

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.22829 of 2018 and

W.M.P.No.26681 of 2018

Sirajudeen

.. Petitioner

v.

1 The Government of Tamil Nadu
Rep. by its Secretary
Public works Department
Forts St. George, Chennai - 600 009

2 The District Collector
Thiruvallur District

3 The Section Officer
Public Works Department
(Water Resource Organization)
Redhills Irrigation Wing
Redhills, Chennai - 600 052

4 The Tahsildar
Avadi Taluk, Tiruvallur District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent culminating in Notice No. 42/S.B/ Encroachment/2018, dated 27.07.2018 and quash the same and further direct the Section Officer, Public Works Department (Water Resources Organization), Redhills - Irrigation Wing, Redhills, Chennai - 600052 not to take any coercive steps from evicting the petitioner from the Survey No. 235, Gangai Lake, Avadi Taluk , Chennai - 600052.

For petitioner : Mr.K.Balakrishnan

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.K.Balakrishnan, learned counsel appearing for the petitioner and Mr.V.Jayaprakash Narayanan, learned Government Pleader (i/c) appearing for the respondents.

2. According to the petitioner, he is in possession of the property bearing Survey No.235, at R.K.J. Vallivelan Nagar, Pothur Lake, Avadi Taluk, Chennai - 600052. He had constructed a residential house on the said land. He has electricity and gas connection and is in possession of Aadhar and ration card.

3. The grievance of the petitioner is that the 3rd respondent on 27.07.2018 had issued a Notice to him stating that his house was constructed on 'Water Body' and it is an encroachment and directed him to remove the same within 21 days. He was further informed that if he failed to remove the encroachment by the time specified, the authorities will remove the same.

4. The prime contention of the learned counsel for the petitioner is that the impugned notice dated 27.07.2018 issued by the 3rd respondent is an illegal one because of the fact that the respondent No.3 is a Section Officer of PWD and the said Officer is not competent to issue the impugned notice in view of section 6(2) of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act 2007 and Rule 2(d) of the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules. He pointed out that Rule 6 and 7 of the said Act envisages notice being issued by an officer and Rule 2(d) defines, who is an officer. He submitted that if Rule 2(d) is perused, it would be clear that a Section Officer is not a competent person to issue the order. For ready reference, Rule 2(d) is reproduced below: -

"2(d) 'officer' means the Assistant Engineer or Junior Engineer or Overseer of the Water Resources Organisation of Public Works Department in charge of the tanks lying in his jurisdiction for the purpose of enforcing the provisions of the Act and the Rules."

The learned counsel for the petitioner thus submitted that notice could only have been issued by an Assistant Engineer or Junior Engineer or Overseer of the Water Resources Organisation of Public Works Department whereas, in the present case, the notice was issued by a Section Officer.

5. The other contention projected on the side of the petitioner is that without issuing a prior notice, the 3rd respondent had come to the conclusion that the petitioner had encroached upon the 'Water body' and directed him to remove the same, hence he has filed the Writ Petition seeking to call for the records pertaining to the proceedings in Notice No.42/S.B./Encroachment/2018, dated 27.07.2018 with prayer to quash the same on the ground that it is illegal.

6. Per contra, it is the submission of the learned Government Pleader (i/c) for the respondents that the petitioner had encroached the Pothur Periya Eri in Survey No.235, at R.K.J. Vallivelan Nagar, Pothur Lake, Avadi Taluk, Chennai - 600052, which belongs to the Public Works Department and had constructed a house and therefore, he was required to remove the encroachment within 21 days from 27.07.2018. The learned Government Pleader (i/c) has tendered letter of Executive Engineer of Water Resources Department, PWD, dated 28.02.2019 wherein it is stated that Section Officer is a general term which is used for the post of either Assistant Engineer or Junior Engineer or Overseer. The present notice is issued by the Section Officer. In view of these facts, it has to be held that Section Officer was competent to issue the notice and it cannot be stated by any stretch of imagination that he is not a competent officer to issue the impugned order.

7. As far as the contention of the learned counsel for the petitioner that the Section Officer is not the competent officer to issue the notice is concerned, this Court in W.P.No.29699 of 2018, had an occasion to consider the very same contention. The said Writ Petition was decided by order dated 12.11.2018 wherein, it was held that the Section Officer of the PWD, who issued impugned notice is very much competent to issue the said notice and also considering the fact that the Section Officer of PWD, Red Hills Irrigation Division, Chennai - 52 is a Competent Officer, as per Tamilnadu Protection of Tanks and Eviction of Encroachments Act, 2007, this Court holds that the Section Officer of the PWD, who issued impugned notice is very much competent to issue the notice.

8. With reference to the contention that principles of natural justice, were not followed, we may refer to the decision of the Division Bench of this Court in T.S.Senthil Kumar V. Government of Tamilnadu rep. By its Secretary, Public Works Department, Chennai-9 and Others reported in [2010] 3 MLJ 771 wherein in para 20 it is observed as under:

"20. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra Mysore V. J.V.Bhat - 1975 (2) S.C.R. 407 and (ii) The Scheduled Caste & Weaker Section Welfare Association V. State of Karnataka [supra], where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions:-

(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, 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.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.

