

(2013) 10 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 18035 of 2013

V.A. Shamsudeen and Others

APPELLANT

Vs

The District Collector, Perambalur, The Executive Engineer,
(P.W.D) Water Resources Organisation and The Assistant
Engineer, (P.W.D) Water Resources Organisation

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0089

Hon'ble Judges : T.S. Sivagnanam, J;R. Banumathi, J

Bench : Division Bench

**Advocate : S. Kamadevan, for the Appellant; M.E. Raniselvam, Addl. Govt.
Pleader for R1 to R3, for the Respondent**

Final Decision : Disposed Off

Judgement

R. Banumathi, J.—This writ petition is filed challenging the notice issued by the 3rd respondent under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2001. By the order of the First Bench dated 18.9.2013, this writ petition was posted before us. When the writ petition was listed today, with the consent of both the parties, the main writ petition itself was taken up for final hearing.

2. Case of petitioners is that the petitioners and about 89 families are in possession and enjoyment of the Government land at Pennakonam North village, Kunnam Taluk, Perambalur District comprising in Survey No. 1 which is classified as "Vellattru Poramboke". According to petitioners, the said land is classified as "River Poramboke". It is neither water storage area nor a water channel which would benefit the general public and particularly, to the local residents. According to petitioners, the petitioners and their predecessors have put up permanent structures and living there for more than 40 years. Along with the petitioners, other families are also said to have put up construction and residing there. Further case of petitioners is that their houses and all other houses are assessed

with property tax and also are enjoying electricity connection. The adjacent land in Survey No. 2 was re-classified as Natham and the occupants were given with house site patta as per the Government Orders. Now the 3rd respondent issued impugned notice in Form-III dated 12.6.2013 alleging that petitioners are presumed to be in possession and enjoyment of a portion of water body land and the same should be removed within 21 days from the date of receipt of the notice.

3. Mr. S. Kamadevan, learned counsel for petitioners contend that the 3rd respondent prior to issuance of impugned notice did not give any opportunity to the petitioners and it amounts to violation of principles of natural justice. Further the petitioners would claim that the occupants of Survey Nos. 2, 3, 4, 5, 6 and 7 at Pennakonam North village have been granted patta; whereas the petitioners, who are in possession of adjacent Survey No. 1 have not been granted patta and therefore, the petitioners would state that the action of the official respondents is discriminatory and violative of Article 14 and 21 of the Constitution of India. According to petitioners, in respect of occupants of Survey Nos. 2, 3, 4, 5, 6 and 7, the Government granted patta since 2003 and there is no reason to discriminate the petitioners alone who are residing in the adjoining Survey Numbers. Therefore, the learned counsel for petitioners submitted that the impugned notice is illegal and prays for quashing the same.

4. Ms. M.E. Raniselvam, learned Additional Government Pleader appearing for respondents submitted that Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 came to be enacted for the purpose of providing measures for checking the encroachment, eviction of encroachment in tanks which are under the control and management of Public Works Department, protection of such tanks and for matters incidental thereto and there is a duty cast upon the State to preserve the water bodies. Further, there is power conferred on the 3rd respondent to initiate the eviction proceedings in terms of Rule 6 of the said Rule and the procedure contemplated under Rule 6 have been scrupulously followed and notices have been issued in Form-III. Therefore, the learned Additional Government Pleader submits that the action initiated by the respondents is in accordance with the statute.

5. The Act does not contemplate the issuance of show cause notice. However, having regard to the fact that the petitioners put up construction long back and also obtained electricity connection and are also paying the property tax and they have also been issued family card, we are of the view that a reasonable opportunity has to be given to the petitioners before taking any action under Rule 6. The contention of the petitioners that occupants of the adjacent Survey Numbers have been granted patta whereas petitioners were not granted patta and discriminated is also to be examined.

6. Learned Additional Government Pleader would fairly submit that the petitioners may be afforded an opportunity to submit their objections and thereafter the authority concerned will pass appropriate orders on merits.

7. In a batch of Writ Petitions (W.P. Nos. 17011 to 17034 of 2013) challenging the notices issued by the 3rd respondent dated 24.7.2013, by the order dated 24.7.2013, we have disposed of all the writ petitions directing the 3rd respondent to treat the impugned notices as show cause notices. The operative portion of the order dated 24.7.2013 in W.P. Nos. 17011 to 17034 of 2013 reads as under:-

7. Considering the submission made by the learned counsel on either side and taking note of the facts stated above, these writ petitions are disposed of by directing the 3rd respondent to treat the impugned notices as show cause notices. The petitioners are directed to submit their reply to the show cause notices raising all points, both factual and legal contentions, within a period of eight weeks from the date of receipt of copy of this order. On receipt of explanation submitted by the petitioners, the 3rd respondent, after affording an opportunity of personal hearing to the petitioners/a representative of the petitioners, shall consider the matter and pass a reasoned order on merits and in accordance with law within a period of four weeks thereafter. It is needless to state that till the conclusion of the proceedings by the 3rd respondent in terms of the above direction, the interim order, which was granted on 25.6.2013 shall continue. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

In terms of the above order, the writ petition is disposed of by directing the 3rd respondent to treat the impugned notices as show cause notices. The petitioners are directed to submit their reply to the show cause notices raising all points, both factual and legal contentions, within a period of eight weeks from the date of receipt of copy of this order. On receipt of explanation submitted by the petitioners, the 3rd respondent, after affording an opportunity of personal hearing to the petitioners/a representative of the petitioners, shall consider the matter and pass a reasoned order on merits and in accordance with law within a period of four weeks thereafter. It is needless to state that till the conclusion of the proceedings by the 3rd respondent in terms of the above direction, the interim order, which was granted on 04.7.2013 shall continue. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.