

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2020

CORAM

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

WP.No.18697/2020

C.Durga Devi .. Petitioner

Versus

1.The Secretary to Government
Public Works Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The District Collector,
Sathuvachari, Vellore District,
Vellore.

3.The District Collector,
O/o.the District Collector,
Ranipet District, Ranipet.

4.The Tahsildar,
Nemili Taluk, Vellore District.

5.The Executive Engineer,
Water Resources Department,
Melpalaaru River Basin Division,
Vellore District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the 4th respondent to send a Form I to the 5th respondent as per Letter No.EvaA-2/Ko.115(MaKuNa)/2019/3527/ dated 11.12.2018, and direct the 3rd respondent to take severe action as against the encroachers, who are all wantonly encroached the Kasa Canal (கசா கால்வாய்) over the survey nos.392 and 393 situated at Panapakkam Village, within the limit of Netumpuli Village Panchayat, Arakkonam Taluk, Ranipet District so enable the Rain Water freely moves to the big pond based on his representation dated 12.09.2020.

For Petitioner : Mr.S.Kumara Devan

For Respondents: Mr.M.Elumalai
Additional Government Pleader

ORDER

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

The petitioner is the resident of Panapakkam, Ranipet District and alleging encroachment on the land comprised in S.F.Nos.392 and 393, Nedumpuli Village, which is classified as Kalvai Poromboke (waterway poromboke), has submitted repeated representations to take action against the encroachers.

2. The learned counsel appearing for the petitioner would submit that the office of the 3rd respondent, acting on the representation of the petitioner dated 20.03.2017, has directed the 5th respondent, vide communication dated 04.07.2017 in Letter No.O.Mu.P4/6872/2017, to do the needful and the 5th respondent in turn, had sent a communication in Letter No.இவது 2/கோ 115(மருநா)-2019-3527, informed the petitioner and necessary communication has been sent for causing survey and inspection, stating that on receipt of Form-I, steps would be taken to remove the encroachment.

3. The primordial submission made by the learned counsel appearing for the petitioner is that despite lapse of nearly two years and odd, encroachment continues to remain in place, in respect of the above cited waterway and the official respondents had exhibited total insensitivity to the rank encroachers on the waterway and prays for appropriate orders to direct the 5th respondent to remove the encroachments.

4. This Court heard the submission of Mr.M.Elumalai, learned Additional Government Pleader appearing for the official respondents who would submit that necessary instructions would be given to the 5th respondent to follow due process of law to remove the encroachments.

5. This Court has 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

<https://hcservices.ecourts.gov.in/hcservices/> 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. Though the petitioner prays for larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his representation or in this Writ Petition, directs the 5th respondent to follow the due process of law and by also adhering to the principles of natural justice, to cause removal of the alleged encroachment in S.F.Nos.392 and 393 of Nedumpuli Village, Ranipet District and in respect of the lands which comes under the ambit of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and in respect of the land belonging to the Local Body, Block Development Officer, Nedumpuli Village, Ranipet District, as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order / uploading of the order in the website and communicate the decision taken, to the petitioner as well as the persons concerned / encroachers.

8. The Writ Petition stands disposed of accordingly. No costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Public Works Department,
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- 2.The District Collector,
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Water Resources Department,
Melpalaaru River Basin Division,
Vellore District.

+1cc to Mr.S.Kumaradevan, Advocate, S.R.No. 41133
+1cc to the Government Pleader, S.R.No. 41553

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