



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD) No.1727 of 2018

and

W.M.P (MD) No.1839 of 2018

.. Petitioner

V.Gopikrishnan

Vs.

1.The District Collector,
Dindigul District, Dindigul.

2.The Junior Engineer,
Public Work Department,
Water Resources Organization,
Parappalar Dam Division,
Oddanchatiram, Dindigul District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the second respondent in the Form of notice in his proceedings in Form III, dated 06.01.2018, for removal of alleged encroachment and quash the same as illegal and in violation of provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules 2007.

For Petitioner

: Mr.B.Saravanan

For Respondents

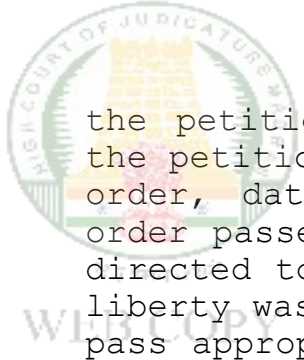
: Mr.V.R.Shanmuganathan,
Special Government Pleader.

ORDER

[Order of the Court was made by N.KIRUBAKARAN, J.]

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

2.The petitioner is the owner of land comprised in Survey Nos.289/1B, 289/2A, and 289/2B1, Kodaalvavi Village, Dindigul West Taluk, Dindigul District, measuring about 2 Acres 47 Cents and an extent of 35 Cents, comprised in Survey No.299/2A, Kodaalvavi Village and an extent of 1.75 acres comprised in S.F.Nos.16/1, 2, 3 and 4 at Thethutpatti Village. The petitioner raised plantain trees in his land and also a portion of the land, belonging to the Government. Now, standing banana trees are in the lands. However, the second respondent tried to evict the petitioner, alleging that



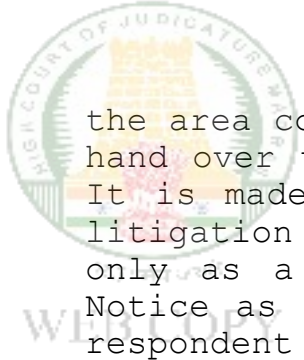
the petitioner encroached upon vast extent of land and therefore, the petitioner filed W.P.(MD).No. 12485 of 2017 and this Court, vide order, dated 02.08.2017, recorded the withdrawal of the impugned order passed by the second respondent, by which, the petitioner was directed to vacate the land. While disposing of the writ petition, liberty was also given to the second respondent, to issue notice and pass appropriate orders, on merits and as per law. Subsequent only, the impugned order in Form-III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 has been passed. The said order is being challenged before this Court.

3.Heard Mr.B.Saravanan, learned counsel appearing for the petitioner as well as Mr.VR.Shanmuganathan, learned Special Government Pleader, appearing for the respondents.

4.Mr.B.Saravanan, learned counsel appearing for the petitioner would submit that the earlier order of this Court has not been complied with and no survey was conducted in the presence of the petitioner to identify the encroached portion of the land and without issuing Form-II Notice, Form-III Notice has been issued, which is contrary to the Division Bench judgment of this Court in *T.S.Senthilkumar v. Government of Tamil Nadu* reported in 2010 (3) MLJ 771 and the Full Bench Judgment of this Court in *T.K.Shanmugam, Secretary, CPI(M), North Chennai District Committee, Chennai-11 v. State of Tamil Nadu, rep. by Secretary to Government, Department of Revenue, Fort St. George, Chennai-9 and Others* reported in 2015(6) CTC 369 and if the properties are measured in his presence, the encroached portion be easily identified, otherwise, the second respondent would include even the petitioner's property, erroneously, as encroached portion. Therefore, he seeks to allow the writ petition.

5.On the other hand, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents would submit that as per the provisions of the act, after survey, Form-III Notice alone has to be given and from the impugned order, it is very clear that survey was already conducted and the actual extent of the land, which is under the occupation of the petitioner and the encroached portion,s are given distinctly in Form-III and therefore, the petitioner could not have any grievance.

6.The main contention of the learned counsel appearing for the petitioner is that no survey was conducted in the presence of the petitioner. However, it is evident from the impugned notice that the portion encroached by the petitioner, has been distinctly given. It is not known whether notice was given by the second respondent or not. In any event and to give the quietus to this issue, the impugned notice is directed to be treated as Form-II Notice and the second respondent, after surveying the property in the presence of the petitioner, is directed to issue Form-III Notice, within a period eight weeks from today. In case, after surveying the property, in the presence of the petitioner, it is found that the petitioner encroached some of the Government lands,



the area could be earmarked, so that the petitioner could vacate and hand over the possession to the second respondent after harvesting. It is made clear that since this litigation is a second round of litigation and no more litigation should come up before this Court, only as a concession, this Court directed to treat the Form-III Notice as Form-II Notice, with the further direction to the second respondent to survey the property, in the presence of the petitioner. Since, this order has been passed, after taking into consideration all these factors, if any encroached portion is identified, at the time of conducting survey in the presence of the petitioner, the petitioner is bound to handover the encroached portion, after harvesting.

7. Accordingly, the writ petition is disposed of, with the above directions and observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector,
Dindigul District,
Dindigul.
2. The Junior Engineer,
Public Work Department,
Water Resources Organization,
Parappalar Dam Division,
Oddanchatiram, Dindigul District.

+One cc to The Special Government Pleader, SR.No.45983

+One cc to Mr.B.Saravanan, Advocate, SR.No.45620

cp/smn
RL/5C/3P/KK/SAR1/14/2/2018

ORDER MADE IN
W.P (MD) No.1727 of 2018
and
W.M.P (MD) No.1839 of 2018
30.01.2018