

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.18104/2020 & WMP.No.22489/2020

1.Pachaiammal
2.Rajendran .. Petitioners

Versus

1.The District Collector
Villupuram District,
Villupuram.
2.The Assistant Engineer
Public Works Department/WRO
Distribution Section,
Ginjee 604 202. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the impugned Notice issued by the 2nd respondent in Form III under Section 6 [1] of the Tamil Nadu Land Encroachment Act, dated 15.10.2020 and to quash the same.

For Petitioners: Mr.G.Sankaran

For R1& R2 : Ms.R.J.Radhika
Government Advocate

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through Video Conferencing]

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
(2)Ms.R.J.Radhika, learned Government Advocate accepts notice on behalf of respondents 1 and 2.
(3)The petitioners, being mother and son, would state that they are residing in a residential house located in S.No.92 of Chakkarapuram Village, Ginjee Taluk, Villupuram District, admeasuring to an extent of 1400 sq.ft., classified as ''pattai poramboke'' as per the revenue records and they are

in occupation for over seven decades. It is further stated that the superstructure put up by them, are also subjected to statutory levies and however, to the shock and surprise of the petitioners, the 2nd respondent issued Form-III Notice dated 15.10.2020, under section 6[1] of the Tamil Nadu Land Encroachment Act, 1905, stating among other things that the petitioners are in occupation of a part of the water body out of the total extent of 68.28.0 Hectares in Ponpatthi S.No.85 and Chakkarapuram S.No.93 and also put up a residential as well as a shop admeasuring to an extent of 0.020 cents.

- (4)The learned counsel for the petitioners would submit that if an opportunity is provided, the petitioners may be in a position to convince the 2nd respondent that the lands in occupation, are not classified as water body ; but only as 'pattai poramboke'.
- (5)The Court heard the submissions of Ms.R.J.Radhika, learned Government Advocate appearing for the respondents and also perused the materials placed before it.
- (6)A Division Bench of this Court, in the judgment reported in 2010 [3] MLJ 771 [T.S.Senthil Kumar V. The Government of Tamil Nadu rep.by its Secretary, Public Works Department, Chennai-9 and others], while upholding the vires of the Tamil Nadu Protections of Tanks and Eviction of Encroachments Act, 2007, in paragraph No.20, observed 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.''

(7) This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioners, either in their representation or in this writ petition, permits the petitioners to submit their response by enclosing relevant and authenticated documents to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order / uploading the order in the website, and upon receipt of the same, the 2nd respondent is directed to consider and dispose of the said representation in accordance with law and pass appropriate orders within a further period of three weeks thereafter and communicate the decision taken, to the petitioners and till such time, shall defer further decision in terms of the impugned Notice dated 03.10.2020. It is made clear that till the disposal of the representation by the 2nd respondent, the petitioners shall not create any third party rights in respect of the land and superstructure in question and shall not alter the physical features of the same.

(8) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The District Collector
Villupuram District,
Villupuram.

2.The Assistant Engineer
Public Works Department/WRO
Distribution Section,
Ginjee 604 202.

+1cc to Mr.G.Sankaran, Advocate SR.40998

WP.No.18104/2020

AJB (CO)
CB(19/01/2021)



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