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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.4.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.6756 of 2022

& WMP.No.6836 of 2022

Abi Showatech (India) Pvt.
Ltd., rep.by the Executive
Director (Operations)

... Petitioner

vs

- 1.The Government of Tamil Nadu,
rep.by the Chief Secretary to
Government, Secretariat,
Chennai-9.
- 2.The Principal Secretary to Government
(Revenue), Government of Tamil Nadu,
Secretariat, Chennai-9.
- 3.The Additional Chief Secretary to
Government, Public Works and
Irrigation Department, Government
of Tamil Nadu, Secretariat,
Chennai-9.
- 4.The District Collector, Office
of the District Collector,
Ranipet-632401.
- 5.The Block Development Officer
(B.P.), Sholinghur Panchayat
Union, Sholinghur, Ranipet
District-631102.



6.The Tahsildar, Taluk Office,
Sholinghur, Ranipet District.
631102.

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7.The Revenue Inspector,
Taluk Office, Sholinghur,
Ranipet District. 631102.

... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned i) Order vide No. Na.Ka. A2/410/2022 dated 04.3.2022 issued by the 5th respondent which served on the petitioner on 08.3.2022 and ii) Notice dated 04.3.2022 issued by the 5th respondent under Section 7(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 which served on the petitioner on 11-3-2022 and quash the same and consequently direct the respondents 1 to 3 to consider claim of the petitioner to purchase the encroached portion of land Survey No.801, pointed out by the respondents in the impugned orders as per Section 12 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 for the price fixed by the Government or exchange of alternate land having equal measurement, by taking into consideration of the fact removal of encroachment would not serve any purpose, as it does not affect storage capacity and water quality of the lake, since bifurcating the petitioner company and lake, metal thar road in existence and use for a several years laid by the Highways Department connecting Pulivalam Village to Kodaikkal Village and Walaja Road (National Highway).

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel assisted by
Mr.Prakash Adiapadham

For Respondents : Mr.J.Ravindran, Additional
Advocate General &
Mr.P.Muthukumar, State
Government Pleader assisted
by Mr.A.Selvendran, Special
Government Pleader for R1
to R4, R6 & R7

Mr.E.Sundaram for R5
Government Advocate



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ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

We have heard the learned counsel appearing for the respective parties.

2. By this writ petition, a challenge is made to the notice dated 04.3.2022 issued under Section 7(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (for short, the Act of 2007).

3. The learned Senior Counsel appearing on behalf of the petitioner submits that the procedure under the Act of 2007 was not followed and otherwise, the respondents initiated action presuming the land in question to be part of a tank. After issuance of notices in Forms I and II under the Act of 2007, a detailed reply was given to the official respondents.

4. Per contra, the learned State Government Pleader contests the writ petition and submits that as per the Act of 2007, the petitioner was served with notice in Form I, followed by the notice in Form II. It is incorrect to state that the procedure prescribed under the Act of 2007 was not followed. The land encroached by the petitioner is a part of the tank and therefore, it is incorrect to state that the procedure prescribed under the Act of 2007 has been wrongly applied presuming the land in question to be a part of the tank. In fact, it is only after verification of the fact with regard to the land in question, action has been initiated by the respondents.

5. We have carefully considered the submissions of either parties and perused the records.

6. The challenge is made to the notice under Section 7(1) of the Act of 2007 mainly on two grounds, firstly alleging non-compliance of the provisions of the Act of 2007 and secondly presuming the land in question to be a part of the tank, whereas, according to the petitioner, it is not so.



7. So far as the first issue is concerned, we find that the official respondents has applied the procedure as given under the Act of 2007 and issued the notice to the petitioner in Form I followed by the notice in Form II. The notice in Form III is yet to be issued.

8. For ready reference, Form II under Sub-Rule (2) of Rule 5 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 is quoted hereunder :

"Form II

[See Sub-rule (2) of Rule 5]

Notice Showing the Index Map of Tank and Boundaries

Name of the

Tank
.....

