

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.5194 of 2023

and

W.M.P.(MD)Nos.4888 & 4889 of 2023

P.Thanislas

... Petitioner

Vs.

1.The District Collector
Kanyakumari District,
Office of District Collectorate,
Nagercoil-629 001,
Kanyakumari District.

2.The Executive Engineer,
Water Resources Department,
Kodayar Basin Division,
Nagercoil-629 001,
Kanyakumari District.

3.The Assistant Engineer,
Public Works Department,
Mechanical Section,
Cherupalloor-629 161,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to impugned Eviction Notice issued by the third respondent Assistant Engineer in Form III vide his proceedings in Lr.No.Ko.25/33/2023, dated 14.02.2023 and quash the same as illegal.

For Petitioner :Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents :Mr.K.Balasubramani,
Special Government Pleader.

ORDER

Heard the learned counsel on either side.

2. The third respondent has issued the impugned Form III notice calling upon the petitioner to vacate the petition mentioned premises. It is challenged on very many grounds. The primary ground on which the learned counsel appearing for the petitioner attacks the impugned Form III Notice is that it has been passed without hearing the petitioner. He would further add that the petitioner has obtained decree from the jurisdictional civil Court in his favour. It is also highlighted that the State of Tamil Nadu was the defendant in the said suit.

3. We do not want to go into the merits of the matter. The petitioner's concerns can be duly addressed by permitting him to respond to the impugned Form III notice which will be treated as show cause notice. The Hon'ble Division Bench in the decision reported in **(2010) 3MLJ 771 (T.S.Senthil Kumar Vs. Government of Tamil Nadu)** held as follows:-

“20.(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.”

4. The petitioner is given two weeks from the date of receipt of a copy of this order to place his objections before the third respondent in response to the impugned Form III Notice. All the objections of the petitioner

shall be considered by the third respondent who shall pass appropriate orders on merits and in accordance with law. If any adverse order is passed, the petitioner will be given breathing time of three weeks to remove the encroachment during which time he will also have right to question the order. All the contentions of the petitioner are left open.

5. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] [B.P., J.]
10.03.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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To

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