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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.2670 of 2022 and WMP.Nos.2829 and 2831/2022

1. Robinson

2. Melba

...Petitioners

-vs-

1. The Secretary to Government,
Water Resource Department,
Secretariat, St. George Fort,
Chennai-600 009.

2. The District Collector,
O/o. The District Collector,
Chennai District.

3. The Assistant Engineer,
Water Resource Department,
Adyar Irrigation Division,
St.Thomas Mount,
Chennai-600 016.

...Respondents

1.

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records on the file of the 3rd respondent Notice in Form III see Rule 6(1) I, dated 29.12.2021 served on the petitioners on 30.12.2021 with reference to Form-1, and quash the same as erroneous, unlawful and issued without jurisdiction.

For Petitioners : Mr.S.Nambirajan

For Respondents : Mr.K.V.Sajeevkumar,
Spl.G.P.



ORDER

(Order of the Court was made by T.RAJA, J.)

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This Writ Petition has been filed, challenging the Form-III Notice dated 29.12.2021 issued by the 3rd respondent, namely, the Assistant Engineer, Water Resource Department, Adyar Irrigation Division, St.Thomas Mount, Chennai-16 and to set aside the same.

2. The matter was listed to-day under the caption, 'for admission'.

3. Learned Counsel appearing for the petitioners would submit that the petitioners have been issued with the impugned Form-III notice by the 3rd respondent, namely, the Assistant Engineer, Water Resource Department, Adyar Irrigation Division, St.Thomas Mount, Chennai-16, without hearing them alleging that the petitioners are the encroachers of the land in Survey No.509, Manapakkam, Sriperumbudur Taluk, Kancheepuram District. But, according to the learned Counsel for the petitioners, the land in Survey No.509 stated above does not come under the category of drain land.

4. At this stage, Mr.K.V.Sajeevkumar, learned Special Government Pleader taking notice for the respondents submitted that originally, the petitioners ought to have been issued with Form-2 notice under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, because the public are prohibited from encroaching upon any drain land within the boundaries marked in the map duly authorised by the Tahsildar. Therefore, if the petitioners are in encroachment of the boundaries, they are liable for eviction under Section 7 of the said Act. Once Form-II Notice is issued, the petitioners shall be liable to give their explanation based on which if the 3rd respondent is not satisfied, then he can proceed to issue the Form-III Notice. The learned Special Government Pleader would also submit that the petitioners have not taken up this point.

5. Agreeing with the stand taken by the learned Special Government Pleader appearing for the respondents, we hereby order that the impugned Form-III notice shall be treated as Form-II Notice and the petitioners are given two weeks time from today to give their explanation and on receipt of the same, the 3rd respondent shall consider and dispose of the same on merits, within a period of two weeks thereafter and can proceed further in accordance with law, in case, if the explanation is found to be unsatisfactory.



6. With the above observation and direction, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are also closed. No costs.

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Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

tsi

To

1. The Secretary to Government,
Water Resource Department,
Secretariat, St. George Fort,
Chennai-600 009.
2. The District Collector,
O/o. The District Collector,
Chennai District.
3. The Assistant Engineer,
Water Resource Department,
Adyar Irrigation Division,
St.Thomas Mount,
Chennai-600 016.

+lcc to Mr.S.Nambirajan, Advocate SR. No.10100

W.P.No.2670/2022

PCH (CO)

PR (04/03/2022)