Name of the

Village(s).....

Name of the

Taluk(s)

Name of the

District(s)

Notice

It is hereby notified for public information in accordance with the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 (Tamil Nadu Act 8 of 2007) that all the part and pieces of land shown within the boundaries marked in the map duly authorised by the Tahsildar of.....Taluk as below are belonging to the Water Resources Organisation of Public Works Department. The public are ordered not to encroach upon any land within the boundaries. Any encroachment within the boundaries is liable for eviction under Section 7 of the Act and the offenders shall be punished with imprisonment for a term, which may extend to three months or fine of rupees five thousand or with both under Section 7 of the Act.

Place:

Date:

Name

..

Designation....."



9. A reply has been given by the petitioner and it is not in dispute that the notice in Form III has not yet been issued.

10. For ready reference, Form III under Sub-Rule (1) of Rule 6 of the said Rules is also quoted hereunder :

"Form III

[See Sub-rule (1) of Rule 6]

Notice to Order for Removal of Encroachment

I
... the Officer, is of the opinion that the
portion of
the
..... tank to an extent
of
.....
..m2 in Survey Field
Number
.....
.....
..... in the
Village
.....in.....
.....
.....Taluk,
in.....
.....District, belonging
to the Water Resources Organisation of
Public Works Department is encroached by you
and in your occupation. I call upon you to
evict your encroachment from the said piece
and part of land within twenty one days from
the date of receipt of this notice, failing
which I shall remove the encroachment and
impose the cost for removal of encroachment
against you. The Department shall not take
any responsibility for encroachments removed
from within the land and disposed of.

Place:

Date:

Name.....

Designation....."



11. In view of the aforesaid provisions, it cannot be accepted that the official respondents failed to apply the provisions of the Act of 2007. Rather, after issuing the notice in Form I, the notice in Form II was issued. The final notice in Form III is yet to be issued after consideration of the reply. Thus, prima facie we find the writ petition to be premature and otherwise, we are not in acceptance with the allegations of non-compliance of the provisions of the Act of 2007.

12. So far as the allegation that the land in question is not a part of the tank is concerned, since the reply to the notice in Form II has been given, the issue would be considered by the respondents. Thus, we would not like to make comment on the issue. Rather, it is left open to the respondents and if it is found to be a case of encroachment of tank land, they would be at liberty to proceed further as per the provisions of law. Presently, the writ petition is premature and otherwise, the question of fact as to whether the encroached land is a part of the tank or not cannot be determined while exercising extraordinary jurisdiction under Article 226 of The Constitution of India.

13. For the foregoing discussions, we dismiss the writ petition. However, it would not mean that the respondents would not consider the reply given by the petitioner in response to the notice in Form II before taking further action. Rather, further action would be taken in consonance with the provisions of law after consideration of the reply. Consequently, the connected WMP is also dismissed. There will be no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

To:

1. The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat,
Chennai-9.



2.The Principal Secretary to Government
(Revenue), Government of Tamil Nadu,
Secretariat, Chennai-9.

3.The Additional Chief Secretary to Government,
Public Works and
Irrigation Department, Government
of Tamil Nadu, Secretariat,
Chennai-9.

4.The District Collector,
Office of the District Collector,
Ranipet-632401.

5.The Block Development Officer,
(B.P.), Sholinghur Panchayat,
Union, Sholinghur, Ranipet,
District-631102.

6.The Tahsildar, Taluk Office,
Sholinghur, Ranipet District.
631102.

7.The Revenue Inspector,
Taluk Office, Sholinghur,
Ranipet District. 631102.

+1cc to M/s.E.Sundaram, Advocate Sr.27189

+1cc to the Government Pleader Sr.27533, 27709

+2cc to M/s.Prakash Adiapadam, Advocate Sr.27667

W.P.No.6756 of 2022
& WMP.No.6836 of 2022

rsi[col]

srg 05/05/2022