

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.18178 of 2020
and W.M.P.No.22588 of 2020

B.Pachiayappan

..Petitioner

Versus

1.The District Collector,
Villupuram.

2.The Assistant Engineer,
Public Works Department,
Water Source and Irrigation,
Vallam, Gingee.

..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 notice dated 13.10.2020 in Form III under Rule 6 Clause 1 of the 2nd respondent and quash the same.

For Petitioner : Mr.A.L.Gandhimathi
For RR 1 & 2 : Mr.S.Kamalesh Kannan
Government Advocate

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. (through video conferencing)]

Heard the submission of the learned counsel appearing for the petitioner.

2. A perusal of the affidavit filed would disclose among other things that the petitioner, who is an Ex-Armyman had put up constructions in barren lands in S.F.No.454/1, Mel Malaiyanur Taluk and also residing there and it is also subjected to statutory levies and to his shock and surprise, he has been issued with Form III in Rule 6(1) by the 2nd respondent, vide impugned notice dated 13.10.2020 and making a challenge to the same, came forward to file this Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is in possession for quite long time and the superstructure put up by him is also subjected to statutory levies and as of now, there is no indication as to the water spread area, in respect of the land in question and since, the 2nd respondent has issued the notice, without due and proper application of mind, prays for appropriate orders.

4. Per contra, Mr.S.Kamalesh Kannan, learned Government Advocate who accepts notice on behalf of the respondents 1 and 2 would submit that in the light of the revenue classification, action has been taken strictly in accordance with law, for which, the petitioner is not expected to make any complaints.

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

6. A Division Bench of this Court in the decision reported in 2010 (3) MLJ 771 (T.S.Senthil Kumar Vs. Government of Tamil Nadu rep. By its Secretary, Public Works Department, Chennai-9 and others), has considered the validity of some of the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, and given certain directions and it is relevant to extract paragraph no.20 of the said judgment:

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. In the light of the above facts and circumstances, this Court is of the view that the impugned notice issued by the 2nd respondent shall be treated as a show cause notice, for which the petitioner is at liberty to submit a detailed response, by enclosing relevant and authenticated documents within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the 2nd respondent is directed to consider and dispose of the same on merits and in accordance with law, within a further period of four weeks thereafter and till such time, shall defer further decision in terms of the impugned notice. It is also made clear that the petitioner till the disposal of the representation by the 2nd respondent, shall not create any third party right, in respect of the land and superstructure in question.

8. The Writ Petition stands disposed of, accordingly. No costs. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The District Collector,
Villupuram.

2.The Assistant Engineer,
Public Works Department,
Water Source and Irrigation,
Vallam, Gingee.

+1 CC to Mrs.A.L. Gandhimathi, Advocate sr 40834.

WP.No.18178/2020

SSI (CO)
SP(08/01/2021)