

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.Nos.826, 827, 829 & 830 of 2021
and W.M.P.Nos.892, 897, 895 & 893 /2021

J.Gunasundari	..	Petitioner in W.P.No.826 of 2021
G.Karthikeyan	..	Petitioner in W.P.No.827 of 2021
S.Pokkisham	..	Petitioner in W.P.No.829 of 2021
K.Sathish	..	Petitioner in W.P.No.830 of 2021

Versus

1.The District Collector,
Chennai District,
Singaravelar Maligai,
Chennai 600 001.

2.The Executive Engineer,
PWD Water Resources Department,
Kosathalai River, Thiruvallur District.

3.The Tahsildar,
Ambattur Taluk, Chennai 600 053.

.. Respondents in all W.Ps

Common Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 2nd respondent to remove the Notice Board and the boundary stone put up at the petitioner's land in plot no.1 comprised in S.F.No. 809 of Korratur Village, Ambattur Taluk, as the same is contrary to the procedure under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 as held in T.S.Senthil Kumar Vs. the State of Tamil Nadu reported in 2010 (3) MLJ 771.

For Petitioners in all W.Ps: Mr.K.Sakthivel

For R1 & R3 in all W.Ps : Mr.R.Vijayakumar
Additional Government Pleader

For R2 in all W.Ps : Mr.A.Aruldoss

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through video conferencing]

By consent, all the Writ Petitions are taken up for final disposal and disposed of by this common order.

W.P.No.826/2021:

The petitioner would claim that her father was in occupation and enjoyment of 0.03 cent of land in plot No.5, comprised in S.F.No.809 of Korattur Village for more than 45 years prior to 1989 and she is doing cultivation in the said land and on 06.02.1991, the Collector of Chengalpet, has issued a direction to give patta to her father on the basis

of the Government notification issued in the year 1989 and the petitioner was assigned with the said land, vide proceedings of the Tahsildar (Special), Saidapet dated 17.10.1991.

W.P.No.827 of 2020:

The petitioner would claim that his father was in occupation and enjoyment of 0.03 cent of land in plot No.3, comprised in S.F.No.809 of Korattur Village for more than 45 years prior to 1989 and he is doing cultivation in the said land and on 06.02.1991, the Collector of Chengalpet, has issued a direction to give patta to his father on the basis of the Government notification issued in the year 1989 and the petitioner was assigned with the said land, vide proceedings of the Tahsildar (Special), Saidapet dated 17.10.1991.

W.P.No.829 of 2020:

The petitioner would claim that his father was in occupation and enjoyment of 0.03 cent of land in plot No.2, comprised in S.F.No.809 of Korattur Village for more than 45 years prior to 1989 and he is doing cultivation in the said land and on 06.02.1991, the Collector of Chengalpet, has issued a direction to give patta to his father on the basis

of the Government notification issued in the year 1989 and the petitioner was assigned with the said land, vide proceedings of the Tahsildar (Special), Saidapet dated 17.10.1991.

W.P.No.830 of 2021:

The petitioner would claim that his father was in occupation and enjoyment of 0.03 cent of land in plot No.1, comprised in S.F.No.9 of Korattur Village for more than 45 years prior to 1989 and he is doing cultivation in the said land and on 06.02.1991, the Collector of Chengalpet, has issued a direction to give patta to his father on the basis of the Government notification issued in the year 1989 and the petitioner was assigned with the said land, vide proceedings of the Tahsildar (Special), Saidapet dated 17.10.1991.

2. According to the learned counsel appearing for the petitioners, apart from the said assignment of lands, no encroachment whatsoever has been caused and no superstructure has also been put up and the said submission, on instructions, is placed on record. It is also pointed out that the superstructure has been put up after obtaining Planning Permission and the construction has also been done strictly in accordance with the Sanctioned Plan.

3. The primordial submission made by the learned counsel appearing for the petitioners by drawing attention of this Court to the judgment reported in **2010 (3) MLJ 771 (T.S.Senthilkumar Vs. State of Tamil Nadu)**, is that without putting the petitioners on notice, a Notice Board has been put up, as if the land in occupation of the petitioners belongs to the Public Works Department, Water Resource Department and in this regard, the petitioners had also submitted individual representations and it may be directed to be considered and till such time, the 2nd respondent may defer further proceedings.

4. This Court heard the submission of Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 and 3 and Mr.A.Aruldoss, learned standing counsel appearing for the 2nd respondent also and they would submit that due process of law would be followed for removal of encroachment.

WEB COPY

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

6. A Division Bench of this Court in the decision reported in **2010 (3) MLJ 771 (T.S.Senthil Kumar Vs. Government of Tamil Nadu rep. By its Secretary, Public Works Department, Chennai-9 and others)**, has considered the validity of some of the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, and given certain directions and it is relevant to extract paragraph no.20 of the said judgment:

"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. Bhat - 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 poromboke 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. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, either in their representations or in these Writ Petitions, directs the 2nd respondent to consider and dispose of the petitioners' representation dated 09.12.2020, on merits and in accordance with law, and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order / uploading of the order in the website. It is made clear that if any superstructures put up by the petitioners on the land in question are in deviation of the Sanctioned Plan or without Planning Permission, necessary steps should also be taken in accordance with law.

8. These Writ Petitions are disposed of with the above observations. No costs. Consequently connected miscellaneous petitions are closed.

[M.S.N.,J] [A.A.N.,J.]
18.01.2021

sk
Internet: Yes /No
Index: Yes/ No

M.SATHYANARAYANAN, J.,
AND
A.A.NAKKIRAN, J.,

sk

To

1.The District Collector,
Chennai District,
Singaravelar Maligai,
Chennai 600 001.

2.The Executive Engineer,
PWD Water Resources Department,
Kosathalai River, Thiruvallur District.

3.The Tahsildar,
Ambattur Taluk, Chennai 600 053.



WP.Nos.826, 827, 829 & 830 of 2021

WEB COPY

18.01.2021