



W.P.(MD)No.17582 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2023

CORAM:

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

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.17582 of 2023

and

W.M.P(MD)Nos.14676 and 14677 of 2023

Muthammal

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Thirumangalam Taluk,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned notice of the second respondent dated 27.06.2023 and quash the same as illegal.

For Petitioner :Mr.T.Veerakumar

For Respondents :Mr.M.Lingadurai,
Special Government Pleader



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ORDER

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

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Heard Mr.T.Veerakumar, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader for the respondents.

2. The petitioner has challenged the order passed by the second respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (in short 'the Act').

3. It is the case of the petitioner that she is the absolute owner of the land measuring to an extent of 74 sq. mts., situated in Survey No.260/98(Part). The petitioner also states that her house property is in Natham land. It is her further case that the impugned eviction order is passed in arbitrary manner without considering the petitioner's right as per revenue records.

4. The learned counsel for the petitioner submitted that no survey was conducted before passing the impugned order despite the petitioner has made objections.

5. The learned Special Government Pleader is unable to get instructions regarding the character of the land or whether the Tahsildar has



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conducted a survey before proceeding for removal of encroachment.

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6. The Honourable Supreme Court in the case of ***Madhav Rao Schindia vs. Ramesh Jatav [(2006) 1 SCC 379]***, has held that survey to identify encroachment shall be done in the presence of persons, who are interested or the persons, who are found to be encroachers.

7. Following the Judgment of Honourable Supreme Court in the case of ***Madhav Rao Schindia*** above referred to, this Court has repeatedly held that before removal of encroachment, the actual encroachment should be identified by conducting a survey by the Tahsildar concerned after issuing notice to the alleged encroachers or in the presence of the alleged encroachers.

8. The Division Bench of this Court in the case of ***T.S.Senthil Kumar vs. Government of Tamil Nadu reported in 2010 (3) MLJ 771***, held that principles of natural justice should be read into the provisions of Tamil Nadu Protections of Tanks and Eviction of Encroachments Act, 2007. So saying, this Court has held as follows:

“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



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supra Mysore vs. J.V. Bhat - 1975 (2) S.C.R. 407 and (ii)The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka, - 1991 (1) U.J. (S.C.) 628 = AIR 1991 SC 1117 = 1991 (2) SCC 604., 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 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.



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(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 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.”

9. In view of the law settled by the Honourable Supreme Court and this Court earlier, when a summary proceedings are initiated against the encroacher, it is for the Tahsildar concerned to conduct a survey in the presence of the interested persons, before they proceed to determine whether the property is in the encroachment of the person concerned. It is only thereafter, they can proceed further by issuing a show cause notice under Section 7 of the Act and pass final orders under Section 6 of the Act, after holding an enquiry on the



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objections / explanations offered to the notice issued under Section 7 of the

Act.

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10. In the case on hand, no survey was conducted before passing the impugned order. In such view of the matter, this Court is inclined to set aside the impugned notice issued by the second respondent.

11. Accordingly, this writ petition is allowed and the impugned notice dated 27.06.2023 issued by the second respondent is set aside. The second respondent is directed to conduct a survey after issuing notice to the petitioner and in the presence of the petitioner. The report drawn pursuant to the survey should also be furnished to the petitioner. In case, the petitioner is found to be in encroachment of any public land, it is open to the second respondent to initiate appropriate action in the Tamil Nadu Land Encroachment Act, 1905, by following due procedure. No Costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [D.B.C., J.]
20.07.2023

Index : Yes / No
NCC : Yes/No
pm



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To:

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- 2.The Tahsildar,
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