



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P(MD)No.25949 of 2019

and

W.M.P. (MD)No.22477 of 2019

Charles

... Petitioner

Vs.

1.The Assistant Engineer(Water Resource Department),
Irrigation Section,
Public Works Department,
Nagercoil, Kanyakumari District.

2.The Tahsildar,
Agastheeswaram Taluk,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned Eviction Notice along with Form-III Notice in க. எண்.கோ.12/757A/2019, dated 13.11.2019 issued by the first respondent and quash the same and consequently direct the second respondent to issue patta to the petitioner in respect of his dwelling house measuring about 12 cents (650 Sq Feet) in Re-Survey R.S.No.3/1, Old No.3/32, New No.4/88, Keelathataiyarkulam, Agastheeswaram Taluk, Kanyakumari District.

For Petitioner : Mr.S.Karthikeyan

For Respondents : Mr.V.R.Shanmuganathan

ORDER

(Order of this Court was made by **M.DURAI SWAMY, J.**)

The petitioner has filed the above writ petition to issue a writ of Certiorarified Mandamus to callf for the recrods relating to the impugned Form-III eviction notice dated 13.11.2019 issued by the first respondent and quash the same and consequently direct the second respondent to issue patta to the petitioner in respect of his dwelling house measuring about 12 cents (650 Sq Feet) in Re-Survey R.S.No.3/1, Old No.3/32, New No.4/88, Keelathataiyarkulam, Agastheeswaram Taluk, Kanyakumari District.



2. It is the case of the petitioner that the first respondent had issued Form-III notice dated 13.11.2019 without issuing Form-II notice to the petitioner. In the judgment in **T.S.Senthil Kumar Vs. The Government of Tamil Nadu, represented by its Secretary, Public Works Department, Chennai and Others** reported in **2010 Writ L.R.113**, the Division Bench of this Court 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.'

3. In the above referred judgment, the Division Bench of this Court held that the principles of natural justice should be followed while removing the encroachment in the water bodies and that the Public Works Department should publish the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and Water Resources Organization and 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.

4. Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents fairly submitted that Form-II Notice was also published in the notice boards of the office of the Village Administrative Officer, however, the same was not sent to the petitioner.

5. In view of the ratio laid down by the Division Bench of this Court, the impugned Form-III notice dated 13.11.2019 is liable to be set aside. Accordingly, the same is set aside.



6. The learned Special Government Pleader appearing for the respondents submitted that a copy of Form-II notice has been given to the Counsel for the petitioner and therefore, the petitioner may be directed to submit his explanation to Form-II notice.

7. The learned Counsel appearing for the petitioner submitted that the petitioner would submit his explanation to Form-II Notice within a period of two weeks.

8. Recording the submissions made by the learned Counsel on both sides, the petitioner is directed to submit his explanation to Form-II notice within a period of two weeks from today and on receipt of the same, the first respondent is directed to consider the same and pass orders / Form-III notice in accordance with law.

9. With the above observations, the Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Assistant Engineer(Water Resource Department),
Irrigation Section,
Public Works Department,
Nagercoil, Kanyakumari District.

2.The Tahsildar,
Agastheeswaram Taluk,
Nagercoil, Kanyakumari District.

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TR(06.12.2019) 4P 3C