



W.P(MD)No.28857 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2023

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD)No.28857 of 2022

and

WMP(MD)Nos.22823 and 22824 of 2022

Lathamaheswari

... Petitioner

VS.

1. The District Collector,
Karur District, Karur.

2. The Tahsildar,
Karur Taluk,
Karur District.

3. The Assistant Engineer,
WRD, Amaravathi Basin Section-1,
Karur.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned notice issued by the 3rd respondent in Form-III notice issued under Rule 6(1) of the



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Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 dated 23.09.2022 and quash the same and consequently direct the respondents not to demolish the portion of his house property situated in new S.F.No.112/3 (Old S.F.No.112) in Plot No.15, situated at Thanthoni Village, Karur Taluk and District as per his representation dated 10.12.2022.

For Petitioner : Mr.P.Athimoolapandian
For Respondents : Mr.M.Sarangan
Additional Government Pleader

ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

Challenging the Form-III notice dated 23.09.2022 issued under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, the petitioner has filed this writ petition to quash the same with a consequential direction to the respondents not to demolish the portion of her house property situated in new S.F.No. 112/3 (Old S.F.No.112) in Plot No.15, situated at Thanthoni Village, Karur Taluk and District, by considering her representation dated 10.12.2022.

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2. Learned counsel for the petitioner submitted that earlier, when an order of eviction dated 01.12.2020 was issued, the petitioner made a representation dated 12.12.2020 to the 4th respondent, for which, the 4th respondent replied by a communication dated 22.12.2020 that the measurement has been made based upon the revenue records. The petitioner filed W.P(MD)No.304 of 2021 before this Court challenging the aforesaid eviction order dated 01.12.2020 and communication dated 22.12.2020, contending that the same do not indicate the basis of encroachment and that measurements were not made in her presence. Considering the said contentions, this Court by order dated 11.01.2021, has passed the following order:-

"5.We have perused the order dated 01.12.2020 and the subsequent communication dated 22.12.2020. There is absolutely no mentioning about the objection of the petitioner and the nature of encroachment made. While the respondent No.4 has got power to remove the encroachment, the same will have to be done in the manner known to law. The impugned notice dated 01.12.2020 has been issued in the prescribed form and therefore, it did not foresee any pre-hearing. Hence, it cannot be accepted as a final order. In the subsequent communication, dated



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22.12.2020, the petitioner was given a reply by the respondent No.4 that due measurements have been made. After hearing, the objection of the petitioner has not been considered.

6. In such view of the matter, while treating the notice dated 01.12.2020, the respondent No.4 is directed to pass appropriate orders on the representation of the petitioner by conducting a fresh enquiry, which is inclusive of due measurements with the available records, and thereafter pass a final order by considering the relevant materials. The needful will have to be done within a period of six weeks from the date of receipt of a copy of this order. Till such time, status quo as on today shall be maintained. We make it clear that the final order will have to be passed by the Assistant Engineer of the Public Works Department."

3. It is the specific contention of the learned counsel for the petitioner that without considering the aforesaid order of this Court, the 3rd respondent has issued the impugned Form-III notice which does not contain specific measurement with regard to Survey No.307. The 3rd respondent failed to consider the fact that there is no water channel in S.No.307 as per the sketch and FMB and all the lands in the said survey number have been converted into residential plots and



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there is no irrigation through the alleged water channel. Learned counsel also submitted that after issuance of the present impugned notice, when the petitioner approached the 3rd respondent with relevant records, the 3rd respondent replied that as per the direction of this Court in W.P(MD)No.14721 of 2020, 28.10.2020, the present impugned notice has been issued. According to the petitioner, the said writ petition was filed by one P.Ilangovan without impleading her as a party. It is further stated that even in the said writ petition, this Court has directed for removal of encroachments after affording sufficient opportunity to all the parties concerned and by following due process of law. However, without giving any opportunity to the petitioner to putforth her case, straightaway, the impugned notice has been issued, thereby, there is a violation of the orders passed by this Court in W.P(MD)No.14721 of 2020, dated 28.10.2020 and also W.P(MD)No.304 of 2021, dated 11.01.2021. Thus, the learned counsel has sought to quash the impugned notice.



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4. Pursuant to the direction of this Court, the 3rd respondent has filed a status report stating that pursuant to the order passed by this Court in W.P(MD)No.304 of 2021, dated 11.01.2021, fresh enquiry and measurement was conducted on 07.08.2021 in the presence of the petitioner and boundaries were demarked with boundary stones. Since the survey revealed that the petitioner has encroached upon 30 sq.mts of land in S.No.307, impugned notice has rightly been issued to comply with the order passed in W.P(MD)No. 14721 of 2020, dated 28.10.2020.

5. However, today, when the writ petition was taken up for hearing, learned Additional Government Pleader appearing for the respondents fairly submitted that the respondents are inclined to conduct a survey of the lands in S.No.307 afresh in the presence of the petitioner and then to proceed with removal of encroachments, if any, therein, by due process of law within a time frame, for which, learned counsel for the petitioner is agreeable.



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6. In view of the aforesaid submissions, the Writ Petition is disposed of directing the respondents to conduct a survey of the lands in S.No.307 in the presence of the petitioner on 30.01.2023. During survey, if any encroachment is found to have been made by the petitioner, the surveyor's report shall be served upon her calling her explanations/objections. After considering such explanations/objections, appropriate action for removal of encroachment shall be taken, if any. Such an exercise shall be completed within a period of twelve weeks from 30.01.2023. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K.,J.] & [R.V.,J.]
09.01.2023

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

1. The District Collector,
Karur District,
Karur.



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and
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Karur District.

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WRD,
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ORDER MADE IN
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DATED : 09.01.2023