



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

And

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.9410 of 2018

and

WMP(MD)Nos.8712 & 8713 of 2018

S.Nagarajan

... Petitioner

vs.

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.

2. The Tahsildhar,
Paramakudi Taluk,
Paramakudi,
Ramanathapuram District.

3. The Assistant Engineer,
Public Works Department,
Parthibanoor Check Dam Section,
Paramakudi,
Ramanathapuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order in Na.Ka.A3-13669-2017, dated 06.03.2018 on the file of the respondent No.2 and quash the same as illegal.

For Petitioner : Mr.S.Louis

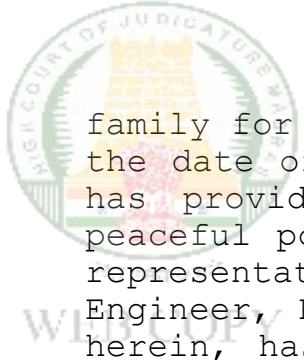
For Respondents : Mr.V.Anand

Government Advocate

ORDER

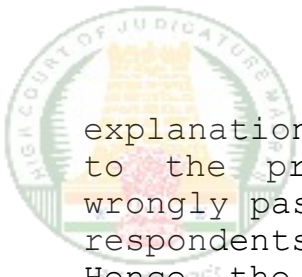
(Order of the Court was made by T.RAJA, J.)

Assailing the impugned order, dated 06.03.2018, the learned counsel for the petitioner heavily contended that the petitioner is an absolute owner of vacant land situated in town Survey No.2 (Municipal Ward 20) having an extent of 510 sq.feet situated at Paramakudi, which was purchased in the year 1990 and thereafter, he constructed a house and he has been residing in the same with his



family for the last three decades. He has also levied house tax from the date of construction. Moreover, the electricity department also has provided electricity service connection and he has been in peaceful possession and enjoyment of the same. He has also given a representation seeking for patta. In the meanwhile, the Assistant Engineer, Public Works Department, Paramakudi, the third respondent herein, has issued an eviction order calling the petitioner as an encroacher and asked him to remove the encroachment within 21 days from the date of eviction order.

2. Aggrieved by the eviction order passed by the third respondent, the petitioner was constrained to file a writ petition in W.P.(MD)No.791 of 2018 challenging the impugned order, dated 22.12.2017 to quash the same on various grounds inter alia that the Assistant Engineer, Public Works Department, failed to follow the procedure provided in Rule 3 (Survey of tanks), Rule 4 (Appointment of Survey Officer) and Rule 5 (Report of Survey Officer) and this Court, by order dated 12.01.2018, observing that the impugned order dated 22.12.2017, was not a final order and it was only a notice issued under Sub Rule (1) of Rule (6) in III of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, came to the conclusion that the notice is required to be given to the petitioner under Section 7(1) of the Act before passing the final eviction order. Accordingly, the impugned order, dated 22.12.2017 was treated as notice and the petitioner was directed to give reply to the impugned notice within two weeks from the date of copy of the said order. It was further mentioned therein that on the receipt of the said reply, the respondent is directed to conduct enquiry after giving opportunity to reply and pass final orders within eight weeks thereafter. Again, pursuant to the order passed by this Court, on 12.01.2018 in W.P.(MD)No.791 of 2018, a notice was served upon the petitioner. The petitioner gave his explanation on 19.02.2018 enclosing four enclosures viz., a property tax issued by the Municipality Commissioner on 23.12.1991; Electricity bill receipt dated 17.01.2006 and another electricity bill receipt dated 19.08.2016 and the impugned order dated 06.03.2018. In the said explanation, it is pleaded that the petitioner was the purchaser of the vacant land in Paramakudi having an extent of 510 sq.feet in Survey No.2 (Municipal War 20) in the year 1990 and constructed a house. After construction of the house therein, he has been residing with his family by paying the house tax. In the said explanation, the petitioner has also explained that the electricity supply was provided by the electricity department and therefore, the respondent ought not to take recourse under Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of the Encroachment Rules. The explanation further mentioned that in between the petitioner's dwelling house and the Vaigai River, there is a Service Road (40 feet) connecting the National Highways from Madurai to Rameshwaram. Therefore, the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, and the Rules framed thereunder are not applicable to his case, since the petitioner house is located in an extent of 510 sq.ft in the road margin. The respondents, without considering his



explanation, dated 19.02.2018 and without considering the reference to the property tax, Electricity bill receipts enclosed, have wrongly passed an order, therefore, the impugned order passed by the respondents, has to be termed only as a cryptic and unreasonable. Hence, the same is liable to be set aside.

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3. We are unable to find any merit therein, for the reasons that when the petitioner was issued with a proceedings dated 22.12.2017, by the Assistant Engineer, Public Works Department, Paramakudi, the third respondent herein, informing the petitioner that he has encroached upon the water body, he came to this Court with W.P.(MD) No.791 of 2018 challenging the same. This Court, taking note of the fact that the order dated 22.12.2017 issued by the Assistant Engineer, Public Works Department, Paramakudi, was not a final one and a notice has to be issued as per Section 7(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, directed both the parties to treat the said proceedings dated 22.12.2017 as a notice and two weeks time was given to the petitioner to give his explanation. Accordingly, he has given his explanation. The third respondent has not passed any final order so far. But we are not concerned with the order going to be passed by the Assistant Engineer, Public Works Department, Paramakudi. When there was a direction against the respondents 2 and 3, the Tahsildhar, taking up the petitioner's representation seeking issuance of patta in respect of the land in question, has refused his prayer citing valid reason that the place in question is forming part of Vaigai River bank. Moreover, the revenue records also classified the land occupied by the petitioner as a river bed and on the basis of the revenue records, that Ward B, Block 5, Survey No.2 at Paramakudi, which was encroached by the petitioner, has named as Vaigai River Poramboke, the Tahsildar has declined to issue patta. Therefore, when the Tahsildar, the second respondent herein, has refused patta, on the ground that as per revenue records, no patta can be issued in favour of any occupants of water body including Vaigai River poramboke land, we are unable to find any merit in the writ petition.

4. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

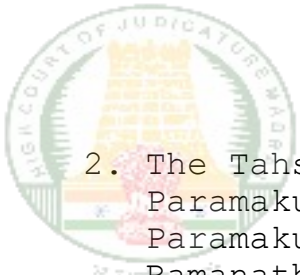
Assistant Registrar (Crl.side)

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Sub Assistant Registrar (CS-II)

To

1. The District Collector,
<https://hcservices.ecourts.gov.in/hcservices/>
Ramanathapuram District,
Ramanathapuram.



2. The Tahsildhar,
Paramakudi Taluk,
Paramakudi,
Ramanathapuram District.

3. The Assistant Engineer,
Public Works Department,
Parthibanoor Check Dam Section,
Paramakudi,
Ramanathapuram District.

+ 1 CC TO Mr.S.LOUIS, ADVOCATE IN SR No. 78794

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 79095

RJ2

TE/JM/SV/SAR-2: 18/09/2018 : 4P/6C

Order made in
W.P (MD) No.9410 of 2018
14.08.2018