



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.25043 of 2018

and W.M.P. (MD) Nos.22705 and 22706 of 2018

1.V.Sekar
2.M.Dhandapani
3.M.Velu
4.A.Karuppaiah
5.S.Jeya paul
6.T.Savithri
7.M.Moorthy
8.K.Rajangam
9.M.Pandi
10.T.Pandiyammal
11.S.Ramesh
12.P.Sekar
13.K.Ramu
14.R.Chinnasamy
15.R.Murugesan

... Petitioners

Vs.

The Assistant Engineer,
Public Works Department/Water Resources Organisation,
Irrigation Section No.II,
Periyar Vaigai Basin,
Sub Division No.1,
Madurai - 02.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pursuant to the impugned Eviction order of the respondent dated 28.11.2018 as against the writ petitioners and quash the same.

For Petitioner : Mrs.Porkodi Karnan

For Respondent : Mr.A.K.Baskarapandian
Special Government Pleader

For Madurai Corporation : Mr.J.S.Murali



O R D E R

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The petitioners challenging the impugned notices issued under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder, came forward to file this Writ Petition.

2.The learned counsel appearing for the petitioners by drawing the attention of this Court to the affidavit filed in support of the petition as well as the typed set of documents would submit that the petitioners are poor coolie workers and they are residing in the area for more than 50 years and the respondent has issued the impugned notices on the pretext of the lands with superstructures are classified as water body and sought to dispossess them without resorting to due process of law and therefore, the petitioners are constrained to file this Writ Petition. He would further submit that the said notices are bereft of any particulars and if an opportunity is given, they would produce supporting documents as to the legality of his possession and enjoyment with a further direction to the officials to consider and pass orders as expeditiously as possible and till such time his possession may be protected.

3.Per contra, Mr.A.K.Baskara Pandian, learned Special Government Pleader would submit that even as per their own averments, except the first petitioner viz., V.Sekar, who was issued with work order by proceedings of the Commissioner, Madurai Corporation dated 07.02.2009 and has also put up construction strictly in accordance with law, it appears to be a clear case of encroachment and action is taken strictly in accordance with law and

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

5.The Constitutional validity/vires of the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 came up for consideration before this Court in the decision reported in **2010 Writ L.R. 113 [T.S. Senthil Kumar v. The Government of Tamil Nadu & others]** and this Court in paragraph 20 of its order held as follows:

"20.In the result, we dispose of the writ petition in the same lines adopting the same met hod which the Supreme Court done in the two cases cited supra **Mysore vs. J.V. Bhat - 1975 (2) S.C.R. 407 and (ii)The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka, - 1991 (1) U.J. (S.C.) 628 = AIR 1991 SC 1117 = 1991 (2) SCC 604**, 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."

6. In the light of the apprehension made by the petitioners, this Court without going into the merits of the claim made by the petitioners in this writ petition, treats the impugned notices as Show Cause Notices, for which the petitioners are permitted to submit their detailed individual responses with supporting documents of genuineness and authenticity to the respondent within a period of three weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the same on merits and in accordance with law and if required, give the petitioners an opportunity of personal hearing and thereafter, pass appropriate orders within a period of six weeks thereafter and communicate the decision taken to the petitioners and till such time the possession and enjoyment of the petitioners in respect of the lands and the superstructures in question shall not be disturbed. It is made clear that till a decision is taken by the respondent on the responses to be submitted by the respective petitioners, they shall not create any third party right in respect of the lands in question as well as the superstructures put up therein and cooperate with the first respondent for expeditious conclusion of the enquiry. It is also open to the jurisdictional Assistant Commissioner of Madurai Corporation to inspect the premises of the petitioners after putting them on notice to find out whether the building has been constructed strictly in accordance with law or not and if any deviation is noted, he is entitled to proceed with the same in accordance with law.

7. This Writ Petition is disposed of accordingly. Consequently, connected Writ Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)



sj

To

1.The Assistant Engineer,
P.W.D/W.R.O.,
Irrigation Section - II,
Periyar Vaigai Basin Sub Division No.1,
Madurai - 2.

2.The Commissioner,
Madurai City Corporation,
Madurai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-81102[F] dated 09/08/2019)

+1 CC to M/s.R.MURALI, Advocate (SR-81289[F] dated 13/08/2019)

W.P (MD) No.25043 of 2018
09.08.2019

KK/SAR/30.08.2019/5P-5C/