



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM :

WEB COPY

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

W.P.Nos.11035, 11039, 11043, 11046 and 11051 of 2022

R.Tamilarasan	...Petitioner in W.P.No.11035/2022
N.Vinayagam	...Petitioner in W.P.No.11039/2022
K.Kumaraguru	...Petitioner in W.P.No.11043/2022
M.Srinivasan	...Petitioner in W.P.No.11046/2022
M.Venkatesan	...Petitioner in W.P.No.11051/2022

Vs

1.The District Collector,
Ranipet Collectorate,
Ranipet District.

2.The Thasildar,
Sholingar,
Ranipet District.

3.The Assistant Engineer (PWD),
Water Resources Organization,
Irrigation Division,
Kavaripakkam, Ranipet District.

...Respondents

Prayer : Petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the notice dated 4th August 2020 issued by the third respondent in Form 3 under Rule 6(1) of the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules made under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and to quash the same.

For the Petitioners : Mr.V.R.Thangavelu

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



COMMON ORDER

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

The writ petitions have been filed to challenge the notices dated 4.8.2020 issued by the respondents invoking the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 [for brevity, "the Rules of 2007"].

2. Challenge to the notices has been made alleging non-compliance of Section 7(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 [for brevity, "the Act of 2007"]. It is stated that despite a mandate to survey the land before issuance of an eviction notice under Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 [for brevity, "the Rules of 2007"], no such survey was conducted. It is submitted that the petitioners had made representations indicating possession of the land for several years after entering into sale deeds. It is with the indication that free flow of odai is not affected by the possession of the property and, thus, the impugned notices should be quashed.

3. Learned counsel for the petitioners submits that without causing survey, an allegation of encroachment has been made. He added that only on survey it can be ascertained by the respondent authorities as to whether the petitioners are occupying excess lands. It is submitted that the petitioners would not be opposing any action, if they are found to be in occupation of excess land after survey. A specific reference has been given in paragraph 8 of the affidavit filed in support of the writ petition. Thus, a direction is sought on the respondents not to give effect to the notice unless survey is conducted indicating encroachment of land.

4. It is further stated that the writ petitions were filed after lapse of two years, as after representations were submitted by them, the respondent authorities did not take any action. Thus, the petitioners were of the opinion that being satisfied with the representation, the respondents had not taken action. However, on knowing that the respondents may initiate action now, the writ petitions were filed immediately thereupon.

5. The writ petitions have been contested by learned Additional Advocate General submitting that reference to Section 4 of the Act of 2007 has been given ignoring the fact that the compliance of the provision aforesaid is to be made at the initial stage itself for demarcation of the tank and notification the boundaries. It is not required to be conducted time and again, rather based on the boundaries so notified if encroachment is found, action is to be taken under Section 7 of the Act of 2007 read with Rule 6 of the Rules of 2007.



6. It is further submitted that the petitioners are encroachers of the land of the water tank which is in excess of the land purchased by them and, accordingly, notices were given to them. Though the petitioners submitted a representation, there was neither an allegation of violation of Section 7(1) of the Act of 2007 nor a request to conduct survey and now after lapse of a period of two years, the prayer made to conduct survey is not bona fide.

7. We have considered the rival submissions and perused the records.

8. The challenge to the notices under Section 7 of the Act of 2007 read with Rule 6 of the Rules of 2007 has been made alleging non-compliance of the procedure contemplated under Sections 4 and 6 of the Act of 2007, though such dispute was not raised in the reply sent to the notices. The procedure for appointment of survey officer and report of survey officer are prescribed under Sections 4 and 6, which are quoted hereunder:

"4. Appointment of Survey Officer.-

(1) The Government or any other officer authorized by it may, by order, appoint any officer not below the rank of Taluk Surveyor as Survey Officer for surveying the tanks within such local limits as may be specified in such order.

(2) The Survey Officer shall carry out the survey of tanks in such manner as may be prescribed.

