



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.25039 of 2018

and W.M.P. (MD) Nos.22700 and 22701 of 2018

- 1.G.Petchiammal
- 2.R.Vijaya
- 3.K.Duraipandi
- 4.S.Rajeshwari
- 5.M.Thamizharasi
- 6.M.Velu
- 7.K.Selvi
- 8.R.Duraiaraj
- 9.R.Ettaiya
- 10.A.Seethai
- 11.P.Selviammal
- 12.S.Papathiammal
- 13.T.Saranya
- 14.J.Sabari
- 15.A.Mohaboob Batcha
- 16.R.Muthammal
- 17.P.Hariharan
- 18.R.Muthu
- 19.K.Vijayan
- 20.K.Muniyandi
- 21.Mayilammal
- 22.L.Pandi
- 23.V.Ramar
- 24.S.Ganaprakasham
- 25.P.Kannan
- 26.V.Pandi
- 27.Kannan

... Petitioners

Vs.

- 1.The Assistant Engineer,
Public Works Department/Water Resources Organisation,
Irrigation Section - 2,
Periyar Vaigai Basin,
Sub Division No.1,
Madurai - 2.
- 2.The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Madurai Division,
Madurai.

... Respondents



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 1st respondent dated 28.11.2018 as against the writ petitioners and quash the same.

For Petitioner : Mr.Porkodi karnan for
M/s.Polax legal Solutions
For 1st Respondent : Mr.A.K.Baskarapandian
Special Government Pleader
For 2nd Respondent : Mr.P.Mahandran
Standing Counsel for TNSCB
For Madurai Corporation : Mr.J.S.Murali

O R D E R

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

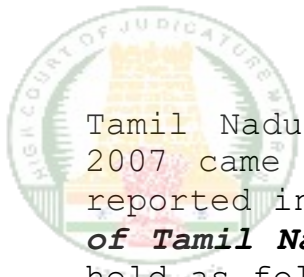
The petitioners claim to be the allottees of the plots in R.S.No.23/24 of B.B. Kulam, Madurai North Taluk, Madurai District as per various proceedings of the second respondent and apprehending that imminent eviction and dispossession in pursuant to the impugned notice of the second respondent under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder, came forward to file this Writ Petition.

2.Mr.P.Mahendran, the learned Standing Counsel appearing for the second respondent would submit that in real and technical sense the lands in which the allotment is said to have been made by the second respondent have not been handed over to them, however, the petitioners are in possession and enjoyment of the respective lands allotted to them to enjoy as is where is conditions.

3.When this Court after going through the materials placed before it has put a query to the learned counsel appearing for the petitioners as to whether any approval or planning permission has been obtained from the local body viz., then the Madurai Municipality or now the City Municipal Corporation before putting up the construction, the learned counsel appearing for the petitioners seek time to get instruction.

4.There is no specific averment in the affidavit filed in support of the writ petition as to whether the respective petitioners after obtaining necessary planning permissions have put up the superstructures and in the absence of such averments, it can only be considered that the superstructures are without any authorization or planning permission.

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 method 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 above facts and circumstances of the case, 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 first 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 first 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 first respondent on the response to be submitted by the respective petitioner, 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. In the absence of necessary materials as to the obtaining of planning permission and putting up of superstructure in accordance with law, the Commissioner, Madurai City Municipal Corporation is directed to disconnect the drainage connection granted to the respective premises within a period of



four weeks from the date of receipt of a copy of this order.

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

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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 Executive Engineer,
Tamil Nadu Slum Clearance Board,
Madurai Division,
Madurai.

3.The Commissioner,
Madurai City Corporation,
Madurai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-81101[F] dated 09/08/2019)

+1 CC to M/s.R.MURALI, Advocate (SR-81290[F] dated 13/08/2019)

+1 CC to M/s.P. MAHENDRAN, Advocate (SR-81455[F] dated 13/08/2019)

sj

W.P (MD) No.25039 of 2018

09.08.2019

KK/SAR/30.08.2019/5P-7C/