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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.10135 of 2018 and
W.M.P(MD)No.9183 of 2018

C.Periyasamy

... Petitioner

vs.

1. The District Collector,
Ramanthapuram District,
Ramanathapuram.
2. The Tahsildar,
Paramakudi Taluk,
Paramakudi, Ramanathapuram District.
3. The Assistant Engineer,
Public Works Department,
Parthibanoor Check Dam Section,
Paramakudi,
Ramanathapuram District.

... Respondents

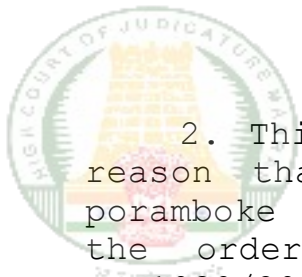
Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records pertaining to the impugned order dated 03.04.2018 on the file of the respondent No.3 and quash the same as illegal.

For Petitioner	: Mr.S.Louis
For Respondents	: Mr.V.Anand
R1 to R3	Government Advocate

O R D E R

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

This writ petition is directed against the impugned proceedings dated 03.04.2018 issued by the Assistant Engineer, third respondent herein, *inter alia*, the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act (hereinafter referred to as 'the Act') and the Rules framed therein are not applicable, as the petitioner's house is located in an extent of 510 sq. ft. in T.S.No.2 in the road margin of the service road connecting National Highway from Madurai to Rameshwaram.



2. This ground is wholly untenable and unjustifiable for the reason that when the petitioner having encroached river side poramboke came to this Court on an earlier occasion challenging the order dated 22.12.2017 issued against him in W.P.(MD) No.1039/2018, it was specifically pleaded that notice should be issued under Section 6(1) of the Act. This Court, after accepting the case of the petitioner dealing with Section 6(1) of the Act and the Rules framed therein and taking reliance from a judgment of this Court in **T.S.Senthilkumar v. Government of Tamil Nadu and others** reported in (2010) 10 MLJ 771, has directed the same petitioner to treat the impugned proceedings dated 22.12.2017 as a notice, as though issued under Section 6(1) of the Act 2007. Accepting the order passed by this Court, the petitioner also treating the said proceedings dated 22.12.2017 as notice gave his detailed explanation on 07.03.2018, which has also been enclosed in the typed set of papers.

3. In the said explanation, in Paragraph Nos.3 and 4, it is stated that they have not followed the Protection of Tanks and Eviction of Encroachment Rules and for better appreciation, the relevant portion of the explanation is extracted hereunder:

"Before taking recourse to Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, the procedure provided in the Rule 3 (survey of Tanks), Rule 4 (Appointment of Survey officer) and Rule 5 (Report of Survey Officer) has not been followed and hence such action is highly arbitrary and illegal.

In between my dwelling house and the Vaigai river there is the service road (40 feet) connecting the national highways from Madurai to Rameshwaram. And as such the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 are not applicable in the instant case as my house is located in an extent of 510 square feet in the road margin."

4. Therefore, when the petitioner had already approached this Court in the first round of litigation in W.P.No.1039/2018 and complained before this Court against the very same respondents that they have not followed the provisions of the Act and Rules framed thereunder, accepting the same, when this Court has directed the respondents to follow the provisions of the Act, he cannot conveniently take a somersault in the second round of litigation that the provisions of the Act cannot be made applicable.

5. Moreover, the petitioner has not produced any title deeds, like, sale deed, settlement deed, partition deed, etc., or revenue records, namely, patta, 'A' Register, etc., showing that the petitioner is the owner of the property. Although he has pleaded that he has purchased the vacant land to an extent of 510 sq. ft.,



in T.S.No.2 (Municipal Ward No.20) in the year 1988 and constructed a house and thereafter, obtained electricity service connection, no acceptable and reliable document was produced before us to show that the petitioner is residing in an unobjectionable place.

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6. On the other hand, the respondents have produced a copy of the Town Survey Register showing that the petitioner has put up a construction on the bank of Vaigai river. The photographs produced by both the parties would also show that by encroaching on the one side of the bank of Vaigai river, the dwelling house has been built without obtaining any prior permission from the local authority. If the petitioner's encroachment has not been removed, during rainy season in the event of flood water flowing across the river bank, the petitioner's house would be washed away. Therefore, anticipating all these factors, to avoid any future damage to the petitioner's house and lives, the impugned notice has been issued for removal of the alleged encroachment. Therefore, for taking every time a somersault, since the petitioner has come to this Court with unclean hands, this Court is not inclined to entertain this writ petition.

7. Accordingly, this writ petition fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-)

To

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

+ 1 CC TO Mr.S.LOUIS, ADVOCATE IN SR No. 78792

RR

TE/SKN/SAR-1 : 07/09/2018 : 3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>

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