



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2018

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P.(MD).No.1061 of 2018

and

W.M.P.(MD).No1104 of 2018

K.Govindan

... Petitioner

Vs.

1.The Assistant Engineer PWD, WRO,
Parthibanoor Regular Section,
Public Work Department Building,
Madurai Mandabam Road,
Paramakudi,
Ramanathapuram District.

2.The District Collector,
Collectorate,
Ramanathapuram.

2.The Tahsildar,
Paramakudi,
Ramanathapuram District.

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order in No.66, dated 22.12.2017 on the file of the 1st respondent and quash the same.

For Petitioner
For Respondents

: Mr.K.Rajeswaran
: Mr.S.Dhayalan
Government Advocate

O R D E R

By consent, the writ petition is taken up for final disposal, at the stage of admission itself.

2. Heard Mr.K.Rajeswaran, learned counsel appearing for the petitioner and Mr.S.Dhayalan, learned Government Advocate, who takes notice for the respondents.



3. According to the petitioner, he is an occupation of the land to an extent 0.0078.0 Sq.Meter, in Town Survey No.2 Block 20, Ward C in Paramakudi Town, Ramanathapuram District. The property in question is an ancestral property and he is enjoying the same for more than a century. The petitioner is regularly paying the property tax also. When things stand so, the first respondent issued the impugned notice under Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (hereinafter referred to as 'the Act'), directing the petitioner to vacate the premises within 21 days from the date of receipt of the notice. Challenging the said notice, the petitioner is before this Court.

4. Though under the Act there is no provision for giving show cause notice, still this Court upheld the Act in the case of *T.S.Senthil Kumar v. Government of Tamil Nadu, rep by its Secretary, Public Works Department, Chennai-9 and others*, reported in (2010) MLJ 771. While upholding the Act, the Division Bench of this Court held in Paragraph No.20 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 v. J.V.Bhat* (supra) and (ii) *Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka* (supra), where the Supreme Court dealt with the *Mysore Slum (Improvement and Clearance) Act, 1959* 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 that 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 is Form-II 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. In view of the above, it is the duty of the authorities to give notice to the petitioner and hear the petitioner and then pass a final order.

6. Therefore, notice issued under Section 6 (1) of the Act is directed to be treated as show cause notice and the petitioner shall give his reply to the above said notice within a period of 4 weeks from the date of receipt of this order. On receipt of the said reply, the third respondent is directed to hold an enquiry and after giving an opportunity of hearing to the petitioner pass appropriate



orders on merits and as per law, within a period of 8 weeks thereafter. Till such order is passed and the copy of the same is served upon the petitioner, the petitioner shall not be disturbed.

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7. Accordingly, the Writ Petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1. The Assistant Engineer PWD, WRO,
Parthibanoor Regular Section,
Public Work Department Building,
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Paramakudi,
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2. The District Collector,
Collectorate,
Ramanathapuram.

3. The Tahsildar,
Paramakudi,
Ramanathapuram District.

+One cc to M/s.K.Rajeshwaran, Advocate, SR.No.43099

+One cc to The Special Government Pleader, SR.No.43685

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RL/6C/4P/SKN/RSK/SAR1/1/2/2018

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and
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