



W.P.Nos.13853, 13855 and 14179 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.07.2022

DELIVERED ON : 19.07.2022

CORAM :

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

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.13853, 13855 and 14179 of 2022

B.Thangaraj

.. Petitioner in
W.P.No.13853/2022

R.Reethamma

.. Petitioner in
W.P.No.13855/2022

C.Jacklin Mary Roseline

.. Petitioner in
W.P.No.14179/2022

Vs

1.The Secretary,
Public Works Department,
Water Resource Department,
Government of Tamilnadu,
Secretariat,
Chennai-600 009.



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- 2.The Assistant Engineer,
Public Works Department,
Water Resource Department,
Irrigation Section,
Padappai-602 301.
- 3.The Director,
Directorate of Survey and Land Records,
Survey House, Chepauk,
Chennai - 600 005.
- 4.The Assistant Director of Survey and Land Reforms,
District Survey Office,
Collectorate Campus,
Chengalpet.
- 5.The Tashildar,
Pallavaram Taluk,
Chrompet,
Chennai-600 044.
- 6.The Inspector of Police,
S-12, Chitlapakkam Police Station,
2nd Main Road, Chitlapakkam,
Chennai-600 064.

.. Respondents
in all WPs

Prayer : W.P.Nos.13853 and 13855 of 2022 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the second respondent in respect of his notice dated 20.11.2021 issued to the petitioners in Form-III, under rule 6 sub-rule (1) of the Tamilnadu Protection of Tanks and Eviction of Encroachment Rules, 2007 relating to property comprised in Survey Number NIL, T.S.Number Ward-D, Block-50, T.S.No.117, Zamin Pallavaram, Pallavaram, Chengalpattu District of constructed house admeasuring 80 sq.m., to quash the same and consequently forebear the respondents from interfering with the petitioners peaceful possession and enjoyment of subject property referred above.



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W.P.No.14179 of 2022 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the second respondent in respect of his notice dated 20.11.2021 issued to the petitioner in Form-III, under rule 6 sub-rule (1) of the Tamilnadu Protection of Tanks and Eviction of Encroachment Rules, 2007 relating to property comprised in Survey Number NIL, T.S.Number 58, Ward-D, Block-53, Zamin Pallavaram, Pallavaram, Chengalpattu District of constructed house admeasuring 90 sq.m., to quash the same and consequently forebear the respondents from interfering with the petitioners peaceful possession and enjoyment of his subject property referred above.

For the Petitioners in all WPs	: Mr.P.Karl Marx
For the Respondents in all WPs	: Mr.J.Ravindran Addl. Advocate General assisted by Mr.P.Muthukumar State Government Pleader Mr.A.Selvendran Spl. Government Pleader

COMMON ORDER

THE CHIEF JUSTICE

By these writ petitions a challenge is made to the notices dated 20.11.2021 issued in Form-III under sub-rule (1) of Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment



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Rules, 2007 [for brevity, "*the Rules of 2007*"].
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2. The challenge to the notices has been made mainly on the ground that the lands in question belong to the petitioners and they are having valid title in proof thereof, yet ignoring the aforesaid the notices in Form III were issued. The petitioners sent their replies/objections to the notices. However, no order on it has been passed. Since the respondents were pursuing action to remove the constructions, the petitioners were left with no option but to file the present writ petitions.

3. Learned counsel for the petitioners has given reference of a Division Bench judgment of this court in the case of ***T.S.Senthil Kumar v. The Government of Tamil Nadu and others, (2010) 3 MLJ 771***, and also a Larger Bench judgment in the case of ***T.K.Shanmugam v. State of Tamil Nadu, (2015) 8 MLJ 1 (FB)***. In the case of ***T.S.Senthil Kumar*** (supra), the constitutional validity of certain provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 [for short, "*the Act of*



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2007"] and Rules of 2007 was challenged. The provisions were held to be constitutionally valid, but to ensure observance of the principles of natural justice, a direction was given to the effect that when the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of the Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, the 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-III may be issued. It was further directed that the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks. The authorities were directed to consider the objections and pass appropriate orders in accordance with law. However, in the instant case, though the petitioners sent their replies/objections, no order has yet been passed. Thus, the prayer is made to either quash the notice in Form-III issued under Rule 6(1) of the Rules of 2007 or to direct the respondents to consider the replies/objections given by them and



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pass appropriate orders. It is in the background that the petitioners have placed on record certain documents to show their title and it is not such a case where the petitioners failed to show their right to possess the land.

4. Learned Additional Advocate General has contested the writ petitions and submits that as per the judgment in the case of **T.S.Senthil Kumar** (supra), the encroacher was required to give reply/objection to the notice in Form-III within two weeks, but, in the instant case, it was given after lapse of five/six months and, therefore, a direction for consideration of the reply/objection may not be given, rather finding the petitioners to have encroached the land of water tank, liberty be given to the respondents to remove the encroachment.

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

6. The issue in reference to the notice in Form-III under Rule 6(1) of the Rules of 2007, pursuant to power under Section 7 of the



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Act of 2007, was the subject-matter of the judgment in the case of **T.S.Senthil Kumar** (supra), wherein the constitutional validity of the provisions was challenged. The Division Bench did not find the provisions to be unconstitutional so as to strike down the same, but to provide for observance of the principles of natural justice, certain directions were given. For ready reference, paragraph (20) of the said judgment is quoted hereunder:

"20. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra Mysore v. J.V. Bhat, 1975 (2) S.C.R. 407 and (ii) The Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka, AIR 1991 SC 1117, where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that



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all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if



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necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as 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-III of the Rules may be issued.

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

[emphasis supplied]



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7. The judgment of the Division Bench in the case of **T.S.Senthil Kumar** (supra) was considered by the Full Bench in the case of **T.K.Shanmugam** (supra) and the directions given by the Division Bench were found to be just and reasonable in the facts and circumstances of the case.

8. In the light of the aforesaid, we find that after the notice in Form-III, the petitioners should have given their replies/objections within a period of two weeks, as directed by the Division Bench of this Court in the case of **T.S.Senthil Kumar** (supra). However, the fact remains that no action to remove the encroachment was taken by the respondents immediately or till the filing of the writ petitions in the month of May, 2022 and, in the meantime, the petitioners sent their replies/objections.

9. We, therefore, dispose of these writ petitions with the following directions:

- (i) To fortify the stand taken by the petitioners in their replies/objections, the petitioners are given two weeks'



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time to submit documents to prove their right of possession to the respondent authorities;

(ii) On receipt of the such documents, if any, within the stipulated time, the respondent authorities shall pass orders on the replies/objections within two weeks thereafter and proceed further as per the provisions of the law; and

(iii) Till the aforesaid exercise is undertaken, the respondent authorities will not give effect to the notice in Form-III issued under Rule 6(1) of the Rules of 2007.

There will be no order as to costs. Consequently, W.M.P.Nos.13125, 13127, 13126, 13128, 13423 and 13424 of 2022 are closed.

(M.N.B., CJ.) (N.M., J.)
19.07.2022

Index : Yes
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Chennai-600 009.
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THE HON'BLE CHIEF JUSTICE
AND
N.MALA,J.

(sasi)

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