9. Clause (i) of the above decision makes it clear that before issuing notice in Form-III, Form-II notice has to be issued to the encroacher.

10. We have already observed that the Section Officer, Public Works Department, Red Hills [Irrigation Section] is quite competent to issue impugned notice dated 27.07.2018 in favour of the petitioner and also this Court, taking note of yet another

important fact that the petitioner had not been afforded an opportunity of submitting his reply/ objection / representation to the impugned notice Form III Rule 6[1] of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, this Court without traversing upon the merits of the matter and also not expressing any opinion, directs the petitioner to submit his representation or to explain his possession to substantiate his case within a period of 10 days from the date of receipt of copy of this order. It is open to the petitioner to produce documentary evidence in this regard before the Officer, who issued impugned notice dated 27.07.2018. If the petitioner requires any personal hearing or to be heard in-person, then, the 3rd respondent, shall provide an opportunity to the petitioner and the petitioner is to avail the same with due diligence. Thereafter, the 3rd respondent is directed to pass a reasoned speaking order within a period of four weeks, uninfluenced by any of the observations made by this Court in the present Writ Petition. It cannot be gainsaid that the 3rd respondent shall pass necessary orders in question within the time adumbrated by this Court. Till such time, the petitioner's possession / enjoyment in the subject land shall not be displaced / disturbed.

11. Before parting with the case, this Court makes it lucidly clear that if the 3rd respondent after providing opportunity to the petitioner, comes to a definite conclusion in writing that the petitioner is an encroacher, then, he shall be removed from the subject property and it is open to the 3rd respondent to take such lawful action in this regard. If any resistance is offered by the petitioner, then, it is open to the 3rd respondent to seek the aid of the Police and to remove the encroachment in the subject land.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Secretary
Public works Department
Forts St. George
Chennai - 600 009

2 The District Collector
Thiruvallur District

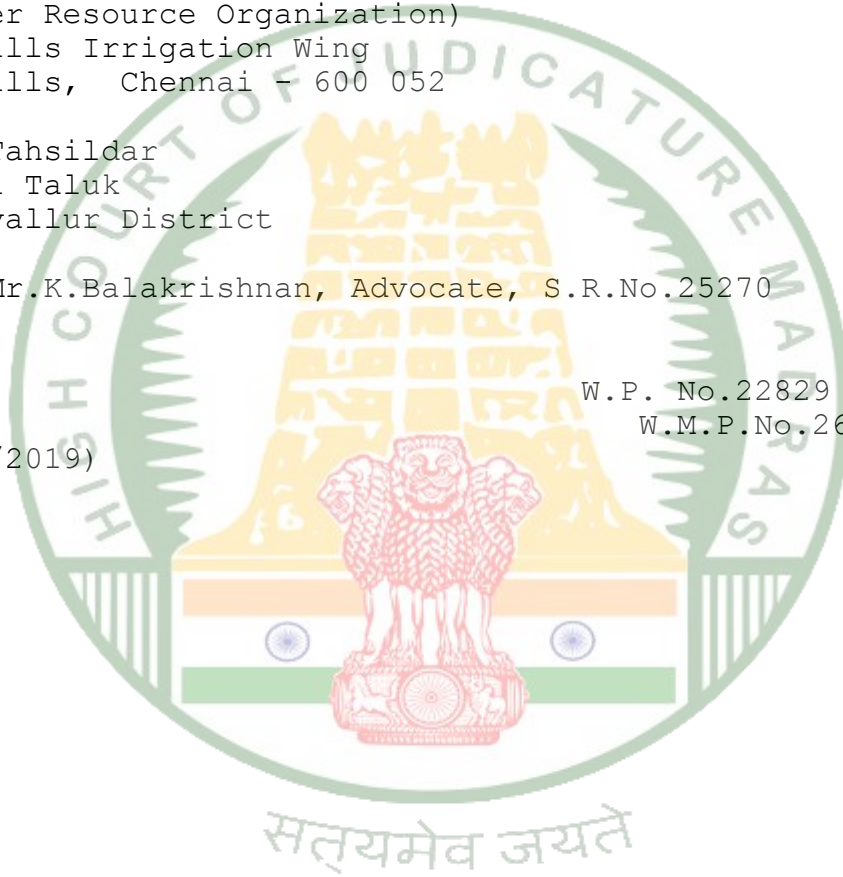
3 The Section Officer
Public Works Department
(Water Resource Organization)
Redhills Irrigation Wing
Redhills, Chennai - 600 052

4 The Tahsildar
Avadi Taluk
Tiruvallur District

+1 cc to Mr.K.Balakrishnan, Advocate, S.R.No.25270

SSM(16/04/2019)

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