

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.11.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.32911/2019 & WMP.Nos.33344 & 33345/2019

1.Mohana
2.Rajakumari
3.Ravi
4.Manickasamy
5.Thangaraj .. Petitioners

Vs.

1.The District Collector
Cuddalore District,
Cuddalore 607001.
2.The Tahsildar
Cuddalore, Cuddalore District.
3.The Assistant Engineer
[Water Resource Organisation]
Public Works Department
Irrigation Division, Cuddalore. : Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the record of the 3rd respondent's impugned notice Form III Rule 6[1] dated 02.11.2019 and quash the same.

For Petitioners : Mr.K.Gandhi Kumar
For Respondents : Mr.Akhil Akbar Ali, GA

O R D E R

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

(1)By consent, the writ petition is taken up for final disposal. Mr.Akhil Akbar Ali, learned Government Advocate accepts notice on behalf of respondents.

- (2) The deponent of the affidavit is the first petitioner and in the affidavit filed in support of this writ petition, she would state that she along with other petitioners are residing at Kuthusi Gurusamy Salai, Imperial Road, Cuddalore New Town and District, for more than 25 years by putting up a RCC Structure / thatched house in Ward No.1, Block No.10, Nagaralavu TS.No.663, in the said road and it is classified as 'Sarkar Poramboke land' as per the Extract of the Town Survey Land Register. She would further state that the properties of the petitioners have also been subjected to statutory levies and they have also been issued with Aadhar Cards and they also belong to economically backward and also hailing from lowest strata of the society.
- (3) The learned counsel for the petitioners would submit that all of a sudden, the petitioners were issued with Form III Notice dated 02.11.2019, calling upon them to remove the encroachment within a period of 21 days from the date of receipt of a copy of the said Notice and in response to the same, the 1st petitioner has also submitted a representation dated 18.11.2019 and took a stand that she is residing in the said premises for more than 36 years and the land in question belongs to Railway and she has been issued with Ration Card, Aadhar Card etc., and therefore, prays for dropping of the proceedings. It is further contended that the provisions under which the impugned Notices were issued, have also not been indicated and therefore, the petitioners are prevented from making effective and proper representation and in the light of the fact that they are residing in their respective premises/properties in question for over three decades, prays for quashment of the impugned notices dated 02.11.2019.
- (4) Per contra, Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents would submit that an encroacher, similarly placed, prayed for issuance of patta in respect of the portion of the land situated in the very same Survey Number and it was rejected and a challenge has been made to the said order by filing a writ petition which also ended in dismissal and the writ appeal in WA.No.3399/2019 is pending without any interim orders and would further add that due process of law is strictly followed and hence, prays for dismissal of this writ petition.
- (5) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (6) A perusal of the materials placed before this Court would prima facie indicate that the petitioners are in occupation of the lands which do not belong to them and claimed to have put up superstructures / thatched sheds and those structures were

also subject to statutory levies and it is also the claim of the petitioners that the properties under their possession are also subject to levy of property tax etc., and they have been given with electricity connection, Ration Cards, Aadhar Cards etc.

(7)A Full Bench of this Court in the decision reported in 2005 [2] CTC 741 [Ramaraju Vs. The State of Tamil Nadu rep. By its Secretary to Government, Revenue Department, Fort St George, Secretariat, Chennai 600 009 and others], has considered the issue relating to removal of encroachment from roads and public streets and in paragraph No.38[3] of the said decision, has observed that ''payment of Property Tax, provisions of Water connection or electricity themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.''

(8)A Division Bench of this Court in the decision reported in 2010 [3] MLJ 771 [T.S.Senthilkumar Vs. The State of Tamil Nadu rep. By its Secretary to Government, Public Works Department, Fort St George, Secretariat, Chennai 600 009 and others], has considered the vires of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and disposed of the writ petition, with the following directions:-

''20The 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,

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 Organisation, 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 encroachments."

(9) This Court, in the light of the above facts and circumstances and the above cited decisions, permits the petitioners herein to submit individual representations by enclosing relevant and authenticated documents, as to their claim to the 3rd respondent within a period of six weeks from the date of receipt of a copy of this order, and the 3rd respondent, upon receipt of the same, is directed to consider the said representations individually, on merits and in accordance with law and pass appropriate orders within a further period of six weeks thereafter and communicate the decision taken, to the petitioners herein and till such time, shall defer the decision as to the eviction of the petitioners from the land and superstructures in question.

(10) It is also made clear that the petitioners, till the disposal of the representations by the 3rd respondent, shall not create any third party rights in respect of the land and superstructures in question.

(11) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

AP

To

1. The District Collector
Cuddalore District,
Cuddalore 607001.
2. The Tahsildar
Cuddalore, Cuddalore District.
3. The Assistant Engineer
[Water Resource Organisation]
Public Works Department
Irrigation Division, Cuddalore.

+lcc to Mr.K.Gandhi Kumar, Advocate, SR.No.97707.
+lcc to Government Pleader, SR.No.98054.

SSD (CO)
CSR: 07/01/2020

WP.No.32911/2019

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