



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD) No.5765 of 2018
and
W.M.P. (MD) No.5650 of 2018

S.Rajeswari

.. Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Public Works Department,
And Water Resource Organization,
rep. by its Chief Engineer,
Periyar Main Canal Section,
Sub Division-1,
Madurai-2.

3.The Public Works Department,
And Water Resources Organization,
Rep. by its Assistant Engineer,
P.W.O/W.R.O (I/c),
Periyar Main Canal Section,
Sub Division-1, Madurai-2.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in Form NO.III (Sub Rule (1) of Rule (6) dated 08.02.2018 signed on 23.02.2018 and served on 24.02.2018 and quash the same and devoid of merits and consequently direct the 1st respondent to issue patta to the petitioner duly considering petitioner's poverty line and in the light of the common order passed in W.P.Nos.14349 to 14351, 2168 to 2171, 5328 to 5330 of 2011 dated 18.01.2012.

For Petitioner : Mr.G.Solai Raja

For Respondents : Mr.S.Pandiarajan
Additional Government Pleader



ORDER

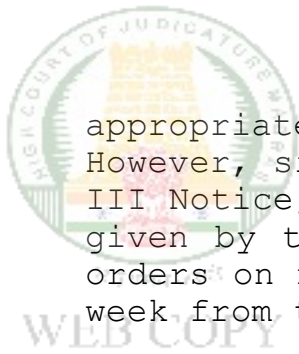
[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.G.Solai Raja, learned counsel appearing for the petitioner, Mr.S.Pandiarajan, learned Additional Government Pleader, appearing for the respondents.

2.The petitioner has filed this writ petition challenging the notice issued by the third respondent in Form No.III in terms of Rule 6(1) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. The impugned notice is furtherance to an order passed in an earlier batch of cases, which were disposed of by the Division Bench, in which the petitioner was the writ petitioner. The Division Bench, while declining to grant any positive relief for the petitioner, made an observation that it has to be verified as to whether the encroachment is inside the tank or outside the tank area and if it is outside the tank area and there is no hindrance to the water body, a protective order was granted. The petitioner is stated to have given representation dated 23.05.2011 enclosing the order passed in the batch of writ petitions dated 18.01.2012. After the issuance of the impugned Form III Notice, the petitioner is stated to have given another objection. In any event, since there was a positive direction issued by the Division Bench in the earlier order to remove the encroachment found inside the tank, the petitioner cannot have a second round of litigation.

3.Mr.J.Solomon Christhudoss, Assistant Engineer, P.W.D./W.R.O.(i/c), Periyar Main Canal Section, Sub Division No.1, Madurai is present in the Court and confirms that the petitioner has encroached into the tank. Though there has been some observations with regard to the encroachments lying in the bund, in our opinion, the bund of the tank also requires to be protected and there cannot be any construction on the tank bund and if any wall is constructed, that may slowly lead to damaging the tank bund as there is a likelihood of drainage water being let out etc. Therefore, it is the duty of the officials to protect the water bodies.

4.Recently, the Full Bench in the case of T.K.Shanmugam V. State of Tamil Nadu - 2015(2) CWC 849 elaborately considered the issue as to how and in what manner the water bodies have to be protected. The question which fell for consideration before the Full Bench was if a water body is in disuse or if there is no water flowing into the water body, whether the water body can be reclassified and whether house site pattas can be granted in the said water bodies. This question was answered against the State pointing out that the Government Orders permitting conversion of a water body into house sites is illegal and it is a clear violation of the public trust doctrine. Therefore, any observation made by the Division Bench in its order dated 18.01.2012 stands impliedly overruled in the light of the decision of the Full Bench dated 30.10.2015 in the case of T.K.Shanmugam. Therefore, be it a water body or a tank bund or a supply channel or a overflow channel,



appropriate steps to be taken to preserve the same as it is. However, since the petitioner has given their objections to the Form III Notice, we direct the third respondent to consider the objection given by the petitioner, afford an opportunity of hearing and pass orders on merits and in accordance with law, within a period of one week from the date of receipt of a copy of this order.

5. In the event, there is encroachments in the tank or on the tank bund, adjoining tank bund or in the supply channel, encroachments should be removed. However, since the petitioner claims to be residing there, she should be granted 15 days time to remove the encroachments by herself, failing which, the respondents shall remove the encroachments departmentally and recover the cost from the petitioner. If the respondents require police assistance, they will address the Superintendent of Police, Madurai District, who shall make adequate arrangements in that regard.

6. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector,
Madurai District,
Madurai.

2. The Public Works Department,
And Water Resource Organization,
rep. by its Chief Engineer,
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Rep. by its Assistant Engineer,
P.W.O/W.R.O (I/c),
Periyar Main Canal Section,
Sub Division-1, Madurai-2.

+1cc to The Special Government Pleader, SR.No.56552
ta

RL/5C/3P/KKR/SAR4/17/4/2018

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ORDER MADE IN
W.P (MD) No.5765 of 2018
19.03.2018