



W.P.No.27963 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.27963 of 2022

Saravanan

.. Petitioner

Vs

- 1.The District Collector,
Collectorate Buildings,
Salem District.
- 2.The chief Engineer,
Public Works Department,
Cauvery Upper Basin Circle,
Trichy.
- 3.The Executive Engineer,
Water Resources Department,
Warabanga Basin Circle,
Salem.
- 4.The Revenue Divisional Officer,
Athur, Salem District.



W.P.No.27963 of 2022

5. The Tahsildar,
Peddanaaickenpalayam,
Salem,
Salem District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records of the third respondent vide Form III dated 29.09.2022 and quash the same.

For the Petitioner : Mr.N.Umapathi

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 Acting Chief Justice)

Mr.Saravanan, son of Periyagounder, has filed this writ petition challenging the impugned notice in Form III dated 29.9.2022 issued by the third respondent and to quash the same.



W.P.No.27963 of 2022

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2. It is the claim of the petitioner that he is a resident of Gopalapuram Village, Peddanaickenpalayam Taluk, Salem District. He is an agriculturist and owning agricultural land admeasuring 4.25 acres comprised in S.No.162/1 to an extent of 1.32 cents and in S.No.162/2A to an extent of 2.93 acres in the said village. Apart from the above, the petitioner is also owning land in S.No.142 to an extent of 0.78 cents, in which the petitioner's family members are cultivating other crops. The lands in S.Nos.162/1, 162/2A and 142 are situated on the banks of river in S.No.151.

3. According to the petitioner, his father was issued with 2C patta in respect of barren lands and he has been cultivating coconut and tamarind trees, apart from cultivating short-term crops in the vacant lands. While so, the third respondent – Executive Engineer, Water Resources Organisation, Sarabanga Basin Circle, Salem, issued the impugned notice in Form III under Rule 6(1) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 (for short, "*Rules of 2007*") alleging that the petitioner has encroached a part of river poramboke land comprised in S.No.151



W.P.No.27963 of 2022

of Gopalapuram Village and directed to remove the same within a period of 21 days from the date of the issuance of the said notice. In the said notice, it has also been stated that if the petitioner failed to remove the encroachment within the time stipulated, the same would be removed at the cost of the petitioner. Aggrieved by the said notice, the petitioner has filed the present writ petition.

4. Learned counsel appearing for the petitioner submitted that when the petitioner's father was granted 2C patta in respect of barren lands in S.No.151, the issuance of impugned notice in Form III is unsustainable in law. He further submitted that by virtue of the impugned notice in Form III in respect of S.No.151, the respondents may interfere with the possession of the petitioner's patta land and, therefore, the impugned notice in Form III is liable to be quashed.

5. Learned Additional Advocate General appearing for the respondents submitted that first of all, the petitioner cannot maintain this writ petition for the simple reason that earlier



W.P.No.27963 of 2022

W.P.No.18185 of 2022 was filed by one Chandran @ Muthusamy against respondents 1 to 5 herein and the petitioner showing him as respondent No.6 for removal of the illegal encroachment made by the petitioner upon the waterbody covering an extent of 4.98 hectares comprised in S.No.151 of Gopalapuram Village, Peddanaickenpalayam Taluk.

6. Learned Additional Advocate General would submit that by the order dated 18.7.2022 passed in W.P.No.18185 of 2022, a Division Bench of this Court, after hearing the parties, except the sixth respondent therein, has given a direction to the State authorities to remove the encroachment made by the sixth respondent, namely the petitioner herein, within a period of eight weeks. Pursuant to the direction of this Court in the said writ petition only, the impugned notice in Form III under Rule 6(1) of the Rules of 2007 was issued calling upon the petitioner to remove the encroachment made in S.No.151, failing which it was to be removed at his costs.



W.P.No.27963 of 2022

WEB COPY

7. Learned Additional Advocate General further submitted that when the petitioner approached this Court with a plea that his father has been issued with 2C patta for barren lands, it is the bounden duty of the petitioner to place on record a copy of the same before this Court. That apart, 2C patta cannot be given for an indefinite period and it will be subject to compliance of certain conditions like paying the rent regularly, maintaining the trees properly, etc., and in default of compliance, the revenue authorities are empowered to take appropriate action against the violator. Since in the instant case the petitioner has not produced the copy of 2C patta, he is not entitled to the relief sought for in the writ petition. Further, since the action initiated by the third respondent is in compliance of the order of this Court in W.P.No.18185 of 2022 dated 18.7.2022, there is no infirmity in the impugned notice in Form III and, thus, he prayed for dismissal of the writ petition.

8. We have considered the rival submissions and also perused the materials available on record.



W.P.No.27963 of 2022

9. On a perusal of the materials produced, we find that one Chandran @ Muthusamy has filed W.P.No.18185 of 2022 for removal of encroachment made by the petitioner herein in the waterbody admeasuring 4.98 hectares comprised in S.No.151 of Gopalapuram Village, Peddanaickenpalayam Taluk. This Court, by the order dated 18.7.2022, after hearing learned Government Pleader has given a direction to remove the encroachment made by the petitioner herein within a period of eight weeks. Pursuant to the order of this Court, the petitioner has been issued notice in Form III under Rule 6(1) of the Rules of 2007.

10. Firstly, if the petitioner is aggrieved by the issuance of notice in Form III under Rule 6(1) of the Rules 2007, he should have placed on record the copy of 2C patta said to have been issued in favour of his father. We are unable to see any such 2C patta in favour of petitioner's father.

11. Secondly, when an order has already been passed for removal of encroachment in S.No.151, we can safely say that the



W.P.No.27963 of 2022

impugned notice in Form III issued under Rule 6(1) of the Rules of 2007 can be effectively implemented only in respect of S.No.151, without interfering with the possession of the petitioner in respect of the lands for which he holds patta.

12. With the above observation, the writ petition is dismissed. It is made clear that since the impugned notice in Form III relates to the land covered in S.No.151, the respondent authorities shall not interfere with the possession of the patta land of the petitioner while removing encroachment in S.No.151. There will be no order as to costs. Consequently, W.M.P.No.27262 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)
19.10.2022

Index : Yes/No
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W.P.No.27963 of 2022

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WEB COPY

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W.P.No.27963 of 2022

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AND
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W.P.No.27963 of 2022

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