



W.P.(MD)No.24326 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.24326 of 2023
and
W.M.P.(MD)No.20543 of 2023

Malarkodi

... Petitioner

Vs.

The Assistant Engineer,
Water Resource Department,
River Conservation Division,
Lalgudi,
Trichy District.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the respondent vide his proceedings in Form-II dated 27.08.2023 signed on 05.09.2023 and quash the same as illegal.

For Petitioners :Mr.T.Leninkumar

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



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ORDER

Heard both sides.

2. The petitioner challenges Form-II notice dated 27.08.2023 issued by the respondent. It appears that the petitioner failed to offer his objection. In the mean while, Form-III notice has also been issued.

3. Considering the special facts and circumstances, the petitioner is given one more opportunity. The petitioner will offer his objection within two weeks from the date of receipt of a copy of this order. The respondent will bear in mind the mandate of this Court issued vide order dated 27.07.2023 in W.P. (MD)No.11994 of 2023. We have outlined the procedure to be followed in the following terms:-

“3.But the matter cannot rest there. It is not as if the petitioner has approached this Court for the first time. When the competent authority took action on the earlier occasion, it was quashed by this Court in WP(MD)No. 8131 of 2023 on 11.04.2023 on the ground that without issuing Form – II notice, Form – III notice was straightaway issued. The Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 was enacted with the object of preserving the water bodies and for clearing encroachments committed in respect of them. Unless the authorities adhere to due process of law, any action taken for the protection of the water bodies will be nullified. We take judicial notice of the fact that Forms (I, II and III) annexed to the statute are peremptory in nature and a literal



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adherence to the statutory provisions would only end in favoring the encroacher. That is why, the Hon'ble Division of the Madras High Court in T.S.Senthil Kumar v. Government of Tamil Nadu (2010) 3 MLJ 771 issued 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.

(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



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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.” We are of the view that a slight tweaking may be necessary by taking note of all the subsequent decisions. For instance, vide order dated 15.06.2022 in WP(MD)No.11825 of 2022 (R.Gurusamy v. Government of Tamil Nadu) following the decision of the Hon'ble Supreme Court reported in (2006) 1 SCC 379 (Madhavrao v. Ramesh Jatav and ors), another Hon'ble Division Bench of this Court held that survey to identify an encroachment should be done in the presence of the interested persons/encroachers. The authorities under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 shall adopt the following procedures :

1. After publication of Form -I in respect of the water body in question, notice should be issued in Form – II to the alleged



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encroacher to the effect that the survey indicates the encroachment on his/her part. Objection/explanation should be invited from the encroacher.

2. If the encroacher disputes the correctness of the survey as contained in Form – I, fresh survey should be done in his/her presence. 3. Form – III notice ordering removal of encroachment shall be enclosed along with the final order.”

4. In this case, in view of the default committed by the petitioner, safeguards could not be observed. Be that as it may, enquiry shall be held by the respondent on the petitioner's objection. Final order shall be passed within a period of four weeks thereafter. Form-III notice shall abide by the outcome of the enquiry.

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

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

10.10.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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G.R.SWAMINATHAN, J

and

B.PUGALENDHI, J.

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To

The Assistant Engineer,
Water Resource Department,
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Lalgudi,
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