

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

W.P.No.32107 of 2019
and WMP. Nos.32365, 32366 & 32367 of 2019

1.K.Veerapathiran
2.C.Ganesan
3.E.Palani
4.K.Sulochana
5.A.Kasthuri
6.E.Ponnammal
7.V.Udhayausha
8.M.Mariya Selvaraj
9.R.Kalaivani
10.Durai Pandi
11.Selvaraj

... Petitioners

Vs

1.The Public Works Department
Rep. By its Asst. Engineer
Irrigation Division
Water Resources Organisation
Redhills, Chennai - 600 052.

2.The Section Officer
PWD - Irrigation Division
Water Resources Organisation
Redhills, Chennai - 600 052.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned notice in 329/S.O/2019 dated 23.10.2019 issued by the second respondent to the petitioners and quash the same.

For Petitioners : Mr.R.Neelakandan

For Respondents : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The first petitioner claims to have purchased the premises bearing Door No.107/1 in Survey No. 1471/1C4 at Lakshmipuram, Red Hills Road, admeasuring an extent of 1500 sq.ft. through an unregistered sale deed dated 11.12.1997. The third petitioner claims to have purchased a vacant land admeasuring to an extent of 1800 sq.ft. in the same survey number at Saidapet Taluk Madhavaram Madhura Lakshmipuram Village, now Thiruvallur District, through an unregistered sale deed dated Nil-09-1999. The fourth petitioner claims to be the owner of 300 sq.ft. of vacant site in the same survey number through a registered settlement deed dated 11.01.1996, vide document No.181/1996, registered on the file of Sub Registrar, Sembium. The seventh petitioner claims to be a owner of 180 sq.ft. vacant house site in the same survey number through a registered settlement deed dated 13.10.1995, vide document No.5990/1995, registered on the file of Sub Registrar, Sembium. The eight petitioner claims to be a owner of 1800 sq.ft. of vacant site in the same survey number at New Lakshmipuram Grama Natham Poromboke (Village site), through a registered settlement deed 30.6.1992 bearing No.3415/1992 on the file of Sub-Registrar, Sembium. And, as to the rest of the petitioners, except producing the receipts evidencing statutory levies, they did not file any documents.

2. Mr.R.Neelakandan, learned counsel appearing for the petitioners would submit that the petitioners, by virtue of their purchase/settlement, they are in possession of house sites and by laying superstructures in question, derived certain rights, and the said superstructures are also subject to statutory levies. He would further submit that in response to the earlier notices dated 22.08.2019, issued by the second respondent, the petitioners have submitted their representations dated 29.08.2019, despite which, without conducting any proper enquiry, impugned notices came to be issued by the second respondent in Form-III, under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed therein. It is the further submission of the learned counsel that the petitioners belong to economically backward and weaker section of the Society, and hence, prays for quashment of the impugned notices dated 23.10.2019.

3. Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader accepts notice on behalf of the respondents and would submit, admittedly notices have been issued as to the unauthorised occupation/encroachment on the part of the petitioners in respect of Survey No.1420/1 of Madhavaram Village

and Taluk, Chennai District, but whereas the documents produced by the petitioners would show that they claim to be in possession of Survey No. 1471/1C4 and would further add that, action has been taken against the encroachers, strictly in accordance with law, under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, and prays for dismissal of this petition.

4. This Court has considered the rival submissions and perused the materials placed before it.

5. A perusal of the contents of the documents would prima facie disclose the the title of the respective petitioners have not been traced and it appears that the possessory rights have been conveyed to the petitioners either through unregistered sale deed / registered settlement deeds.

6. The Division Bench of this Court in it's judgment W.P.No.20021 of 2008, dated 10.02.2010 [T.S.Senthil Kumar Vs Government of Tamil Nadu] reported in [2010 3 MLJ 771], had dealt with the constitutional validity of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and disposed of the writ petition, issuing the following directions :

" 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 in Mysore vs. J.V.Bhat (supra) and (ii) 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.

7. In the considered opinion of this Court, the petitioners are at liberty to submit their representations/responses to the impugned notices dated 23.10.2019, by enclosing relevant and authenticated legally acceptable documents, to the second respondent, within a period of four weeks from the date of receipt of a copy of this order. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, either in their representations dated 29.08.2019 as well in this writ petition, directs the second respondent to scrupulously adhere and follow the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, and Rules framed therein, and complete their process as expeditiously as possible, in accordance with law, preferably within a period of four weeks, upon receipt of the representations submitted by the petitioners, and till such time, the alleged possession and enjoyment of the petitioners, in respect of the lands and superstructures in question, is protected. It is also made clear that till the official respondents complete the said exercise, the petitioners shall not create any third party rights in respect of their lands and superstructures in question.

8. With the above directions, this writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1.The Assistant Engineer
Public Works Department
Irrigation Division
Water Resources Organisation
Redhills, Chennai - 600 052.

2.The Section Officer
PWD - Irrigation Division
Water Resources Organisation
Redhills, Chennai - 600 052.

+1cc to Mr.R.Neelakandan, Advocate Sr.94727

+1cc to the Government Pleader Srl.95102

W.P.No.32107 of 2019

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srg 31/01/2020

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