



WEB COPY

W.P(MD)Nos.7279 and 7285 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD)Nos.7279 and 7285 of 2020

and

W.M.P. (MD) .Nos.6729 and 6747 of 2020

M.Appavoo

... Petitioner in W.P.(MD).7279/2020

Vijaya

... Petitioner in W.P.(MD).7285/2020

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Assistant Engineer,
Public Works Department
Water Resources Division and Irrigation,
Vadakkankulam,
Tirunelveli District.

... Respondents in both W.Ps

Prayer in W.P.(MD).7279/2020: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd respondent to consider the petitioner's objection dated 20.06.2020 to the Form-III issued by means of an order bearing No.Ko.15/89/2020 dated 15.06.2020 by the 2nd respondent under Rule (6) Sub Rule (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act 8 of 2007), on merits and in accordance with law in the light of the order of this Court dated 03.03.2020 made in W.P.(MD).No.4555 of 2020 and in terms of the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act 8 of 2007)and rules framed thereunder.

Prayer in W.P.(MD).7285/2020: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd respondent to consider the petitioner's objection dated 20.06.2020 to the Form-III issued by means of an order bearing No.Ko.15/90/2020 dated 15.06.2020 by the 2nd respondent under Rule (6) Sub Rule (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act 8 of 2007), on merits and in accordance with law in the light of the order of this Court dated 03.03.2020 made in W.P.(MD).No.4555 of 2020 and in terms of the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act 8 of 2007)and rules framed thereunder.

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W.P (MD) Nos. 7279 and 7285 of 2020

For Petitioner : Mr.S.Palani Velayutham
in both W.Ps

For Respondents : Mr.R.Murugan
Additional Government Pleader
in W.P. (MD) .No.7279/2020

Mr.VR.Shanmuganathan
Special Government Pleader
in W.P. (MD) .No.7285/2020

COMMON ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

Since the issue involved in both the writ petitions is one and the same, these writ petitions are disposed of by this common order.

W. P. (MD) .No. 7279/2020:

2.The petitioner claims that he has purchased a landed property in sy.No.2352/8 admeasuring to an extent of 1 acre, 26 cents, situated at Perungudi, Part II Village, Radhapuram Taluk, Tirunelveli District, through a registered sale deed bearing document No.3086/2000, registered on the file of the Sub Registrar, Panagudi, Tirunelveli District. The petitioner claims to be in possession and enjoyment of the said land from the date of purchase. The petitioner would aver that the second respondent issued a notice under Ref.Order No.Ko/15/89/2020, dated 15.06.2020 for removal of the alleged encroachment made by the petitioner in the water body bearing Sy.No.2189 to an extent of 1.33 hectare at Perungudi, Part II Village, Radhapuram Taluk, Tirunelveli District.

3.The learned Counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that admittedly, the property is not located in the said survey number and that apart, the petitioner is in possession of the property for nearly 14 years and the second respondent without due and proper application of mind, has issued erroneous notice and prays for appropriate orders.

W. P. (MD) .No. 7285/2020:

4.The petitioner is the wife of the petitioner in W.P.(MD). No. 7279/2020 and she claims to have purchased 25 cents of lands in

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survey No.2358/1 and 80 cents of lands in Sy.No.2358/2, aggregating to an extent of 1.05 cents (80 + 25 cents) through a registered sale deed bearing No.1415 of 2005, registered on the file of the Sub-Registrar, Panagudi, Tirunelveli District. That apart, she had also purchased 52 cents of land in the eastern portion in Ayan punja survey No.2359/5, through a registered document No.2883/2010, dated 23.07.2010. The petitioner would aver that the second respondent issued a notice under Ref.Order No.Ko/15/90/2020, dated 15.06.2020 for removal of the alleged encroachment made by the petitioner in the water body bearing Sy.No.2185/1 situated at Perungudi, Part II Village, Radhapuram Taluk, Tirunelveli District.

5.The learned Counsel appearing for the petitioner would submit that in response to the notices dated 15.06.2020, issued by the second respondent, detailed representations, dated 20.06.2020 have been submitted by the respective petitioner through registered post with acknowledgment due. But without considering the same, steps have been taken to disturb their possession on the ground of alleged encroachment on the water body and hence, prays for appropriate orders.

6.Mr.VR.Shanmuganathan, learned Special Government Pleader accepts notice on behalf of the official respondents and would submit that on an earlier occasion, a challenge has been made in W.P.(MD).No.20021 of 2008 and vide order dated 10.02.2010, this Court had disposed of the writ petition by directing the second respondent to issue Form-III notice and thereafter to proceed in accordance with law. He would further submit that the petitioners did not submit any objection and by following the due process of law, the impugned Form-III notices have been issued to the petitioners for removal of encroachment on the water bodies and hence, prays for dismissal of the writ petitions. He would also brought to the notice of this Court that re-survey of the lands in question is also being done.

7.This Court has paid it's anxious consideration to the rival submissions made by the learned Counsel on either side and also perused the records placed before it.

8.This Court in the decision in T.S.Senthil Kumar Vs. Government of Tamil Nadu, represented by its Secretary, Public Works Department, Chennai-9 and Others reported in (2010)3 MLJ 771 (DB), while upholding the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 has given certain directions and it is relevant to extract hereunder:-

"(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 given 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."

9. In the light of the above facts and circumstances, the second respondent is directed to consider the objections submitted by the petitioners in accordance with law and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order and till such time, shall defer further decision as to the removal of the alleged encroachment of the petitioners in respect of the alleged water body. The petitioners till the disposal of the representations, shall not create any third party right in respect of the lands in question.

10. With the above directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (ACCOUNTS)

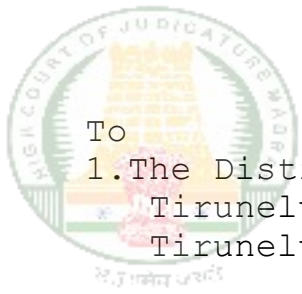
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Sub Assistant Registrar (CS)

Note:- In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

vs/ssl



W.P (MD) Nos.7279 and 7285 of 2020

To

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Assistant Engineer,
Public Works Department
Water Resources Division and Irrigation,
Vadakkankulam,
Tirunelveli District.

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