation Section] is quite competent to issue Impugned Notice dated 23.10.2018, issued to and in favour of the Petitioner and also this Court, taking note of yet another important fact that the Petitioner had not afforded an opportunity of submitting his reply / objection / representation to the impugned notice Form III Rule 6[1] of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, this Court without traversing upon the merits of the matter and also not expressing any opinion, directs the Petitioner to submit his representation or to explain his possession to substantiate his case within a period of one week from the date of receipt of copy of this order. It is open to the Petitioner to produce documentary evidence in this regard before the Officer, who issued Impugned Notice dated 23.10.2018. If the Petitioner requires any personal hearing or to be heard in-person, then, the 4<sup>th</sup> Respondent, shall provide an opportunity to the Petitioner and the Petitioner is to avail the same with due diligence. Thereafter, the 4<sup>th</sup> Respondent is directed to pass a reasoned speaking orders within a period of two weeks in a qualitative and quantitative terms in a fair, free, just and in an unbiased and dispassionate manner, of course, untrammelled and uninfluenced with any of the observations made by this Court in the present Writ Petition. It cannot be gainsaid that the 4<sup>th</sup> Respondent shall pass necessary orders in question within the time adumbrated by this Court. Till such time, the Petitioner's possession / enjoyment in the subject land shall not be displaced / disturbed.

11. Before parting with the case, this Court makes it lucidly clear that if the 4<sup>th</sup> Respondent after providing opportunity to the Petitioner, comes to a definite conclusion in writing that the Petitioner is an encroacher, then, he shall remove from the subject property and it is open to the 4<sup>th</sup> Respondent to take such lawful action in this regard. If any resistance is offered by the Petitioner, then, it is open to the 4<sup>th</sup> Respondent to seek the aid of the Police and to remove the encroachment in the subject land.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

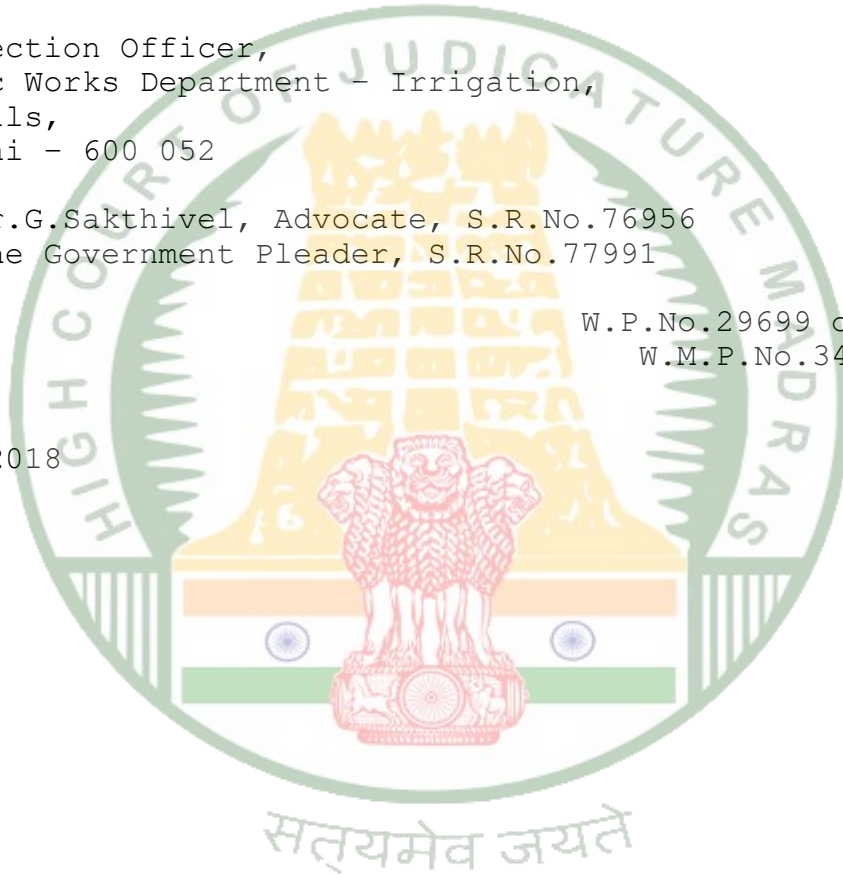
1. The District Collector,  
Thiruvallur District
2. The Assistant Engineer,  
Public Works Department - Irrigation,  
Redhills, Chennai - 600 052
3. The Tahsildar,  
Ambattur Taluk,  
Thiruvallur District
4. The Section Officer,  
Public Works Department - Irrigation,  
Redhills,  
Chennai - 600 052

+1cc to Mr.G.Sakthivel, Advocate, S.R.No.76956

+1cc to the Government Pleader, S.R.No.77991

W.P.No.29699 of 2018 and  
W.M.P.No.34633 of 2018

MR (Co)  
CS/11/12/2018



WEB COPY