



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

WEB COPY

W.P (MD) No.7322 of 2022
and W.M.P. (MD) No.5554 of 2022

- 1.R.Boomi
- 2.K.Lakshmi
- 3.M.Manikandan
- 4.R.Murali
- 5.Rajagopal
- 6.Sundarapandi
- 7.P.Rajendran
- 8.Mayakannan
- 9.P.Murugeswari
- 10.P.Mookkayee
- 11.M.Patchiammal
- 12.M.Ayyappan
- 13.Baby
- 14.M.Bavani
- 15.Sundarammal
- 16.Chandra
- 17.S.Vaijeyanthi
- 18.V.Vasuki
- 19.S.Rani
- 20.J.Pandiammal
- 21.Vallimayil
- 22.A.Suresh
- 23.U.Subbulakshmi
- 24.Vellaithai
- 25.Velayuthagurusamy
- 26.S.Pandi
- 27.Kandammal
- 28.K.Ganesan
- 29.S.P.Pamydeen
- 30.Raja
- 31.A.Kamaludeen
- 32.Raseetha Begum
- 33.M.Balu
- 34.T.Ponnurangan
- 35.Anthony Peter
- 36.Jeeva
- 37.Rajeshwari
- 38.Murugeswari
- 39.Malliga
- 40.Saravanakumar



41.Amutha
42.Sumathi
43.Surendramoorthi

... Petitioners

Vs.

1.The Assistant Engineer,
WRD, PWD, Nilaiyur Section, Nilaiyur,
Periyar Vaigai Basin Sub Division No.II,
Madurai - 625 002.

2.The District Collector,
Collectorate Building,
Madurai - 625 020.

3.The Tahsildar,
Madurai South Taluk,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Form - III Notice under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 (Sub Rule (1) of Rule 6), issued by the 1st Respondent dated 30.03.2022 and quash the same as illegal and consequently direct the 2nd and 3rd Respondents to issue Patta to the Petitioner and other Petitioners by taking into account the 3rd Respondent's Proceedings in Na.Ka.No.C3/19148/2009, dated 27.08.2009 within the stipulated time as fixed by this Hon'ble Court.

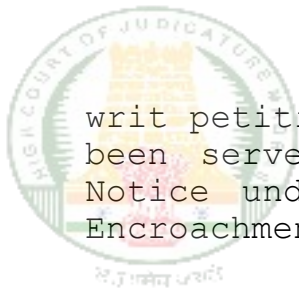
For Petitioners : Ms.A.Rajini
For Respondents 1 to 3 : Mr.S.P.Maharajan
Special Government Pleader

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This writ petition is filed challenging the Form - III Notice dated 30.03.2022 issued by the 1st respondent under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 (Sub Rule (1) of Rule 6) and praying to direct the 2nd and 3rd Respondents to issue Patta to the Petitioners and others by taking into account the 3rd Respondent's Proceedings in Na.Ka.No.C3/19148/2009, dated 27.08.2009 within a time frame.

2. The petitioners, who are 43 in number, have put up small tiled houses in Survey Field No.92 in the village Thirupparankundram, Madurai District. Pursuant to the order of this Court, it is submitted that the respondents have initiated action for removal of encroachments against the petitioners and others. The



writ petition has been filed mainly on the ground that they have not been served with Notice in Form - II before issuing Form - III Notice under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007.

3. In respect of similar writ petition filed by another set of people, this Court has allowed the writ petition with a direction to the first respondent to issue Form - II Notice to the petitioners therein within a period of two weeks from the date of receipt of a copy of that order and to proceed further after getting objections/explanations from the petitioners therein, who are termed as encroachers.

4. Learned counsel appearing for the petitioners requests to pass a similar order in this case also. Learned Special Government Pleader contended that the petitioners herein were served with notice in Form - II. Though, learned Special Government Pleader has produced set of notices, which are stated to have been served to the petitioners, this Court is unable to find acknowledgment from any of the petitioners. Therefore, we hold that the petitioners have not been given notice in Form - II before issuing the impugned notices in Form - III.

5. Learned Special Government Pleader requests this Court to treat the notices issued to the petitioners, which are impugned in the writ petition as notices in Form - II and to give liberty to the respondents/authorized officers to pass final orders after hearing the objections/explanations of the petitioners. For this, learned counsel appearing for the petitioners has no objection.

6. Hence, this Writ Petition is allowed and the impugned notices in the writ petition in Form - III are set aside. However, Form - III notices shall be treated as notices in Form - II of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007. It is open to the petitioners to raise their objections or representations in response to the impugned notices by treating the same as one issued in Form - II, which is required under the Act before issuing notice in Form - III. The 1st respondent is directed to consider the objections or representations offered by the petitioners and to pass appropriate orders and thereafter to take appropriate action, if necessary, by removing the encroachments. The representations of the petitioners that they have applied for patta and the matter is pending consideration before the State need not be considered as that will prolong the matter. The entire exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

7. Learned counsel for the petitioners states that <https://hds.in/courts/home/fccservices/> which is occupied/encroached by the petitioners, is



classified as tank in the revenue records, in the entire land in particular survey number, the tank does not exist for a long time and independent houses were put up not only by the petitioners but also by various other people.

8. Learned counsel for the petitioners further states that there are schools and Government establishments in the land, which has been classified as Puliyankulam Tank. However, there is no scope for any building being allowed inside the waterbody by any encroacher. In such circumstances, we cannot grant exemption to the petitioners merely because they have put up residential houses for several years. The procedure contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the Rules framed thereunder shall be strictly followed before passing final order by issuing Form - III notice. It is also to be noted that this Court has earlier specifically directed the officials to survey and demarcate the lands, if there is any dispute with regard to the encroachment of waterbody. Such survey and demarcation also shall be conducted by the first respondent or authorized officer after issuing notice or in the presence of the so-called encroachers, including the petitioners. This exercise shall be completed within a period of six months from the date of receipt of a copy of this order. This order is applicable not only to the petitioners, who have approached this Court, but also to those who have not approached this Court.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sj

To

- 1.The Assistant Engineer,
WRD, PWD, Nilaiyur Section, Nilaiyur,
Periyar Vaigai Basin Sub Division No.II,
Madurai - 625 002.
- 2.The District Collector,
Collectorate Building,
Madurai - 625 020.
- 3.The Tahsildar,
Madurai South Taluk,
Madurai District.

+1 CC to M/s.SPL GP (SR-25403[F] dated 13/06/2022)

W.P(MD)No.7322 of 2022

09.06.2022

SS(17/06/2022) 4P 5C

<https://hcservices.ecourts.gov.in/hcservices/>