



WEB COPY

W.P.(MD)No.17541 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. (MD) No.17541 of 2021

and

W.M.P (MD) No.14378 of 2021

- 1.Muniyandi
- 2.Govindarasu
- 3.Marimuthu
- 4.Palraj
- 5.Karuppayee
- 6.Sornam & Sornavalli
- 7.V.Surasangu

.. Petitioners

Vs.

- 1.The Assistant Engineer,
PWD, WRO, (Irrigation),
Kalayarkoil, Sivagangai District.

- 2.The District Collector,
Sivagangai District,
Sivagangai.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order dated 24.08.2021 issued under Section 6(1) of the Tamilnadu Protection of Tank and Eviction of Encroachment Act 2007 on the file of the first respondent and quash the same and further directing the respondents to issue the house site patta to the petitioners.

For Petitioners :Mr.G.Prabhu Rajadurai
For Respondents :Mr.B.Saravanan,
Government Advocate

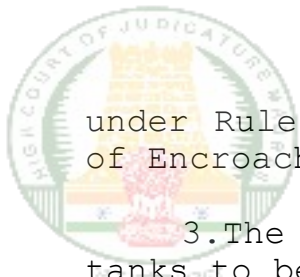
ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The grievance of the several writ petitioners is that they have been sought to be summarily evicted without being afforded any opportunity of hearing.

2.Several notices have been issued in Form III under the Rules made in pursuance of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007. Notice in Form III is generally issued

<https://hcservices.ecourts.gov.in/hcservices/>



under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007.

3.The said Rules of 2007 contemplate, *inter alia*, a survey of tanks to be conducted by the appointment of a survey officer. Action is taken on the basis of the report of the survey officer. Rule 6 (1) of the said Rules indicates as follows:

"6.Eviction of Encroachment.- (1) If any person has encroached upon any land of the tank, the officer referred to in sub-rule (3) of Rule 4, shall prepare a notice in Form III and call upon the person concerned to remove the encroachment."

4.Form III which is appended to the said Rules of 2007 is a summary direction calling upon the noticee "to evict your encroachment from the said piece and part of land within twenty one days from the date of receipt of this notice ...".

5.There is sufficient basis to the petitioner's grievance that no opportunity has been afforded to the noticee to present a defence. The petitioner says that there is a previous Division Bench judgment of this Court that requires an opportunity of being heard to be read into the provision so that the said provision is not arbitrary and unreasonable.

6.Accordingly, the petitioners will treat the impugned notices as show-cause notices to which the petitioners may respond with full details within two weeks from date, whereupon the concerned official who addressed the notices will look into the grounds urged by the petitioners to ascertain whether any defence is made out or any right is indicated to continue in occupation of the land which is said to have been encroached upon. In the event any arguable defence is found, eviction of the relevant petitioner may not be taken up. However, if the defence does not indicate any right to the land said to have been encroached upon, eviction will follow, but after a period of 21 days being afforded from the date of service of the notice of eviction, till actual eviction is carried out.

7.W.P.(MD)No.17541 of 2021 is disposed of.

There will be no order as to costs. Consequently, W.M.P.(MD) No.14378 of 2021 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



MR/RM

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 Assistant Engineer,
PWD, WRO, (Irrigation),
Kalayarkoil, Sivagangai District.

2.The District Collector,
Sivagangai District,
Sivagangai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-30637[F] dated 29/09/2021)

+1 CC to M/s.SPL.GP (SR-30594[F] dated 29/09/2021)

W.P.(MD) No.17541 of 2021
28.09.2021

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