

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10..07..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.5439, 5208, 5635 12850 to 12859 of 2015

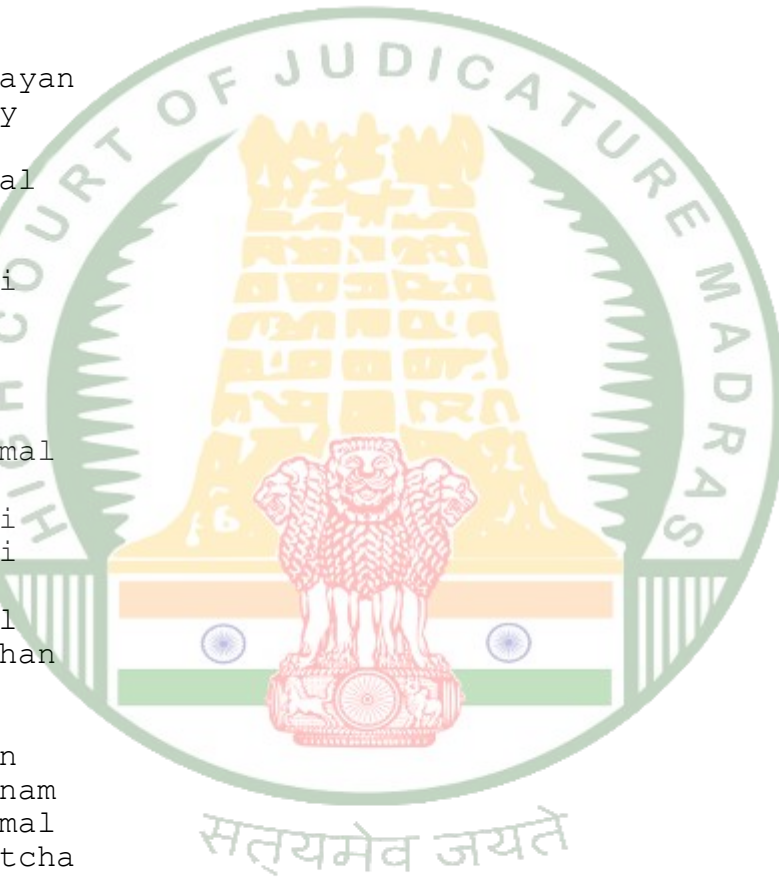
W.P.No.5439 of 2015

- 1 M.Vijayakumar
- 2 Kamalakanni
- 3 W/o. Ramalingam
- 4 Krishnaveni
- 5 Venkatesan
- 6 Kamalakanni
- 7 S/o. Perumal
- 8 Kuppammal
- 9 Govindaraj
- 10 Dhasaradhan
- 11 Subramani
- 12 Manikandan
- 13 Dhanalakshmi
- 14 Karthik
- 15 Mallika
- 16 Durai
- 17 Kumar
- 18 Velusamy
- 19 Ganesan
- 20 Rajendran
- 21 Kumar
- 22 Nallammal
- 23 Elumalai Gounder
- 24 Palani
- 25 Unnamalai Ammal
- 26 Govindammal
- 27 Rajaram
- 28 Pasumalai
- 29 Venkatesan
- 30 Munusamy
- 31 Rajeswari
- 32 Kasiammal
- 33 Sagadevan
- 34 Palani
- 35 Kamalakannan
- 36 Rajendran S/o.Gopal



