

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.1549 of 2019

A.Venkatesan

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary
Public Works Department
Secretariat, Fort St. George
Chennai - 600 009.
2. Water Resource Department
Chennai Kosasthalaiyaru Sub Division
Public Works Department
Chepauk, Chennai - 600 005.
3. The Section Officer
Water Resource Department
Chembarambakkam Irrigation Section
Kundrathur
Chennai - 600 069.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned notice of the third respondent dated 27.12.2018 and quash the same and consequently direct the respondents to survey the lands in Survey No.10 and 11 with the help of the Taluk Surveyor after affording opportunity to the petitioner and demarcate the petitioner's property measuring 0.10 cents comprised in Survey No.10/2A, No.79, Kollacheri Village, Kundrathur Panchayat, Pallavaram Taluk, Kancheepuram District.

For Petitioner

: Mr.S.S.Swaminathan

For Respondents

: Mr.V.Jayaprakash
Narayanan
Government Pleader (i/c.)

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner has preferred this writ petition being aggrieved by the notice dated 27.12.2018 issued by the third respondent under Form-III of the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007.

2. The learned counsel for the petitioner contended that the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007 contemplates issuance of a notice under Form-II before a notice is issued under Form-III of the said Rules.

3. The learned Government Pleader (i/c), on instructions, admits that no notice was issued to the petitioner under Form-II of the said Rules prior to the notice issued under Form-III. The learned Government Pleader (i/c) further submitted that the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007 does not provide for issuance of notice to a particular party, but Form-II only contemplates that public at large are ordered not to encroach upon any land within the boundaries. Any encroachment within the boundaries is liable for eviction under Section 7 of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act and the offenders shall be punished with imprisonment for a term which may extend to three months or fine of Rs.5,000/- or with both under Section 7 of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act. He further submitted that notice under Form-II was affixed at the office of the Village Administrative Officer, which, according to him, is sufficient compliance.

4. This Court had earlier dealt with a similar issue in the case of T.S.Senthil Kumar v. The Government of Tamil Nadu, rep. by its Secretary, Public Works Department, Fort St. George, Chennai-9 and others, reported in (2010) 3 MLJ 771 : 2010 SCC OnLine Mad 1347, wherein a direction was issued in relation to encroachment on tanks. The learned Government Pleader (i/c) admitted that they are following the said decision scrupulously.

5. It is pertinent to note that in paragraph 20 of the decision in T.S.Senthil Kumar (supra), it is clearly stated that Form-II 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. Thus, the decision in T.S.Senthil Kumar (supra) clearly states that Form-II notice has to be issued to the alleged encroacher before Form-III notice is issued. Admittedly, in the present case, Form-II notice has not been issued to the petitioner.

6. The learned counsel for the petitioner states that the petitioner has sent a reply to the notice dated 27.12.2018 by registered post on 31.12.2018, however, the said reply has not yet been considered.

7. The learned Government Pleader (i/c.) submitted that the notice dated 27.12.2018 issued to the petitioner under Form III shall be treated as a notice under Form II and the reply of the petitioner dated 31.12.2018 will be considered by the authority concerned in accordance with law before evicting the petitioner.

8. In view of the above, this writ petition is disposed of with directions that the reply of the petitioner dated 31.12.2018 will be considered by the authority concerned as reply to Form II notice and thereafter the authorities shall proceed in accordance with law before evicting the petitioner. No costs. Consequently, W.M.P.No.1724 and 1727 of 2019 are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The Secretary
State of Tamil Nadu
Public Works Department
Secretariat, Fort St. George
Chennai - 600 009.
2. Water Resource Department
Chennai Kosasthalaiyaru Sub Division
Public Works Department
Chepauk, Chennai - 600 005.
3. The Section Officer
Water Resource Department
Chembarambakkam Irrigation Section
Kundrathur

+1 cc to M/S.S.S.Swaminathan, Advocate, S.R.No.7200

+1 cc to the Government Pleader, S.R.No.6542

W.P.No.1549 of 2019

SPD(CO)

SSM(13/02/2019)