

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2019

CORAM

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAIWAMY

W.P.Nos.35925 & 35926 of 2007
and M.P.Nos.1 & 1 of 2007

A.Jonnes Catherine ... Petitioner in W.P.No.35925/2007

Komala Devi ... Petitioner in W.P.No.35926/2007

Vs.

1.The Junior Engineer,
Public Works Department,
Ni.Va.A. Irrigation Division,
Padapai - 601 301.

2.The District Collector,
Kancheepuram. ... Respondents in both W.Ps

Petitions under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records of the 1st respondent in proceedings Nil dated 22.11.2007 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioners : Mr.V.Raghavachari
(in both W.Ps)

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

C O M M O N O R D E R

THE HON'BLE CHIEF JUSTICE
AND
M.DURAIWAMY, J.

Since the issue involved in both these Writ Petitions are identical, the Writ Petitions are disposed of by this common order.

2.The petitioners have preferred these Writ Petitions being aggrieved by the notice dated 22.11.2007 issued by the 1st respondent under Form-III of the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007.

3.The learned counsel for the petitioners contended that the Tamil Nadu Protection of Tanks 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, however, the petitioners were not issued with Form - II notice prior to the issuance of Form - III notice.

4.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 being 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 Tanks and Eviction of Encroachment Rules 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 Tanks and Eviction of Encroachment Rules.

5.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.

6.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.

7.The learned Government Pleader (i/c) submitted that the notice dated 22.11.2007 issued to the petitioners under Form - III shall be treated as a notice under Form - II and the petitioners can send a reply to the said notice, which will be considered by the authority concerned in accordance with law before evicting the petitioners.

8.The learned counsel for the petitioners submitted that they will send reply to the said notice dated 22.11.2007 within two weeks from the date of receipt of a copy of this order. On receipt of the said reply, the authority concerned shall consider the same and thereafter proceed in accordance with law.

9.With these observations, the Writ Petitions are disposed of in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Junior Engineer,
Public Works Department,
Ni.Va.A. Irrigation Division,
Padapai - 601 301.

2.The District Collector,
Kancheepuram.

+1cc to Mr.V.Raghavachari, Advocate SR.No.45684

+1cc to Government Pleader SR.No.46166

W.P.Nos.35925 & 35926 of 2007

and M.P.Nos.1 & 1 of 2007

GJ II(CO)

GMV (11/07/2019)

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