



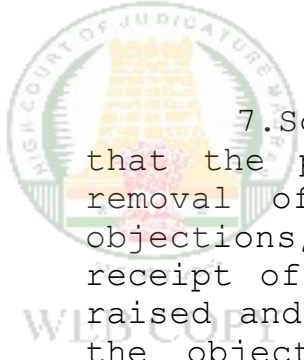
placed as that of the petitioner. The prayer sought for in the said Writ petition was to quash a notice dated 27.02.2017, which was identical to that of the present impugned notices. The Writ petitioner contended that the impugned notice itself is an order of removal of encroachment and it was not preceded by prior notice and no survey number was noted. Therefore, the Division Bench by order dated 19.07.2017 held that as there was a violation of principles of natural justice, allowed the Writ petition and remitted the matter to the file of the respondent, leaving it open to the respondent to conduct survey through a designated authority, after issuing notice to the said Writ petitioner and thereafter, the respondent shall pass fresh order in accordance with law.

3.The learned Additional Government Pleader for the respondent submitted that in view of the said direction, survey was conducted and as per the survey report, the respondent has identified 16 encroachers, out of which, the petitioner namely, Mahalakshmi, wife of Palpandi stated to have encroached in 5 places, apart from that there are other persons.

4.We find that the impugned notices have been issued in partial compliance of the earlier direction. The Court directed the respondent, after conducting survey, pass fresh orders in accordance with law. This would mean that the petitioner should have an opportunity to give her objections to the proposed eviction. However, without doing so, straightaway the impugned notices are passed, which itself is an order of eviction.

5.Further, it is brought to our notice that apart from the persons, whose names have been mentioned in the proceedings of the respondent in the survey report, there appears to be other encroachers as well, not only in the Vandiyur Surplus course, but in the Vandiyur Tank itself. This Court took judicial notice of the said fact on account of the submissions made across the bar, when the Writ petition was heard.

6.When the respondent takes action against encroachments for the purpose of protecting water body, their action should be free from any discrimination, however, big or small the encroachers are. Therefore, if there are encroachments in the said Tank, then the authorities should take action in respect of those encroachments also. But while doing so, they should follow the proper procedure. Otherwise, the entire process would become a fait accompli. Hence, we direct the respondent herein to forward a copy of this order to their higher authorities to take note of the observation and act in accordance with law.



7. So far as the petitioner's case is concerned, we direct that the petitioner shall treat the present impugned notice of removal of encroachment as a showcause notice and submit her objections, if any, within a period of 7 days from today and on receipt of the same, the respondent shall consider the objections raised and pass orders on merits and in accordance with law. If the objections are not satisfactory, it is well open to the respondent to pass an order of eviction giving 30 days time for the petitioner to remove the encroachment.

8. With the above said directions, the Writ petition is disposed of. No costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To
The Assistant Engineer,
P.W.D./ WRO Periyar Main Canal Section,
Subdivision No.1,
Madurai - 2.

+1cc to Special Government Pleader in SR.No.49048
+1cc to M/s.S.Mahalakshmi, Advocate, in SR No.48442

W.P. (MD) No.2945 of 2018
14.02.2018

nbj
MKV-SV-MMS-SAR 1/15.2.2018/3P-4C