

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.12.2020

CORAM

THE HON'BLE MR.JUSTICE R. MAHADEVAN
and
The Hon'BLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.20262 & 20264 of 2020
and W.M.P.Nos.25056 & 25059 of 2020

V. Rajarajeswaran ..Petitioner
in W.P.No.20262/2020

K. Vibin ..Petitioner
in W.P.No.20264/2020

Vs

1.The Tahsildar, Anamalai Taluk, Anamalai,
Coimbatore District - 642 104.

2.The Assistant Executive Engineer,
Public Works Department/Water Resources
Department, Contour Canal Sub-Division,
Aliyar Nagar, Anamalai Taluk,
Coimbatore District - 642 101.

3.The Assistant Engineer,
Public Works Department/Water Resources
Department, Contour Canal Section No-I,
Sarkarpathy, Contour Canal Sub-Division,
Aliyar Nagar, Anamalai Taluk,
Coimbatore District - 642 101.

..Respondents
in both the W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned notices issued by the third respondent in Letter No.AE/SKPY/F11/-/2020 dated -12.2020 and signed on 03.12.2020 and posted on 07.12.2020 and received on 08.12.2020 and quash the same as illegal and consequently forbearing the respondents from interfering with the peaceful possession of the petitioners over the land in S.F.Nos.1030/G2 and 1030/F2, in Vettaikaranpudur Village,

Sethumadai Village, Anaimalai Taluk, Coimbatore District and to allow the petitioners to put up solar electric fencing to ward off crop riding wild elephants from destroying their fields.

For Petitioners : Mr. M. Purushothaman
For Respondents : Mrs. R.J. Radhika
Government Advocate

C O M M O N O R D E R

(Order of the Court was made by R. Mahadevan, J.,)

Mrs.R.J.Radhika, learned Government Advocate, accepts notice on behalf of the respondents. By consent of both the parties, the main writ petitions are taken up for final disposal at the admission stage itself.

2.These writ petitions have been filed to quash the notices dated nil.12.2020 issued by the third respondent and consequently forbear the respondents from interfering with their peaceful possession over the lands in S.F.Nos.1030/F2 and 1030/G2, in Vettaikaranpudur Village, Sethumadai Village, Anaimalai Taluk, Coimbatore District and permit the petitioners to put up solar electric fencing to ward off crop riding wild elephants from destroying their fields.

3.According to the petitioners, they are irrigating their agricultural lands in S.F.No.1030 in Vettaikaranpudur Village in Sethumadai Village, Anaimalai Taluk, Coimbatore District by the water flowing in the Aliyar Feeder Canal from the Sakarpathy Hydro Power Project to the Aliyar Dam in Anaimalai Taluk. There are about 13 sluices carrying water from south to north direction to many lands and the petitioners' farmlands are situated on the mouth of one of the sluices. Even the Revenue authorities are collecting tax for the lands situated in S.F.Nos.1030/F2 and 1030/G2, thereby acknowledging the ownership and possession of the petitioners. Aggrieved over the same, the petitioners preferred respective suits in O.S.Nos.324 and 358 of 2020 on the file of the District Munsif Court, Pollachi and the same are pending. When such being so, the third respondent issued the impugned notices in Form III under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, as if the petitioners are the encroachers upon the public land and directed them to remove the encroachment. Hence, the present writ petitions came to be filed before this Court.

4. Heard the learned counsel for the petitioners, who submitted that without following due process of law, the third respondent has straight away issued the impugned notices to order for removal of encroachment, to the petitioners, treating them as encroachers upon the public land, which are arbitrary, illegal and in violation of the principles of natural justice and hence, the same are liable to be quashed.

5. On the other hand, the learned Government Advocate taking notice for the respondents submitted that there are various pronouncements by the Supreme Court as well as this Court, with respect to removal of encroachment on the water course belonging to the Government and hence, the notices impugned herein, came to be issued by the third respondent to the petitioners. However, she fairly conceded the submission so made by the learned counsel for the petitioners that no opportunity was granted to the petitioners to put forth their case.

6. Heard both sides and perused the materials placed before this Court.

7. There is no difference of opinion that 'the natural resources of the earth, including the air, water, land, flora and fauna, especially representing the samples of natural ecosystem, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. In the present case, admittedly, before issuing the notices to order for removal of encroachment, which are impugned herein, the petitioners have not been provided reasonable opportunity to put forth their stand along with supporting documents. Such practice adopted by the respondent authorities cannot be countenanced by this Court, as it is a basic principle of justice that no adverse orders should be passed against a party without hearing them.

8. Accordingly, these writ petitions are allowed, by treating the notices impugned herein as show cause notices, to which, the petitioners shall file their objections with necessary documentary evidence, within a period of two weeks from the date of receipt of copy of this order. On receipt of the same, the third respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioners

and all other interested parties, if any, within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

- 1.The Tahsildar,
Anamalai Taluk, Anamalai,
Coimbatore District - 642 104.
- 2.The Assistant Executive Engineer,
Public Works Department/Water Resources
Department, Contour Canal Sub-Division,
Aliyar Nagar, Anamalai Taluk,
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Public Works Department/Water Resources
Department, Contour Canal Section No-I,
Sarkarpathy, Contour Canal Sub-Division,
Aliyar Nagar, Anamalai Taluk,
Coimbatore District - 642 101.

+2cc to Mr.Purushothaman, Advocate, S.R.No.43197
+2cc to Mr.Purushothaman, Advocate, S.R.No.43198
+1cc to Government Pleader, SR.No.50

W.P.Nos.20262 & 20264 of 2020 and
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MG (CO)
KKV/04/01/2021
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