



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.24642 of 2018
and W.M.P. (MD) No.22354 of 2018

M.Gurusamy

... Petitioner

Vs.

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

... 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 relating with the Form III notice, for removal of encroachment, dated Nil, issued to the petitioner on 05.12.2018, by the respondent, relating with the alleged encroachment to an extent of 2 Cents by petitioners in Bibikulam Tank and quash the same as it is arbitrary and illegal.

For Petitioner : Mr.R.Suriyanarayanan

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

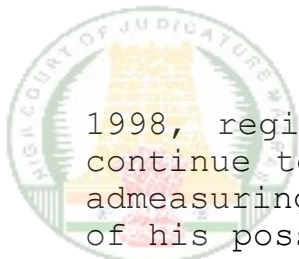
For Madurai Corporation : Mr.J.S.Murali

O R D E R

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

The petitioner challenging the impugned notice 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 petitioner would submit that the title in respect of the property has been passed as early as on 25.07.1959 in the form of a sale deed in favour of Ayyan Karuppan, who in turn under registered sale deed dated 01.06.1988, sold the same in favour of one Muniasamy, who is the father of the petitioner, and who in turn executed a registered gift deed dated 19.09.1988 in favour of the petitioner under document No.2676 of



1998, registered on the file of Sub Registrar, Chockikulam and he continue to remain in possession and enjoyment of the said property admeasuring an extent of 1260 Square feet. The petitioner in support of his possession and enjoyment has produced property tax assessment pertains to the property.

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3.The learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned notice and would submit that the said notice is bereft of any particulars and if an opportunity is given, he 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.

4.Per contra, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondent would submit that the land in which the petitioner claims to be in possession and enjoyment is classified as water body and therefore, action has been taken strictly in accordance with law and prays for dismissal of the writ petition.

5.This Court considered the rival submissions and also perused the materials placed before it.

6.In paragraph 4 of the affidavit filed in support of the Writ Petition, the petitioner has stated that after purchase of the house site, he has built up a house therein after obtaining building permission and plan approval from Madurai Corporation. Hence, the jurisdictional Assistant Commissioner of Madurai Corporation, shall cause inspection of the premises of the petitioner after putting him 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.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."

8. Insofar as the impugned notice is concerned, in the light of the judgment of this Court reported in **2010 Writ L.R. 113** (cited supra), this Court treats the impugned notice as a Show Cause Notice, for which the petitioner is permitted to submit his detailed response with supporting documents of genuineness and authenticity to the sole respondent within a period of two 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 petitioner an opportunity of personal hearing and thereafter, pass appropriate orders within a period of six weeks thereafter and communicate the decision taken to the petitioner and till such time the possession and enjoyment of the petitioner in respect of the land and the superstructure in question shall not be disturbed. It is made clear that till a decision is taken by the respondent on the response to be submitted by the petitioner, he shall not create any third party right in respect of the land in question as well as the superstructure put up therein and cooperate with the respondent for expeditious conclusion of the enquiry.

8. This Writ Petition is disposed of accordingly. Consequently, connected Writ Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

// 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.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Commissioner,
Madurai Corporation,
Madurai.

+1 CC to M/s.R.SURIYA NARAYANAN, Advocate (SR-81124[F] dated
09/08/2019)

+1 CC to M/s.SPL GP (SR-81806[F] dated 14/08/2019)

W.P (MD) No.24642 of 2018
09.08.2019

KK/SAR/29.08.2019/5P-5C/