

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

CORAM :

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

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.16771 of 2022

and

W.M.P.Nos.16082 & 16084 of 2022

M.Dhayalan

.. Petitioner

Vs

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

Prayer : Petition 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 117, Ward-D, Block-50, Zamin Pallavaram, Pallavaram, Chengalpattu District of constructed house admeasuring 80 sq. m., to quash the same and consequently forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of his subject property referred above.

For the Petitioner : Mr.P.Karl Marx

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)

By this writ petition, a challenge is made to the notice in Form-III issued under sub-rule (1) of Rule 6 of the Tanks and Eviction of Encroachment Rules, 2007 [for brevity, "the Rules of 2007"].

2. The challenge to the impugned notice has been made mainly on the ground that the land in question belongs to the petitioner, yet, notice in Form-III has been given with a direction to evict him from the land. A reference of sale deed has been given to indicate title of the land and perused by this Court. We find that the sale deed referred by the petitioner is an un-registered document, which cannot create right in favour of the petitioner and it has been fairly conceded by learned counsel for the petitioner that the sale deed is un-registered.

3. The aforesaid is only one part, otherwise, there is nothing on record to show that the executor of the deed was having title to the land i.e. N.Krishnamoorthy, because the

land, otherwise, belongs to tank as per the notice. Thus, the petitioner is under obligation to prove his title to the land and that too a legal document and not an un-registered document.

4. At this stage, learned counsel for the petitioner has given a reference to the judgment of a Coordinate Bench of this Court in the case of K.Sambandhamoorthy v. The Secretary, Public Works Department, Water Resource Department, Government of Tamil Nadu and others [W.P.No.28289 of 2021, decided on 16.02.2022], wherein a similar challenge to Form-III was made and the Court directed to treat Form-III as show cause notice and thereby to give an opportunity of hearing to the petitioner. Thus, a prayer is to follow the said judgment.

5. We have gone through the judgment of the Coordinate Bench in the case of K.Sambandhamoorthy, supra. The issue raised therein was competence of the officer who issued notice in Form-III, which is not an issue herein and, further, no reason has been given to convert Form-III as show cause notice, which otherwise cannot be converted going against the statutory provision, because after serving notices in Form-I and II, this Court cannot issue direction against the statutory provision.

6. It is settled law that any judgment of the Court running counter to any statutory provision would be per incuriam, as has been held by the Apex Court in the case of Dr. Shah Faesal and others v. Union of India and another, (2020) 4 SCC 1. In the instant case, since no document has been produced by the petitioner to prove his legal title over the land in question, we do not find any ground to cause interference in the notice in Form-III.

7. Accordingly, the writ petition fails and it is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.16082 and 16084 of 2022 are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
Public Works Department,
Water Resource Department,
Government of Tamilnadu,
Secretariat, Chennai-600 009.
2. The Assistant Engineer,
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Irrigation Section,
Padappai-602 301.
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+1cc to Mr.P.Karl Marx, Advocate, S.R.No.42198

+1cc to the Government Pleader, S.R.No.42890

W.P.No.16771 of 2022

GPL(CO)
UMA(11/07/2022)