



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2018

CORAM:

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

Writ Petition (MD).No.22657 of 2017

1. M.Thetchinamoorthy
2. M.Angusamy
3. V.Kalaiarasi
4. Sree Kamatchi Builders,
represented by its Proprietor,
Senthil Kumar.
5. Veerapandian
6. Govindan
7. K.R.Sannasi Marbles.
Rep. by its Proprietor

... Petitioners

Vs.

1. The District Collector,
Ramanatahpuram District.
2. The District Revenue Divisional Officer,
Ramanathapuram District,
Ramanathapuram.
3. The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.
4. The Tahsildar,
Ramanathapuram,
Ramanathapuram District.
5. The Commissioner,
Ramanathapuram Municipality,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 5 to conduct the enquiry upon the notice dated 11.10.2017 by affording opportunity to the petitioner 1 to 7 in accordance with the procedure established by law and by following the Principle of Natural Justice and consequently not to pass any order of eviction except the procedure established by law.



For Petitioners : Mr.A.Anandan
For Respondent : Mr.D.Muruganandam
Additional Government Pleader
for RR1 to 5

O R D E R

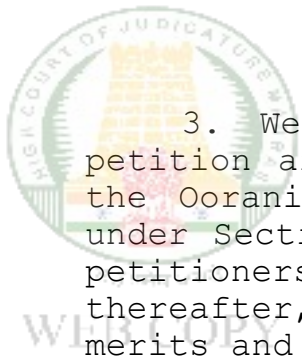
WEB COPY

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

The writ petition has been filed by one Thiru M.Thetchinamoorthy and others praying for issuance of a writ of Mandamus directing the respondents 1 to 5 to conduct enquiry upon the notice dated 11.10.2017, by affording an opportunity of personal hearing and the compliance of the principles of natural justice.

2. The petitioners claim to be in possession of the property, pursuant to a licence granted to them by the Trustees of Throwpathi Amman Temple. However, the said temple or its Trustees have not been impleaded as respondents in the writ petition. It is not clear as to how the Trustees granted lease and licence in favour of the private parties that too on the banks of a water body. Even assuming it has been granted, the same cannot create any vested right in favour of the petitioners and other similarly placed persons, in the light of the recent enactment viz., Tamil Nadu protection of Tanks and Eviction of Encroachment Act. Therefore, if it is found that there is an encroachment in a land which is classified as water body, then necessarily such encroachment are required to be evicted. Merely because, a water body is in disuse cannot be a ground to convert the lands for some other purpose. In this regard, useful reference can be made to the decision of the Full Bench in the case of T.K. Shanmugam vs The State of Tamil Nadu reported in 2015 (6) CTC 369

"3. When it is a recognised principle that tanks, rivers and water-bodies are all communal properties belonging to the public at large, environmental management is not the concern of the Government alone and it is the responsibility of the people as well. Unfortunately, in the eagerness to acquire more and more property, even rivers, water bodies and lakes are not left free. Cases of encroachment on water bodies are really alarming. Water bodies are potential source for drinking water for human and cattle. Only with a view to protect the same and to help the environment and develop ecology, the Government has enacted the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007). The very object of the Act is to find the exact boundary of each Tank in Tamil Nadu and also to detect encroachments for eviction as per the procedure laid down in the said Act. However, there are instances where the public raised fingers against the Government also when it has forgotten the laws meant for preserving water bodies and attempted to fill up those natural streams under the guise of development. Occupation of the water bodies by way of encroachment will deprive water to the public in larger interest ignoring the Public Trust Doctrine."



3. We find that some of the petitioners in this writ petition are carrying on commercial activities on the banks of the Oorani. However, the impugned notice being only a notice under Section 7 of the Tamil Nadu Land Encroachment Act and the petitioners have to necessarily submit their reply and thereafter, the respondents will proceed to pass an order on merits and in accordance with law.

4. The learned counsel for the petitioners requests reasonable time may be granted to submit their reply.

5. The learned counsel appearing for the Trustees of the Temple, who intervened in the proceedings and submitted that the Trustees filed W.P.(MD).No.1838 of 2018, by impleading the Deputy Superintendent of Police, Ramanathapuram District, the Inspector of Police, Kenikarai Police Station, Ramanathapuram District and two other private parties on the ground that the police authorities are harassing them at the instance of the private parties in respect of the land owned by the Temple. It appears that on account of the eviction, which has been initiated with a view to preserve the Oorani, the petitioners and others have approached the police authorities etc. However, there is no definite material to establish that there has been harassment on the Trustees of the Temple. In any event, since the issue pertaining to the encroachment in the Oorani and the adjoining lands are dealt with by this Court, we called for W.P.(MD).No.1838 of 2018 and heard the parties and the said writ petition is also disposed of along with this W.P.(MD).No.22657 of 2017.

6. In the result, the writ petition is disposed of by directing the petitioners to submit their reply to the show cause notice dated 11.10.2017 within a period of 15 days from the date of receipt of a copy of this order and on receipt of the reply, the competent authority is directed to conduct an enquiry and pass orders on merits and in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Ramanathapuram District.

2. The District Revenue Divisional Officer,
Ramanathapuram District,
Ramanathapuram.



3. The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.

4. The Tahsildar,
Ramanathapuram,
Ramanathapuram District.

5. The Commissioner,
Ramanathapuram Municipality,
Ramanathapuram District.

+1cc to Special Government Pleader, SR.No. 49383
+1cc to M/S.S.Mugilarasan, Advocate SR.No. 49623

Writ Petition (MD).No.22657 of 2017
15.02.2018

akv
JM/KKR/SAR 3/15.05.2018/4P/8C