



WEB COPY

W.P.(MD)No.11750 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD)No.11750 of 2020

and W.M.P. (MD)No.10190 of 2020

(Through Video conferencing)

P.Samraj

...Petitioner

-Vs-

1.The District Collector
Kanyakumari District
Nagercoil.

2.The Executive Engineer
Water Resource Organization
Public Works Department
Thuckalay & Post.
Kanyakumari District.

3.The Assistant Engineer
Water Resource Organization
Public Works Department
Thuckalay & Post
Kanyakumari District.

... Respondents

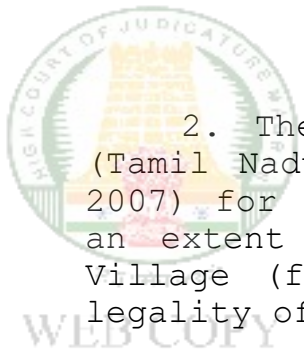
Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned notice of the third respondent, in No.Nfh.19/c.ngh.(gh)/137/2020, dated 22.07.2020 and quash the same.

For Petitioner : Mr.J.John Jayakumar
For Respondents : Mr.B.Bagavathi,
Government Advocate.

ORDER

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

The petitioner claims that the landed property admeasuring to an extent of 7 cents in R.S.No.545/4 and 545/22 in Old Survey No.5528/2 of Colachel Village, originally belonged to his grandfather viz., Kainthan Nadar and by way of succession, he is entitled to the property. The petitioner filed O.S.No.142 of 2013 on the file of the Court of Principal District Munsif, Eraniel, against the Collector of Kanyakumar District, Tahsildar, Kalkulam Taluk and the Village Administrative Officer, Colachel, praying for declaration of title over the B-schedule property and admittedly, no interim orders are in operation.



2. The second respondent has issued the notice under Form-3 (Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007) for eviction of the petitioner from the land, admeasuring to an extent of 2010 sq. mt., in Survey No.545/22 at Chemponvilai Village (formerly known as Colachel Village) and challenging the legality of the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner would submit that a comprehensive suit for declaration in respect of the property in question is pending and the first respondent, being the party to the said litigation, ought to have reminded the respondents 2 and 3 about the pendency of the suit and he would also pray that if sufficient opportunity given to him, he would be in a position to put forth his defence in an effective manner and hence, prays for appropriate orders.

4. Per contra, Mr.B.Bagavathi, the learned Government Advocate appearing for the respondents would submit that the lands in S.Nos.545/22, 23, 25 of Chemponvilai Village are classified as Chenamvillai Branch/Sub Canal and since the petitioner is admittedly in occupation of a water course, he is not entitled to resist the eviction and prays for dismissal of the writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed on record.

6. The vires of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 came up for consideration and in the decision reported in (2010) 3MLJ 771 [**T.S.Senthil Kumar, Vs. Government of Tamil Nadu, Represented by its Secretary, Public Works Department, Chennai**], the validity of vires of the said Act has been upheld and it is relevant to extract the directions issued in paragraph No.20 of the said decision.

"20.....

(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. T.S. Senthil Kumar vs The Government Of Tamil Nadu on 10 February, 2010 Indian Kanoon - <http://indiankanoon.org/doc/1059219/> 25.

(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



(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.

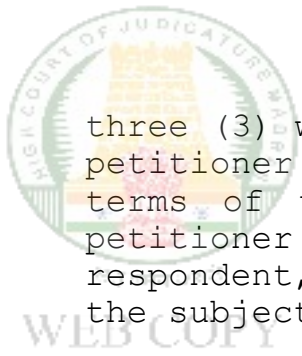
(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(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."

7. In the light of the above facts and circumstances, the third respondent is directed to treat the impugned notice as show cause notice for which, the petitioner is permitted to submit a detailed representation, by enclosing the relevant and authenticated documents, within a period of three (3) weeks from the date of receipt of a copy of this order and upon receipt of the same, the third respondent is directed to consider the same on merits and in accordance with law and pass appropriate orders within a period of



three (3) weeks thereafter and communicate the decision taken to the petitioner and till such time, shall defer further decisions in terms of the impugned notice. It is also made clear that the petitioner till the disposal of his representation by the third respondent, shall not create any third party rights in respect of the subject matter of the impugned notice.

8. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsm

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

- 1.The District Collector
Kanyakumari District
Nagercoil.
- 2.The Executive Engineer
Water Resource Organization
Public Works Department
Thuckalay & Post.
Kanyakumari District.
- 3.The Assistant Engineer
Water Resource Organization
Public Works Department
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Kanyakumari District.

+1 CC to M/s.SPL GP(SR-17581[F] dated 21/09/2020)

W.P.(MD)No.11750 of 2020
and W.M.P.(MD)No.10190 of 2020
18.09.2020

AC (CO)

KB (29.09.2020) 4P 5C

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