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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

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THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.2258 of 2022 and WMP.Nos.2431 and 2432/2022

C.Kirushnamoorthi

Petitioner

-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

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 3<sup>rd</sup> respondent Notice in Form III see Rule 6(1) I, dated 29.12.2021 served on the petitioner on 30.12.2021 with reference to Form-1, and quash the same as erroneous, unlawful and issued without jurisdiction.

For Petitioner : Mr.S.Nambirajan

For Respondents: Mr.K.V.Sajeevkumar,  
RR1 to R3 Spl.G.P.

ORDER

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

This Writ Petition has been filed, challenging the Form-III Notice dated 29.12.2021 issued by the 3<sup>rd</sup> 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 petitioner would submit that the petitioner has been issued with the impugned Form-III notice by the 3<sup>rd</sup> respondent, namely, the Assistant Engineer, Water Resource Department, Adyar Irrigation Division, St.Thomas Mount, Chennai-16, without hearing him alleging that the petitioner is an encroacher of the land in Survey No.509, Manapakkam, Sriperumbudur Taluk, now comes under Alandur Taluk, Kancheepuram District. But, according to the learned Counsel for the petitioner, the land in Survey No.509 stated above does not come under the category of drain land because the Encumbrance Certificate of Survey No.509 reflects that the schedule of the property of Dharmarajapuram, Manapakkam Village to an extent of 1650 sq.ft. is not coming within the jurisdiction of the 3<sup>rd</sup> respondent. Therefore, the 3<sup>rd</sup> respondent has mistakenly issued a Form-III notice to the petitioner and others in Dharmarajapuram, Manapakkam Village as though they are encroachers, but frankly speaking, they are not encroachers. The petitioner has been paying the property tax to the Village President of Manapakkam Village in the name of Kumutha and also got electricity connection in the name of one Sukumar and he has also got a Family Ration Card issued by the Civil Supplies and Consumer Production Department and Aadhar Card also has been issued to him. Therefore, when the petitioner has been residing for more than 30 years in the place-in-question, the 3<sup>rd</sup> respondent issuing the impugned Form-III notice dated 29.12.2021 which was served on him on 30.12.2021 stating the he is an encroacher of the drain land is without any jurisdiction. Hence, the same is liable to be interfered with, he pleaded.

4. In support of his submission, learned Counsel for the petitioner relying upon a decision of this Court in T.S.Senthil Kumar vs. The Government of Tamil Nadu and others reported in 2010 (3) MLJ 771 submitted that 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-II of the Rules has to be issued, but the concerned Tahsildar has issued Form-III Notice without issuing the Form-II notice. Therefore, for all these infirmities, the Writ Petition deserves to be allowed by setting aside the impugned notice, he pleaded.

5. It is, at this stage, Mr.K.V.Sajeevkumar, learned Special Government Pleader taking notice for the respondents



submitted that originally, the petitioner ought to have been issued with Form-II notice by the Tahsildar 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. However, the challenge made by the petitioner that the 3<sup>rd</sup> respondent has no authority or jurisdiction to issue the impugned Form-III notice is concerned, the said submission cannot be accepted. The reason being that the 3<sup>rd</sup> respondent, namely, the Assistant Engineer, Water Resource Department, Adyar Irrigation Division, St.Thomas Mount, Chennai-16, has knowledge of the location of the property-in-question and not only the petitioner, three other persons have also encroached the water body. In support of this submission, he has also produced a typed set of papers along with Village Sketch.

6. A perusal of the typed set produced by the learned Special Government Pleader appearing for the respondents would go to show that the petitioner and four others have encroached the water body. When the copies of the said typed set of papers are furnished to the learned Counsel for the petitioner, he is unable to deny the same. But the Village Sketch produced before us clearly shows that the water body has been almost encroached by the petitioner and four others. But as rightly accepted by the learned Special Government Pleader appearing for the respondents, instead of issuing the Form-II notice by the concerned Tahsildar, Form-III Notice has been issued by the Assistant Engineer, Water Resource Department, Adyar Irrigation Division, St.Thomas Mount, Chennai-16, the 3<sup>rd</sup> respondent herein. However, when the petitioner is in encroachment of the boundaries, he is liable for eviction under Section 7 of the said Act and as per the ratio laid down by this Court in the case in T.S.Senthil Kumar vs. The Government of Tamil Nadu and others reported in 2010 (3) MLJ 771, once Form-II Notice is issued, the petitioner shall be liable to give his explanation based on which if the 3<sup>rd</sup> respondent is not satisfied, then, he can proceed to issue the Form-III Notice. The relevant portion is extracted here 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-II of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the



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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 view of the above, agreeing with the submissions made by the learned Special Government Pleader that concerned Tahsildar has to issue the Form-II calling upon the petitioner to submit his explanation whether he has encroached the land-in-question and if the explanation is not satisfactory, only then, Form-III notice can be issued, we direct them to do so accordingly. Since Form-II has not been issued in this case, we hereby order that the impugned Form-III notice shall be treated as Form-II Notice and the petitioner is given two weeks time from today to give his explanation and on receipt of the same, the 3<sup>rd</sup> respondent shall consider the same on the basis of the revenue records and dispose of the matter on merits, within a period of four weeks thereafter and can proceed further in accordance with law, in case, if the explanation of the petitioner is found to be unsatisfactory.

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

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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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.

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+1cc to Mr.S.Nambirajan, Advocate SR.No.8807

W.P.No.2258/2022

SKM(CO)  
GMY(28/03/2022)