



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P. (MD)No.3249 of 2020

and

W.M.P. (MD)No.2755 of 2020

R.Baskaran

... Petitioner

Vs.

1.The Assistant Engineer,
Public Works Department (PWD),
Water Resource Department (WRD),
Irrigation Division No.I,
Upper Vaipar Vadigaal Sub-Division,
Rajapalayam Taluk,
Virudhunagar District.

2.The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings dated 30.01.2020, and quash the same as illegal.

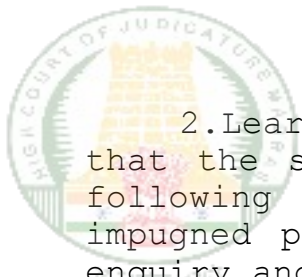
For Petitioner : Mr.P.Subbaraj

For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

[Order of the Court was made by **T.RAJA, J.**]

The petitioner has questioned the impugned proceedings viz., Form-III Notice dated 30.01.2020, issued by the first respondent, calling upon him to vacate from the encroached portion within 21 days.



2.Learned counsel appearing for the petitioner would submit that the second respondent has issued the impugned notice without following the principles of natural justice. Before issuing the impugned proceedings, the second respondent has not conducted any enquiry and no opportunity was given to the petitioner to submit his explanation. Moreover, when the petitioner was issued with the notice dated 21.10.2019 by the second respondent herein, a detailed representation dated 28.11.2019 was given, but till date, the second respondent has not considered the same. It is not permissible on the part of the first respondent to pass the impugned proceedings, because the land in question is classified as 'Government Poramboke'.

3.Opposing the abovesaid prayer, Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents, would submit that the petitioner cannot maintain this Writ Petition, since all opportunities have been granted to him. He would further submit that after issuance of Form-I and Form-II notices, the present Form-III notice has been issued. Therefore, after availing all the opportunities, the present writ petition filed by the petitioner, challenging the Form-III notice, cannot be entertained.

4.But, we find it difficult to disbelieve the case of the petitioner. The reason being, this Court in **T.S.Senthilkumar Vs. Government of Tamil Nadu, Rep. by its Secretary, Public Works Department, Chennai - 9 and others** reported in 2010 (3) MLJ 771, has given a direction that firstly, notice should 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 thereafter, the notice in Form-III of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, may be issued and 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 time frame and 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.

5.In the case on hand, when a notice has been issued by the second respondent Tahsildar, a detailed representation dated 28.11.2019, has been given by the petitioner, till date, it is not known as to whether the said representation has been disposed of.

6.In view of the above, without going into merits of the matter, the second respondent is directed to pass appropriate orders on the pending representation dated 28.11.2019, within a period of two weeks from the date of receipt of a copy of this order. If the second respondent/Tahsildar comes to the conclusion that the petitioner is an encroacher, Form-III notice can be acted upon.



7. With the above direction, this Writ Petition is disposed of.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Assistant Engineer,
Public Works Department (PWD),
Water Resource Department (WRD),
Irrigation Division No.I,
Upper Vaipar Vadigaal Sub-Division,
Rajapalayam Taluk,
Virudhunagar District.

2. The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.

+1 CC to Mr.P.SUBBARAJ, Advocate (SR-6876[F] dated 18/02/2020)

W.P. (MD) No. 3249 of 2020
18.02.2020

VB(03.03.2020) 3P 4C