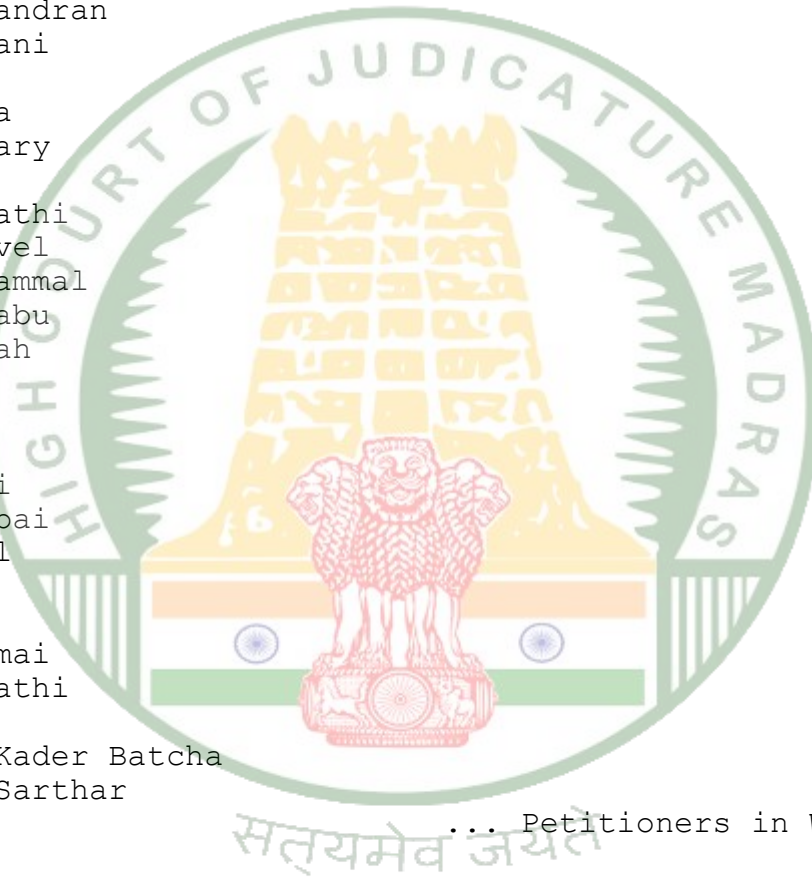
WEB COPY

35 Rangasamy
36 Venkatesan
37 Rajendran
S/o.Chinnathambi
38 Ramanathan
39 Gopinathan
40 Mallika
41 Chandra
42 Raman
43 Subashini
44 Ramamoorthy
45 Veerappan
46 Rajaram
47 Mari
48 Kathavarayan
49 Kuppusamy
50 Ammu
51 Valliammal
52 Kuppan
53 Arumugam
54 Subramani
55 Murugan
56 Rani
57 Ganesan
58 Sudha
59 Rathinammal
60 Ammu
61 Amsavalli
62 Manonmani
63 Govindan
64 Thayammal
65 Ranganathan
66 Elumalai
67 Ramesh
68 Manibalan
69 Poongavanam
70 Govindammal
71 Ameer Batcha
72 Sainsha
73 Kanniappan
74 Dhowlathbe
75 Mariammal
76 Poongavanam
77 Selvaraj
78 Antonysamy
79 Lourdusamy
80 Amudha
81 Mayakannan
82 Rathinammal
83 Saritha
84 Amdulbe
85 Chinnasamy



WEB COPY

86 Murugan
87 Saroja
88 Sujatha
89 Varadharajan
90 Manoharan
91 Pushparaj
92 Thirupathi
93 Sudha
94 Sundari
95 Renugammal
96 Ranganathan
97 Shanthi
98 Ramachandran
99 Selvarani
100 Asayn
101 Sarmila
102 Lillamary
103 Purvin
104 Padmavathi
105 Sakthivel
106 Patchiammal
107 Shiekbabu
108 Abdullah
109 Gopal
110 Sankar
111 Babu
112 Bhavani
113 Nanthabai
114 Perumal
115 Chitra
116 Devagi
117 Sivagamai
118 Valarmathi
119 Renuga
120 Sheik Kader Batcha
121 Abdul Sarthar
122 Malar



