



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

And

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.9285 of 2018

and

WMP(MD)No.8597 of 2018

Raju

... Petitioner

vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Assistant Engineer,
Public Works Department / Water
Resource Organization,
Parthipanoor Reservoir Section,
Paramakudi,
Ramanathapuram.

3.Tashildar,
O/o.The Tahsildar,
Ilayankudi Main Road,
Paramakudi,
Ramanathapuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus call for the records of impugned order in Na.Ka.A3-13669-2017 dated 06.03.2018, passed by the Respondent No.3 to quash the same and consequently directing the respondent No.1 to consider the petitioner's appeal for issuance of Patta in respect of the property of house with extent about 0.0144.0 Sq.Mtr. in ward No.B, Block No.5, Survey No.2 in Paramakudi, Ramanathapuram District.

For Petitioner : Mr.S.M.A.Jinnah
For Respondents : Mr.V.Anand

Government Advocate

* * *

ORDER

(Order of the Court was made by T.RAJA, J.)

This writ petition is directed against the order, dated 06.03.2018, passed by the Tahsildar, Paramakudi, the third respondent herein, in and by which, the Tahsildar while considering the case of the petitioner putting up a house in Ward B, Block No.5, Survey No.2, which is a vaigai river Government poramboke, has come to the conclusion that the petitioner has encroached the said property.



2. Assailing the impugned order, the learned counsel appearing for the petitioner submitted that originally the land in question was classified as a waste land near river side. Hence, the father of the petitioner purchased the same and constructed a house thereon. After completion of the construction of the house, the petitioner's family has been paying the taxes. While so, all of a sudden, the Assistant Engineer, Public Works Department/ Water Resource Organization, Parthipanoor Reservoir Section, Paramakudi, Ramanathapuram, the second respondent herein issued an order under Section 6(1) of Protection of Tanks and Eviction of Encroachment Rules, 2007 calling upon the petitioner to vacate the dwelling house within 21 days from the date of receipt of the notice. Since there was no notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, for the simple reason that the said land belong to revenue authorities, a writ petition in W.P.(MD)No.226 of 2018 was filed challenging the impugned order, dated 22.12.2017. This Court, by order dated 29.01.2018 appreciating the claim of the petitioner that notice is required to be given under Section 7(1) of the Act before passing the eviction order, had directed both the parties to treat the said notice, dated 22.12.2017, as a notice issued under Section 7(1) of the Act. A further direction was issued to the petitioner to give reply within a period of two weeks from the date of receipt of a copy of the order and on receipt of the said reply, if any, the respondents were also directed to conduct enquiry after giving opportunity to the petitioner and thereafter pass a final order. The order further says that till the final order is passed, the petitioner's possession should not be disturbed.

3. The learned counsel for the petitioner further submitted that after the order was passed by this Court on 29.01.2018, he appeared before the second respondent in person and submitted his reply to the respondents 2 and 3. Finally, the Tahsildar has passed the impugned order holding that the land in Ward B, Block No.5, Survey No.2 is Vaigai River Government Poramboke. Therefore, during the flood and rainy season, it will cause hindrance to the public. Accordingly, the Tahsildar also came to the conclusion that there is no possibility for issuance of patta. Accordingly, dismissed his application. The third respondent herein ought to have considered the claim of the petitioner, when his adjacent land owners were granted patta. The treatment shown by the third respondent is not only discretionary in nature, but also step motherly treatment, which is against equality clause guaranteed under Article 14 of the Constitution of India.

4. A detailed counter affidavit has been filed by the second respondent taking a stand that T.S.No.2, Block No.5, Ward B, is classified as Vaigai River Government Poramboke and the petitioner has encroached 0.0144.1 sq. meter by constructing a house therein. In view of the above fact that the petitioner has encroached into the Government Poramboke land, being appropriate authority under the



Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, they have furnished a notice on 03.04.2018 in Form-III as per Rule 6(1) of the Act. However, they filed a writ petition in W.P. (MD)No.226 of 2018 challenging the Form-III notice and this Court directed the petitioner to give reply to the said notice, within a period of four weeks from the date of receipt of copy of the order. By virtue of the order passed by this Court, enquiry was conducted and only after considering the case of the petitioner and also the explanation offered by the petitioner, the impugned order has been passed. Therefore, there is no error or infirmity in the impugned order. The learned counsel for the respondent further submitted that even the revenue records clearly show that P.S.No.2 in Block No.5, Ward B, Paramakudi, at Ramanathapuram District has been classified as Vaigai River Government Poramboke.

5.A perusal of the revenue records clearly shows that Ward B, Block No.5, Survey No.2, is a Vaigai River Government Poramboke. Therefore, the impugned order passed by the respondent does not call for any interference. Accordingly, this writ petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The District Collector,
Ramanathapuram District, Ramanathapuram.

2.The Assistant Engineer,
Public Works Department / Water
Resource Organization,
Parthipanoor Reservoir Section,
Paramakudi, Ramanathapuram.

3.The Tashildar,
O/o.The Tahsildar,
Ilayankudi Main Road,
Paramakudi, Ramanathapuram District.

+1 CC TO SPECIAL GOVERNMENT PLEADER IN S.R.NO.80630.

RJ 2

DS PM SAR-2 10.10.2018 3P/5C

W.P(MD)No.9285 of 2018
and

WMP (MD) No.8597 of 2018
27.08.2018