



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD) No.19552 of 2019

and

W.M.P. (MD) Nos.16005 and 16006 of 2019

S.Venkatachalam

.. Petitioner

Vs.

1.The District Collector,
Karur District, Karur.

2.The Assistant Engineer,
Public Works Department,
Water Resources Department,
River Conservation Section,
Karur.

3.The Tahsildar,
Manmangalam Taluk,
Manmangalam,
Karur.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the proceedings of the second respondent in Form III Notice dated 27.11.2018 and quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.Vallinayagam,
Senior counsel for Ms.Kavi Ganesan

For Respondents : Mr.M.Murugan
Government Advocate

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.Vallinayagam, learned senior counsel for the petitioner and Mr.M.Murugan, learned Government Advocate for the respondents.



2. The petitioner by way of this writ petition seeks to quash the proceedings of the second respondent, dated 27.11.2018, which is a notice in Form III under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Rules, 1978 (hereinafter referred to as 'the Rules').

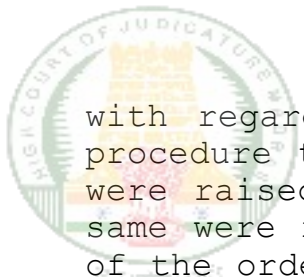
3. Earlier, the petitioner had approached this Court and filed W.P.(MD)No.18382 of 2018. Along with the said writ petition, four other writ petitions were also clubbed, who are also similarly placed persons as that of the petitioner, who had been issued with Form III notice under the provisions of the Rules. Several contentions were raised by the petitioners in the said writ petitions and in particular, about the manner in which the provisions of the Rules have to be enforced. In this regard, the petitioners had referred to Sections 4, 5 and 6 of the Rules and submitted that the procedure has not been followed. The writ Court after hearing the parties, disposed of writ petitions by an order, dated 24.08.2018. The contention with regard to non-issuance of Form II notice was held in favour of the petitioners and accordingly, the writ petitions were allowed and Form III notices, dated 14.02.2018 were set aside and the respondents were directed to publish Form II notice indicating the nature and extent of encroachment. The learned writ Court had also given liberty to the petitioners to submit their objections. The petitioners had submitted their objections and Form III notice has been issued, which is impugned in this writ petition.

4. The learned senior counsel appearing for the petitioner strenuously contended that as per Section 3 of the Act, which in terms of the provisions of the Tamil Nadu Survey and Boundaries Act, notice has to be issued by the Surveyor, who is the competent authority under the said Act and thereafter, the procedure under Section 4, 5 and 6 of the Rule has to be followed. Further by referring to Section 3 of the Rule, it is submitted that register of the action taken has not been prepared and this procedure has been violated by the respondent. In this circumstances, Form III notice is liable to be set aside.

5. Further by referring to the schedule to the sale deed executed in favour of the petitioner, dated 18.03.2008, registered document No.311 of 2008, it is submitted that the property of the petitioner has been clearly set out in the schedule to the sale deed and the property is situated in the North of the Channel and now the respondent alleges that the petitioner has encroached the property delineating as CID in FMB sketch, which is on the South of the channel and therefore, there is a gross error committed by the respondent and the entire proceedings are vitiated.

6. The learned Government Advocate appearing for the State has submitted a set of papers enclosing all the relevant documents

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with regard to the manner in which the survey was conducted, the procedure to be followed under Section 3, 4 etc.. Some objections were raised by the petitioner in the earlier writ petition and the same were noted by the Hon'ble Division Bench in Paragraph 4 and 7 of the order dated 24.08.2018. However, the Hon'ble Division Bench did not quash the proceedings on any of those grounds, but interfered with Form III notice, because Form II notice was not duly published. Therefore, the petitioner are proclaimed and estopped from raising such plea and all that can conduct in this writ petition is validity of the notice under Form III.

7. Be that as it may, the record placed by the learned Government Advocate in the form of typed set of papers clearly shows that along with Form II notice, sketch was enclosed and the petitioner has also submitted his objection. The officials from the respondent department is present before this Court and submit that in the sketch, the encroached area by the petitioner is A29 CID and list has been clearly made. Further, photographs show that from the petitioner house property, the channel is flowing and there has been an attempt to cover up the channel area also.

8. Considering all these facts, we find that there is no procedural error in the identification of the property and as such the entire proceedings have been done in accordance with the provisions of the Rules. Thus, for the above reason, we find no ground to interfere with the order in the writ petition. Accordingly, this writ appeal fails and dismissed.

9. After dictating the order, the learned Senior counsel appearing for the petitioner submitted that reasonable time may be granted to the petitioner to remove the encroachment by himself at his costs. Considering the said representation, the petitioner is granted 15 days time from the date of receipt of a copy of this order, to remove the encroached area, which has been indicated by the respondent. Failing which, the respondent shall take action for removing the encroachment departmentally. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Karur District, Karur.

2.The Assistant Engineer,
Public Works Department,
Water Resources Department,
River Conservation Section,
Karur.

3.The Tahsildar,
Manmangalam Taluk,
Manmangalam,
Karur.

+1CC TO M/S.KAVI GANESAN, Advocate Sr. No. 86303

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 86570

ORDER MADE IN

W.P (MD) No.19552 of 2019

12.09.2019

DKS (CO)

TR(23.10.2019) 4P 6C