... Petitioners in WP.5439 of 2015

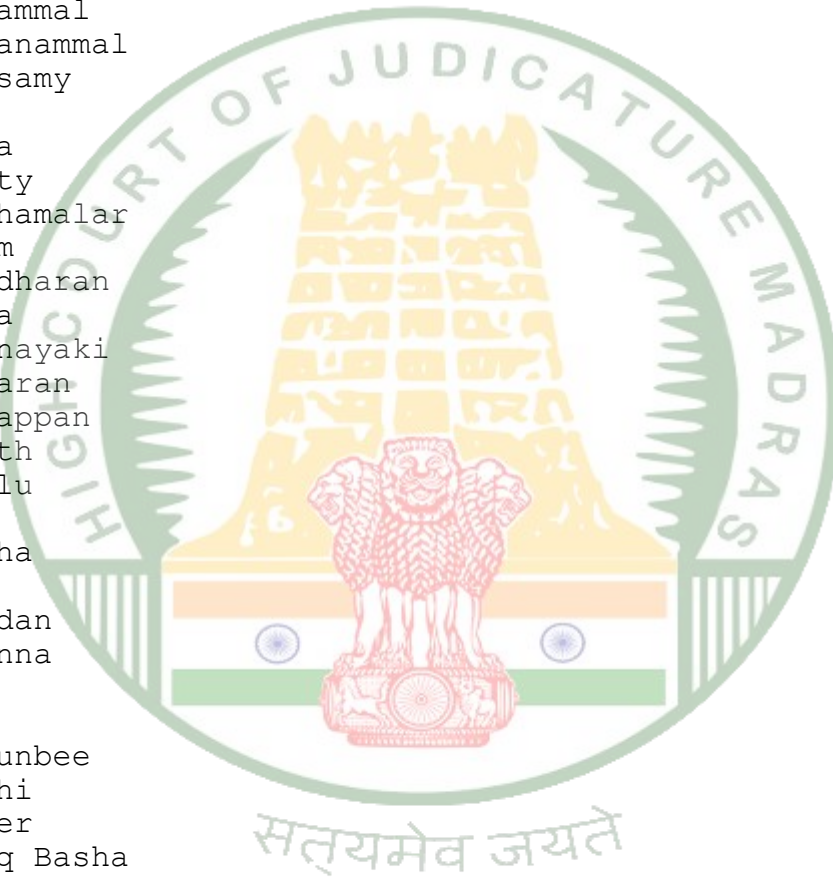
1. P. Ellammal
2. M. Subramani

...Petitioners in WP.No.5208 of 2015

W.P.No.5635 of 2015:

1 Muniyan
2 Palanivel
3 Lakshmi
4 Saradha
5 Chinnakuzhandai
6 Mani
7 Pachaiyappan

8 Ellammal
9 Venugopal
10 Vadamalai
11 Rajalakshmi
12 Munusamy
13 Ramu
14 Sharmila
15 Arangesan
16 Devanathan
17 Thaayaar
18 Veerannan
19 Kumudhavalli
20 Valliammal
21 Santhanammal
22 Kuppusamy
23 Selvi
24 Saroja
25 Christy
26 Suvithamalar
27 Dhanam
28 Dhamodharan
29 Amudha
30 Ranganayaki
31 Manoharan
32 Kanniappan
33 Sampath
34 Alamelu
35 Selvi
36 Lalitha
37 Mala
38 Govindan
39 Presanna
40 Gopi
41 Selvi
42 Kayirunbee
43 Revathi
44 Esthaer
45 Sathiq Basha
46 V.Annapoorani
47 E.Sathish
48 Umapathy
49 Suresh
50 Mari
51 Raja
52 Jayakodi
53 Meera
54 Gopalakrishnan
55 Kalamurthy
56 Anusuya
57 Valli
58 Valarmathi
59 Murugan