(3) The Survey Officer shall be assisted by such officers of the Public Works Department having control over such tanks.

6. Report of Survey Officer.-

(1) The Survey Officer shall after the completion of the survey of tanks, prepare a chart and a register pointing out the boundaries of the tanks and such other informations necessary for the purpose of identifying the limits of tank.

(2) The chart and the register prepared under sub section (1) shall be handed over to an officer of the Public Works Department, having control over such tanks, as may be specified by the Government.

(3) The officer referred to in sub-section (2), shall within one month from the date of handing over of the chart and register, publish a notice in such manner as may be prescribed point out the boundaries of the tank."



9. As per Sections 4 and 6 of the Act of 2007, the Survey Officer shall conduct survey of tanks and prepare a chart and a register pointing out the boundaries of the tanks. The allegation in the writ petition is not that the action as envisaged under Sections 4 and 6 of the Act of 2007 has not been taken to determine the boundaries, but their grievance is that before causing a notice under Rule 6 of the Rules of 2007 for eviction of encroachment, the compliance of Sections 4 and 6 of the Act of 2007 was not made. Section 7 of the Act is also quoted hereunder for ready reference:

"7. Eviction of encroachment.- (1) If the officer specified in sub-section (2) of Section 6 is of opinion that any person has encroached upon any land within the boundaries of the tank and that the encroacher should be evicted, the officer shall issue a notice in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before a date specified in the notice.

(2) Where, within the period, specified in the notice under sub-section (1), the encroacher has not removed the encroachment and has not vacated the land within the boundaries of the tank, the officer referred to in sub-section (2) of Section 6 shall remove the encroachment and take possession of the land within the boundaries of the tank encroached upon, by taking such police assistance as may be necessary. Any police officer whose help is required for this purpose shall render necessary help to that officer.

(3) Any crop or other product raised on the land within the boundaries of the tank shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by the encroacher after a notice under sub-section (1), be liable to forfeiture."

10. Section 7 of the Act of 2007 does not direct survey of the land in the manner given under Sections 4 and 6 of the Act of 2007 before causing notice under Rule 6 of the Rules of 2007. Therefore, we are unable to accept the first limb of the argument raised by learned counsel for the petitioners and otherwise, as stated by learned Additional Advocate General, survey and report as required to be conducted under Section 6 of the Act of 2007 have been done while determining the boundaries of the tank and that exercise is not required to be caused again before issuance of notice under Rule 6 of the Rules of 2007.



11. It is also a fact that the entire plot occupied by the petitioners is not said to be an encroachment, but only small parts of it. The petitioners have not indicated in their reply to the notices that they are in occupation of only the lands so purchased and not excess lands. In any case, this court exercising jurisdiction under Article 226 of the Constitution of India cannot enter into such factual disputes.

12. However, taking note of the statement made by the petitioners, while we do not intend to cause interference with the impugned notices, the writ petitions are disposed of with liberty to respondents to proceed further to remove the encroachment only to the extent of the land belonging to the reservoir and while undertaking such exercise, the land in rightful occupation of the petitioners may not be disturbed. Rather, action should be taken after measuring the land belonging to the petitioners. In any event, the exercise of removal of encroachment would be completed within two months from the date of receipt of a copy of this order.

There will be no order as to costs. Consequently, W.M.P.Nos.10629, 10635, 10638, 10640 and 10642 of 2022 are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To:

- 1.The District Collector,
Ranipet Collectorate,
Ranipet District.
- 2.The Thasildar,
Sholingar, Ranipet District.
- 3.The Assistant Engineer (PWD),
Water Resources Organization,
Irrigation Division,
Kavaripakkam, Ranipet District.

+5ccs to M/s.V.R.Thangavelu, Advocate Sr.No.30799 to 30803

+1cc to the Government Pleader Sr.No.30971, 30973

W.P.Nos.11035, 11039, 11043, 11046 and 11051 of 2022

BP(CO)

RVM(11/05/2022)