



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P(MD)No.17920 of 2017

and

W.M.P.(MD) Nos.14436 and 16887 of 2017

Jainullabuddin

... Petitioner

vs.

1. The Assistant Engineer,
Public Works Department/ Water Resources Department
(Kallanai Canal Division)
Edaiyathi, Orathanadu Taluk,
Thanjavur District.

2. Arumugam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 26.08.2017 passed by the 1st respondent herein and quash the same and consequently direct to hear the petitioner by issuing show cause notice regarding the alleged encroachment.

For Petitioner : Mr.D.R.Murugesan

For Respondent 1 :Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent 2 : No appearance

ORDER

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

This writ petition is directed against the impugned proceedings dated 26.08.2017 issued by the Assistant Engineer, Public Works Department/Water Resources Department (Kallanai Canal Division), Edaiyathi, Orathanadu Taluk, Thanjavur District, calling upon the petitioner to remove the encroachment on the ground that when the petitioner was not issued with any notice alleging encroachment, straight away an order of removal, which is impugned herein, cannot be issued. This is against the ratio laid down by this Court in **T.S.Senthilkumar v. The Government of Tamil Nadu and others** reported in **2010 WLR 113**, wherein, it is held in Paragraph No.20(f)(1), which is given as under:



"(i) When the Officer of the Public Works Department publishes the notice in Form - II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the water resources Organisation, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in form III of the Rules may be issued."

2. Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the first respondent fairly submitted that the petitioner is entitled to have a prior notice before the impugned order directing him to remove the encroachment and vacate the place in question.

3. Learned counsel for the petitioner drawing our notice to an order dated 21.07.2017 passed by this Court in W.P.(MD) No.3840/2017 filed by the second respondent herein, stated that, a specific direction was issued by this Court to the Executive Engineer to give notice to all the encroachers and after giving them reasonable opportunity to submit their case, only then, to proceed further for removal of encroachment, if the Executive Engineer satisfied that there has been encroachment. Since there is no notice issued, the impugned order may be treated as notice and the petitioner may be given two weeks time to submit his explanation to the impugned notice.

4. Learned Special Government Pleader also submitted that this Court has already held in **T.S.Senthilkumar (supra)** in Paragraph No.20(f)(1) that notice should also be issued to the alleged encroachers to the effect that survey indicates that the place in his/her occupation is an encroachment and notice in Form II may be issued.

5. We are satisfied that the respondents should proceed against the alleged encroachers, after issuing notice on the basis of the survey report indicating the nature of encroachment and the extent of encroachment and thereafter Form II notice, under Rule 6 of the Tamil Nadu Land Encroachment Act, 1905 to be issued. In the present case, notice in Form III alone has been issued. Therefore, we grant liberty to the Assistant Engineer, first respondent herein, to issue Form II notice on the basis of the survey report indicating the nature and extent of encroachment and thereafter issue notice in Form II and thereafter proceed.

6. In view of the above, the writ petition is partly allowed by setting aside the impugned notice and the first respondent is directed to issue Form II notice and after receiving the said Form II notice, the petitioner is given two weeks time to submit his



explanation, if any and on the basis of the explanation to be given by the petitioner, the first respondent can proceed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (Cs-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Assistant Engineer,
Public Works Department/ Water Resources Department
(Kallanai Canal Division)
Edaiyathi, Orathanadu Taluk,
Thanjavur District.

+1cc to Mr.D.R.Murugesan, Advocate Sr.No.93449

+1cc to Spl.Government Pleader Sr.No.93378

SRM

VB/PM/SAR4/29.11.2018/3P/4C

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