WEB COPY

60 Uma
61 Santha
62 Jothi

..Petitioners in WP.5635/15

1. Rani
2. Saroja
3. Krishnan
4. Murugan
5. Ramesh
6. Thrishath
7. Karthikeyan
8. Rajamani
9. Krishnamoorthy
10. Kanthan

..Petitioner in WP.12850/15

Ramesh ..Petitioner in WP.12851/15
Krishnan ..Petitioner in WP.12852/15
Saroja ..Petitioner in WP.12953/15
Rajamani ..Petitioner in WP.12854/15
Krishnamoorthy ..Petitioner in WP.12855/15
Thrishath ..Petitioner in WP.12856/15
Karthikeyan ..Petitioner in WP.12857/15
Kanthan ..Petitioner in WP.12858/15
Murugan ..Petitioner in WP.12859/15

Vs

The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Revenue Department, Fort St. George,
Chennai-9.

..1st Respondent in WP.No.5439 of
2015, 5635, 12850 to 12859/15

The Commissioner for Land
Administration, Government of
Tamil Nadu, Chepauk, Chennai-5

..2nd Respondent in WP.No.5439 of
2015, 5635/15, 12850 to 12859

The District Collector,
Villupuram District, Villupuram.

..3rd Respondent in WP.No.5439 of
2015, 5635/15, 12850 to 12859/15
1st Respondent in WP.No.5208/15

The Revenue Divisional Officer/
Sub Collector, Gingee Revenue
Division Gingee,
Villupuram District

..4th Respondent in W.P.No.5439
of 2015, 5635, 12850 to 12859/15

The Tahsildar Gingee Taluk,
Gingee, Villupuram District

..5th respondent in WP.No.5439 of
2015, 5635, 12850 to 12859/15

..4th respondent in WP.No.5208/15

The Executive Officer, Gingee
Town Panchayat, Gingee
Villupuram District

..6th Respondent in WP.No.5439 of
2015, 5635, 12850 to 12859/15

..5th respondent in WP.No.5208/15

The Block Development Officer/
Commissioner Gingee Pachayat Union,
Gingee, Villupuram District

..7th respondent in
WP.No.5439/15, 12850 to
12859/15

Tamil Nadu Electricity
Generation and Distribution
Corporation, Rep. by its
Assistant Engineer (O&M),
Gingee Town, Villupuram District.

..8th Respondent in
W.P.No.5439/15

..7th Respondent in
W.P.5635/15

The District Revenue Officer,
Villupuram District

..2nd Respondent in
W.P.5208 of 2015

The Revenue Divisional Officer,
Tindivanam, Villupuram District

..3rd Respondent in
WP.No.5208 of 2015

The Assistant Engineer,
Tamil Nadu Electricity, Board,
Gingee, Villupuram District

..6th Respondent in
WP.No.5208/15

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of (1) Certiorari, to call for the records relating to the orders made in order impugned stereo type the order made in Na.Ka.No.A2/18/2014, dated 05.02.2015 passed by the sixth respondent respectively and quash the same and consequently direct the fifth respondent to issue Patta to the petitioners or any alternative land in terms of various Government orders passed by the Government of Tamil Nadu.

(2) Certiorarified Mandamus Calling for the records pertaining to the Impugned Order in Na.Ka. No.A2/18/2014 dated 5.2.2015 on the file of the 5th respondent and quash the same and consequently direct the 4th respondent to issuance of house sita patta under the Special Scheme of the respondent for the said houses of the petitioner herein within a stipulated time based on the petitioner representation dated 10.2.2015(in WP.No.5208 of 2015)

(3) Certiorarified Mandamus calling for the records relating to the impugned stereo type orders dated 02.02.2015 made in K.No. AE-(O&M) Town/Gingee/D Encroachment A.No.261/2015 passed by the 7th respondent and made in Na.Ka.No. A2/18/2014 dated 05.02.2015 passed by the 6th respondent respectively and quash the same consequently direct the 5th respondent to issue Patta to the petitioners or any alternative land in terms of various Government orders passed by the Government of Tamil Nadu (in WP.5635 of 2015)

(4) Writ of certiorarified Mandamus calling for the records relating to the orders made in Na.Ka.No. A2/18/2014 dated 05.02.2015 passed by the 6th respondent and quash the same and consequently direct the 5th respondent to issue Patta to the petitioner or any other alternative Government Poramboke land available in Gingee in terms of various Government orders passed by the State of Tamil Nadu (in WP.Nos.12850 to 12859 of 2015 respectively.

