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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD)No.1938 of 2021

and

W.M.P. (MD)Nos.1656 to 1658 of 2021

Hazrath Bilal Jumma Pallivasal,
Rep. by its Secretary,
N.K.Imtiyaz Ahamed

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Public Works Department / WRO,
Rep. by its Executive Engineer,
Periyar Vaigai Basin Division,
Madurai - 2.

3.The Junior Engineer,
Public Works Department / WRO,
Irrigation Section No.II,
Periyar Vaigai Basin Sub Division No.1,
Madurai - 2.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Form III Notice dated 06.01.2021 on the file of the 3rd respondent and quash the same and consequently, forbear the respondents from demolishing the petitioner's Mosque / Pallivasal in an extent of 1500 sq.ft in S.No.53, Tallakulam Village, Madurai North Taluk, Madurai District.

For Petitioner
For Respondents

: Mr.T.Lajapathi Roy
: Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by
Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

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

The petitioner has come forward to challenge the impugned notice on the premise that it has not been put on notice.



2. The learned Counsel appearing for the petitioner submitted that the proposed removal is contrary to law and without affording an opportunity to the petitioner, the impugned notice came to be issued.

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3. The learned Additional Advocate General appearing for the respondents submitted that Form II notice has already been given. He further submitted that the petitioner is an encroacher and Form III notice also clearly indicates the nature of the land and the encroachment made by the petitioner.

4. The issue is no longer *res integra*. A Division Bench of this Court, in **T.S.Senthil Kumar v. Government of Tamil Nadu and Others**, reported in (2010) 3 MLJ 771, considered the said issue with respect to the proposed removal without any notice and has held as follows:

"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 in *Mysore v. J.V.Bhat* (supra) and (ii) *Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka* (supra), 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."

5. In such view of the matter, the writ petition stands disposed of, by treating the impugned notice as a show cause notice, to which, the petitioner is given four weeks time from the date of receipt of a copy of this order to give reply and thereafter, appropriate orders will have to be passed within a further period of four weeks, in accordance with law. Till such time, status-quo, as on date, shall be maintained. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The District Collector,
Madurai District,
Madurai.

2.The Executive Engineer,
Public Works Department / WRO,
Periyar Vaigai Basin Division,
Madurai - 2.

3.The Junior Engineer,
Public Works Department / WRO,
Irrigation Section No.II,
Periyar Vaigai Basin Sub Division No.1,
Madurai - 2.

+1 CC to M/s.SPL GP (SR-4252[F] dated 10/02/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-4189[F] dated 10/02/2021)

W.P. (MD)No.1938 of 2021
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ES (CO)

KB(23.02.2021) 4P 6C