



WEB COPY



W.P.No.4778 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.4778 of 2021

M.Gokulakannan
S/o.Marimuthu

... Petitioner

Vs.

1. The Chief Engineer
Water Resources Department
Public Works Department
Chepauk, Chennai.

2. The Executive Engineer
Public Works Department
Palar Basin, Chengalpattu.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to forbear the respondents from taking any coercive action against the petitioner's property at Plot No.E (Bagyalakshmi Nagar previously) Viduthalai Nagar, comprised in Survey No.363/1B of No.17, Madipakkam, II, S.Kolathur Village, Now



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Sozhingnanallur Taluk (previously Tambaram Taluk) Chennai (previously Kancheepuram District) measuring an extent of 1189.36 sq.ft without following procedure prescribed under law.

For Petitioner : Mr.S.M.Muralidharan

For Respondents : Mr.T.K.Saravanan
Government Advocate

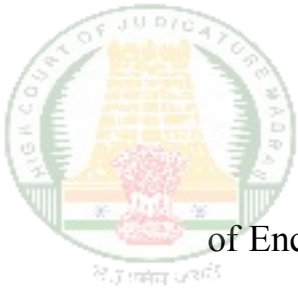
ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to 'Survey No.363/1B in No.17, Madipakkam II, S.Kolathur Village, Now Sozhingnanallur Taluk (previously Tambaram Taluk) Chennai (previously Kancheepuram District) measuring an extent of 1189.36 sq.ft' {hereinafter 'said land' for the sake of brevity}.

2. Prayer of writ petitioner is simple. Respondents ought not to take any coercive action qua writ petitioner's construction in said land without following procedure prescribed in law is the prayer.

3. Learned State Counsel, advertent to the counter affidavit, very fairly submits that procedure under 'Tamil Nadu Protection of Tanks and Eviction



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of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' {hereinafter 'Tanks Act' for the sake of convenience, clarity and brevity} and 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' {hereinafter 'Tanks Rules' for the sake of convenience, clarity and brevity} will be followed.

4. Following procedure under Tanks Act will necessarily mean that the procedure laid down by Hon'ble Full Bench in ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} more particularly sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph No.15 will be followed and the same reads as follows:

'15. Certain provisions of Tank Act namely, Sections 4 to 10 were challenged in a Writ Petition with a prayer to declare those provisions as null and void and contrary to Article 14 of the Constitution of India on the ground that those provisions confer upon the executive, unguided and uncanalised discretionary power, since they denied to the persons aggrieved an opportunity of being heard. The said Writ petition was heard by a Division Bench to which one of us (M.Sathyanarayanan,J.) was a party. The Division Bench took note of the various decisions including the decision in the case of Sivakasi Region Tax Payers Association (supra),



disposed of the Writ Petitions without declaring the provisions of the Act as unconstitutional, since no opportunity is given and held that there is nothing in the Act which excludes the principles of natural justice, the Act (Tank Act) does not specifically indicate that the encroachers do not have right to be heard and issued the following directions vide judgment dated 10.02.2010, reported in 2010 3 MLJ 771.

(a)

(b).....

(c).....

(d).....

(e).....

(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



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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.'

5. Learned counsel for writ petitioner very fairly submits that this douses the anxiety of writ petitioner. To be noted, Mr.S.M.Muralidharan, learned counsel for writ petitioner is on 'Videoconferencing' {'VC'} platform and Mr.T.K.Saravanan, learned State Counsel is before us in the physical Court. Further to be noted, this is a hybrid hearing, which is a daily / regular / routine feature in this Court.

Captioned WP disposed of as closed recording the stated position of learned State Counsel. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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and
K.RAJASEKAR, J.,

mk

To

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