

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P.Nos.1599, 1601, 1603, 1613 and 1621 of 2019

Savithri .. Petitioner in
W.P.No.1599 of 2019

P.Mangammal .. Petitioner in
W.P.No.1601 of 2019

G.Mani .. Petitioner in
W.P.No.1603 of 2019

Rajendran .. Petitioner in
W.P.No.1613 of 2019

Poona Sundari .. Petitioner in
W.P.No.1621 of 2019

-vs-

The Assistant Engineer,
WRO/PWD,
Irrigation Department,
Katpadi - 632 006,
Vellore District.

.. Respondent in all WPs.

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records on the file of the respondent's Notice dated 24.12.2018 issued under Section 6(1) of Land Encroachment Act, 1905 and quash the same.

For Petitioners : Mr.K.V.Sanjeev Kumar

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

COMMON ORDER

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

The petitioners have preferred these writ petitions being aggrieved by the notice dated 24.12.2018 issued by the respondent under Form-III of the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007, with regard to the lands of the petitioners as under:

Writ Petition Number	Land particulars
W.P.No.1599 of 2019	Survey No.264 measuring an extent of 00037 square meter area in the part of lake squatter land of Water Resources System situated in Serkkadu Village, Katpadi Taluk, Vellore District.
W.P.No.1601 of 2019	Survey No.264 measuring an extent of 00047 square meter area in the part of lake squatter land of Water Resources System situated in Serkkadu Village, Katpadi Taluk, Vellore District.
W.P.No.1603 of 2019	Survey No.264 measuring an extent of 00156 square meter area in the part of lake squatter land of Water Resources System situated in Serkkadu Village, Katpadi Taluk, Vellore District.
W.P.No.1613 of 2019	Survey No.264 measuring an extent of 00027 square meter area in the part of lake squatter land of Water Resources System situated in Serkkadu Village, Katpadi Taluk, Vellore District.

Writ Petition Number	Land particulars
W.P.No.1621 of 2019	Survey No.264 measuring an extent of 00044 square meter area in the part of lake squatter land of Water Resources System situated in Serkkadu Village, Katpadi Taluk, Vellore District.

2. The learned counsel for the petitioners 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 petitioners under Form-II of the said Rules prior to the notice issued under Form-III. The learned Government Pleader (i/c) however, 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 was sufficient compliance as envisaged under the Act and it was not necessary to issue any personal notice to the petitioners or other encroachers, hence, no notice under Form-II was issued to the petitioners.

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 cases, Form-II notice has not been issued to the petitioners. Hence, the notice issued under Form-III, prior to the notice being issued under Form-II, cannot be allowed to stand. Therefore, the notices dated 24.12.2018 issued under Form-III to the petitioners are quashed. It would be open to the respondent to proceed hereafter in accordance with law.

6. The writ petitions are allowed in terms aforesaid. No costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bbr

To

The Assistant Engineer,
WRO/PWD,
Irrigation Department,
Katpadi - 632 006,Vellore District.

+1 cc to Mr.K.V.Sajeev Kumar, Advocate Sr.No.4862

+1 cc to The Government Pleader, SR.No.5344

सत्यमेव जयते

W.P.Nos.1599, 1601, 1603,
1613 and 1621 of 2019

NM(CO)
CSL/21.02.2019

WEB COPY