



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7110 of 2022

D.Arul Murugan

.. Petitioner

Vs

1.The District Collector,
Thiruvallur District,
Master Plan Complex,
NH - 205, Tiruvallur
Pin-602 001.

2.The Revenue Divisional Officer,
Near SBI & Post Office,
J.N.Road,
Tiruvallur - 602 001.

3.The Tahsildar,
Taluk Office,
Tiruttani Taluk.

(Cause-title of respondent No.3 amended
as per the order dated 28.3.2022 in
W.M.P.No.7475 of 2022)

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the third respondent made in Ref.No.Na.Ka.826/2020/A1 dated 18.03.2022 and quash the same and consequently direct the third respondent to strictly follow the directions of this Court with its true letter and spirit made in W.P.No.293 of 2021 dated 27.01.2022.

For the Petitioner : Mr.P.Chandrasekar
for Mr.K.Balaji

For the Respondents : Mr.J.Ravindran
Addl. Advocate General
assisted by
Mr.A.Selvendran
Spl. Government Pleader



ORDER

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

Assailing the order dated 18.3.2022 passed by the third respondent, the writ petition has been filed seeking a direction on the respondents to follow the direction issued by this court in the judgment dated 27.1.2022 passed in W.P.No.293 of 2021.

2. Learned counsel for the petitioner submits that in a petition filed by one R.Renuka Ganesh, bearing W.P.No.293 of 2021, this court passed an order dated 27.1.2022 giving certain directions in paragraph 4. The writ petition therein was filed seeking a writ of mandamus against respondents 1 to 4 therein to take action against respondents 8 and 9 to remove the encroachment on the pond area at Survey No.109/7, Thozhudhavur Village, Tiruthani Taluk, Thiruvallur District. The writ petition therein was disposed of with certain directions, out of which the relevant direction for the purpose of this writ petition was to follow the procedure prescribed under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 or the Tamil Nadu Land Encroachment Act, 1905 in its strict terms, if the encroachment is found.

3. Learned counsel for the petitioner submits that without following the procedure given under the Act of 2007 or the Act of 1905, the respondents have now issued a notice for eviction. Referring to the facts of this case, learned counsel submits that notices under Sections 6 and 7 of the Act of 1905 were issued during the pendency of the earlier writ petition and, therefore, a representation was made by the petitioner requesting the respondents not to proceed further in the matter, but ignoring the representation and without causing notices afresh under Sections 6 and 7 of the Act of 1905, the order for eviction has been passed. Therefore, the respondents have violated the direction given by this court in its order dated 27.1.2022. Therefore, the prayer is to set aside the order dated 18.3.2022.

4. We have considered the submission made by learned counsel on either side and perused the records.

5. The facts relevant to the case have been narrated, but at the cost of repetition, it is necessary to refer to certain facts which pertain to land in question. The writ petition, being W.P.No.293 of 2021, was filed by R.Renuka Ganesh alleging encroachment in the pond. The writ petition was disposed of with the directions which are contained in paragraph 4(ii) and are quoted hereunder:

"4. Having regard to the contentions raised by the Petitioner, the Writ Petition is disposed on the



WEB COPY

following terms:-

(i) ***

(ii) if it has been found that there are any encroachments in that water body, immediate action for their removal shall be taken following the prescribed procedure under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, or the Tamil Nadu Land Encroachment Act, 1905, as the case may be."

6. Learned counsel for the petitioner has alleged violation of the direction quoted above inasmuch as without complying the prescribed procedure given under the Act of 2007 and the Act of 1905, the order impugned has been issued. It is stated that while the notices under Sections 6 and 7 of the Act of 1905 were given to the petitioner, it was replied by way of representation stating that a writ petition is pending, thus, respondents should not proceed further in the matter.

7. Since the petitioner did not challenge the notices under Sections 6 and 7 of the Act of 1905, the respondents were bound to proceed further in the matter, because mere pendency of the writ petition is not a bar on the respondents to proceed further, more so, when the petition was filed to seek a direction for removal of the encroachment and notices under Sections 6 and 7 of the Act of 1905 were given for that purpose only. The petitioner did not contest the notices under Sections 6 and 7 on merit and, therefore, the respondents proceeded further in the matter in compliance of the direction quoted above and issued the order dated 18.3.2022.

8. According to the petitioner, the respondents could not have proceeded further in reference to notices issued under Sections 6 and 7 of the Act of 1905 during the pendency of the public interest litigation and fresh notices under the provisions of the Act of 1905 ought to have been given after disposal of the writ petition by the order dated 27.1.2022.

9. We do not find argument aforesaid to be tenable because while concluding the writ petition, the direction of the court was to remove the encroachment after complying the procedure given under the Act of 2007 or the Act of 1905. The said procedure has been applied. Rather, the procedure under the Act of 1905 was initiated even prior to the disposal of the writ petition and has been concluded thereupon. Therefore, it cannot be said that without complying the procedure under the Act of 1905, the order dated 18.3.2022 has been passed. The petitioner was served with notices under Sections 6 and 7 of the Act of 1905. The provisions of Sections 6 and 7 of the Act of 1905 are quoted herein for ready reference:



WEB COPY

"6. Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops, etc.-

(1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 or section 3- A may be summarily evicted by the Collector, or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorized by the State Government in this behalf (hereinafter referred as the Authorised Officer) and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorized officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control by the Tahsildar or Deputy Tahsildar or authorized officer and any property so forfeited shall be disposed of as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorized officer may direct.

(2) An eviction under this section shall be made in the following manner, namely:- By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or the authorized officer may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar or Deputy Tahsildar or authorized officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorized officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the



WEB COPY

form of the schedule for imprisonment in the civil jail of the district for the like period:

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any authorized officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

7. Prior notice to person in occupation.- Before taking proceedings under section 6, the Collector or Tahsildar, or Deputy Tahsildar or Revenue Inspector or any authorized officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer'), as the case may be, shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864 or in such other manner as the State Government by rules or orders under section 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he has been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar or Deputy Tahsildar or authorised officer having



WEB COPY

jurisdiction, as the case may be, and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar or authorised officer having jurisdiction, as the case may be."

10. It is a fact that the petitioner was having a remedy of appeal under Section 10 of the Act of 1905, but without availing the same, a writ petition was filed alleging non-compliance of the direction of this court 27.1.2022 while passing the order dated 18.3.2021. It is despite the fact that the respondents had issued notices under Sections 6 and 7 of the Act of 1905 before issuing the order dated 18.3.2021, thus, required procedure was followed.

In view of the above, we do not find any merit in the writ petition to cause interference with the order dated 18.3.2021. Accordingly, the writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.7119 and 9139 of 2022 are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sasi

To

1.The District Collector,
Thiruvallur District,
Master Plan Complex,
NH - 205, Tiruvallur, Pin-602 001.

2.The Revenue Divisional Officer,
Near SBI & Post Office,
J.N.Road, Tiruvallur - 602 001.

3.The Tahsildar,
Taluk Office, Tiruttani Taluk.

+1cc to Mr.K.Balaji, Advocate, S.R.No.26586

+1cc to Thomas T.Jacob, Advocate, S.R.No.27334(07/06/2022)

+1cc to the Government Pleader, S.R.No.27165(07/06/2022)

W.P.No.7110 of 2022

SPD(CO)
SB(25/04/2022)