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W.P.(MD)Nos.8560, 8561, 8563 and 8565 of 2020
and
W.M.P.(MD).Nos. 7925, 7926, 7927 & 7929 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2020

CORAM

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

W.P. (MD)Nos.8560, 8561, 8563 and 8565 of 2020
and
W.M.P. (MD) .Nos.7925, 7926, 7927 & 7929 of 2020

- | | |
|-------------------|--|
| 1. Velan | ... Petitioner
(in W.P.(MD).No.8560/2020) |
| 2. Lakshmi | ... Petitioner
(in W.P.(MD).No.8561/2020) |
| 3. Jainullabuddin | ... Petitioner
(in W.P.(MD).No.8563/2020) |
| 4. Rasu | ... Petitioner
(in W.P.(MD).No.8565/2020) |

Vs.

The Junior Engineer,
Public Works Department/
Water Resources Department,
Kallanai Canal Division,
Edaiyathi, Orathanadu Taluk,
Thanjavur District.

... Respondent
(in all the Writ Petitions)

Common Prayer: Writ 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 proceedings of the respondent dated 08.07.2020 and quash the same.

For Petitioner : Mr. N.Dilip Kumar
(in all W.Ps)



For Respondent
(In all W.Ps)

: Mr. VR.Shanmuganathan,
Special Government Pleader

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COMMON ORDER

[Order of the Court was made by **M.SATHYANARAYANAN, J.**]

By consent, all these writ petitions are taken up together and disposed of by this common order as the issue to be adjudicated, is one and the same.

2. The petitioners herein originally filed O.S.No.15 of 2017, on the file of the Sub-Court, Pattukottai, against the official respondents praying for declaration that the suit schedule property in Survey No.21 of Thoppanayagam Village, Orathanadu Taluk, Thanjavur District, belongs to them with the further declaration that those properties are not situated in the water spread area of Kallanai Canal and for permanent injunction restraining the defendants/official respondents from interfering with their peaceful possession and enjoyment of the property, including demolishing the super structure and other consequential reliefs. The said Suit is still pending without any interim orders.

3. The petitioners on an earlier occasion, made a challenge to the order of the Assistant Engineer, Public Works Department/Water Resources Department, Kallanai Canal Division, Edaiyathi, Orathanadu Taluk, Thanjavur District, by filing W.P.(MD).No.17885 of 2017 (Rasu), W.P.(MD).No.17910 of 2017 (Velan), W.P.(MD).No.17920 of 2017 (Jainullabuddin) and W.P.(MD).No.17919 of 2017 (Lakshmi) and all the writ petitions came to be partly allowed by setting aside the said direction and further directed to issue Form II notice under Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and to proceed further in accordance with law.

4. The petitioners in terms of the liberty granted in the said writ petitions, have submitted their individual representations dated 03.12.2019. The learned counsel appearing for the petitioner would submit that despite the above cited orders dated 12.09.2018, 30.10.2018, 30.10.2018 and 07.03.2019 respectively, in the above cited writ petitions, there was no objective consideration on the part of the second respondent and he merely issued final orders and also pointed out that if the representations filed by the petitioners would have been considered properly by applying their mind, the official respondents would have definitely drawn the conclusion that they have not caused encroachment upon the water spread area and prays for interference.



5. Per contra, Mr.VR.Shanmuganthan, learned Special Government Pleader, appearing for the respondents has drawn the attention of this Court to Paragraph No.4 of the plaint in O.S.No.15 of 2017, filed by the petitioners herein as plaintiffs on the file of the Sub-Court, Pattukottai, and would submit that in the light of the admission made in the said paragraph, they are encroachers upon the water spread area and due process of law by strictly adhering to the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and Rules framed thereunder have been complied with and prays for dismissal of this writ petition.

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

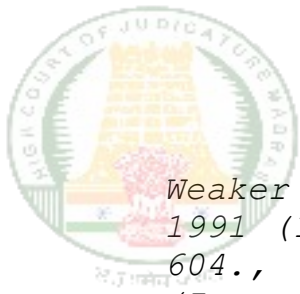
7. The fact remains that the orders dated 12.09.2018, 30.10.2018, 30.10.2018 and 07.03.2019, respectively in W.P.(MD).No.17885 of 2017, W.P.(MD).No.17910 of 2017, W.P.(MD).No.17920 of 2017 and W.P.(MD).No.17919 of 2017, had directed the Assistant Engineer, Public Works Department/Water Resources Department, Kallanai Canal Division, Edaiyathi, Orthanadu Taluk, Thanjavur District, to issue Form II notice upon the petitioners and on receipt of the same, they were granted two weeks time to submit their explanation, if any, and on the basis of the explanation given by them, the concerned official respondent was directed to proceed in accordance with law. In terms of the compliance of the said order, the Assistant Engineer, Public Works Department/Water Resources Department, Kallanai Canal Division, Edaiyathi, Orthanadu Taluk, Thanjavur District, has also issued Form II notice on each of the petitioners and they have given their detailed response. However, a perusal of the impugned notice would disclose that there appears to be a lack of objective consideration to the said representation. It is to be noted at this juncture that it is the categorical statement of the petitioners that they did not encroach upon even an inch of land upon the water spread area and as such, the respondent is bound to consider their objections objectively.

8. It is also pointed out by the learned Special Government Pleader that the petitioners in their written representations, did not submit any relevant material or document to substantiate their claim.

9. It is also relevant to extract paragraph No.20 of the judgment rendered by a Division Bench of this Court, reported in **(2010) 3 MLJ 771, T.S.Senthil Kumar v. Government of Tamil Nadu.**

"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.

Prabhu (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.

10. In the light of the above facts and circumstances, this Court directs the respondents to treat the impugned notices as show-cause notices for which, the petitioners are given opportunity to submit their detailed responses along with the relevant and authenticated documents within a period of three weeks from the date of receipt of a copy of this order. The respondent on receipt of the same, is directed to consider the same on merits and in accordance with law and pass appropriate orders within a further period of two weeks thereafter and communicate the decision taken to each of the writ petitioners and till such time, defer further decision in terms of the impugned notices. It is also made clear that the petitioners till the disposal of consideration and disposal of their representations, shall not create any third party right in respect of the lands in question.



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11. These **Writ Petitions stand disposed of** accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Deputy Registrar ()

// True Copy //

/ /2020
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

To

The Junior Engineer,
Public Works Department/
Water Resources Department,
Kallanai Canal Division,
Edaiyathi, Orathanadu Taluk,
Thanjavur District.

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-13631[F] dated
05/08/2020)

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