

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM

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

W.P.No.7693 of 2019

Sivalingam

.. Petitioner

Vs

The Assistant Engineer
Public Works Department
Water Resources
Irrigation Section
Guidiyatham, Vellore District.

.. Respondent

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 order of the respondent dated 22.02.2019 Form 3 Rule 6(1) and quash the same and further direct the respondent forbearing or evicting or dispossessing from his land at comprised in Survey No.294 situated at Modikuppam Village, Gudiyatham Taluk, Vellore District.

For Petitioner : Mr.S.Arivazhagan

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

ORDER

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

Heard Mr.S.Arivazhagan, learned counsel for the petitioner and Mr.V.Jayaprakash Narayanan, learned Government Pleader (i/c.) for the respondent.

2. The petitioner has preferred this writ petition being aggrieved by the order dated 22.2.2019 issued by the respondent under Form-III of the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007.

3. 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.

4. 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 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 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.

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 counsel for the petitioner states that the petitioner has sent a reply to the order dated 22.2.2019 on 6.3.2019, however, the said reply has not yet been considered.

8. The learned Government Pleader (i/c.) submitted that the order dated 22.2.2019 issued to the petitioner under Form III shall be treated as a notice under Form II and the reply of the petitioner dated 6.3.2019 will be considered by the authority concerned in accordance with law before evicting the petitioner.

9. In view of the above, this writ petition is disposed of with directions that the reply of the petitioner dated 6.3.2019 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.Nos.8328 and 8329 of 2019 are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

The Assistant Engineer
Public Works Department
Water Resources
Irrigation Section
Guidyatham, Vellore District.

+lcc to Government Pleader sr.no.27217

+lcc to Mr.S.Arivazhagan, Advocate sr.no.26963

W.P.No.7693 of 2019

sj(co)

nr 09/04/2019