For Petitioners :: Mr.G.Eithirajulu in all W.Ps.
Mr.M.R.Jothimanian in W.P.No.5635/2015
Mr.K.Murugesan in W.P.No.5208/2015

For Respondents :: Mr.S.T.S.Moorthy GP for RR1 to R5
Assisted by Mr.V.Shanmugasundaram G.A.,
Mr.Era.Premnath G.A., for RR6 & 7
Mr.M.Varankumar for R8

C O M M O N O R D E R

(Order of the Court was made by T.S.SIVAGNANAM,J.)

In all these Writ Petitions, the petitioners challenge notices issued by the sixth respondent, the Executive Officer, Gingee Town Panchayat, dated 05.02.2015. By the impugned notices, the petitioners were called upon to vacate and clear the encroachment, which has been made in a water body classified as "Erikarai".

2. The petitioners would state that there was a water body was in existence in the said place where they reside and by efflux of time, it lost its character and several persons including the petitioners

have put up their residential huts, madras terrace building, tiled house etc in meagre extent of lands measuring about 2 to 3 cents and are residing there for several years. It is submitted that all the petitioners have been provided all the basic amenities such as electricity, water connections, road facilities etc. The children of the petitioners are said to be studying in the nearby schools and most of the petitioners are coolies and daily wage earners struggling to eke their livelihood. The petitioners would state that the exact portion of the Eri has not been surveyed for several decades and all of them were living peacefully in their houses and the area, where they are residing, is not a water catchment area as defined under the provision of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act), but it is only a bund of the lake with height of a bund 15 to 17 feet and abutting the outer bund. It is further submitted that none of the petitioners are living inside the lake or in the water body and therefore, they approached the Revenue Divisional Officer, Gingee, for recognising their possession and enjoyment and grant of patta. However, the said authority declined their request. The petitioners would further state that by virtue of the various Government Orders issued from time to time in G.O.Ms.No.854, dated 30.12.2006, G.O.Ms.No.142, dated 23.05.2013 and G.O.Ms.No.372, dated 26.08.2014, taking a policy decision to grant free house site patta and the said benefit was extended periodically and lastly extended upto 31.03.2015. The petitioners are stated to have submitted representations to the respondents to consider their claim in the light of the Government Orders, but the same were not considered and they reliably understand that for few people, the District Level Committee has made recommendations for grant of free house site patta and the petitioners have been singled out without any valid reason.

3. It is further submitted that the Executive Officer of the Gingee Town Panchayat issued a notice dated 28.10.2014, alleging that the petitioners are residing in survey Nos.16 and 18, which forms part of the "B-Eri" and this notice was stated to be issued pursuant to direction issued in a Writ Petition in W.P.No.18056 of 2014, wherein prayer was made for removal of encroachment in the "Eri". The petitioners being aggrieved by such notices, filed Writ Petitions which were disposed of by order dated 22.01.2015, recording the submission made by the learned Government Pleader stating that the impugned notices shall be withdrawn and fresh action will be taken as per the statutory provision. After the order dated 22.01.2015 in the batch of cases, the petitioners are stated to have submitted individual representation on 01.02.2015 for grant of patta. While so, the impugned notices have been issued by the Executive Officer, Gingee Town Panchayat, which are said to be without jurisdiction. Further, the notices do not refer to any provision of law under which they have been issued. The learned counsel appearing for the petitioners submitted that the impugned notices are clearly in violation of the earlier orders passed by this Court and the notices are wholly without jurisdiction.

4. At the time, when these Writ Petitions were entertained an order of status quo was granted, which was extended from time to time and subsequently ordered to be tagged along with W.P.No.18056 of 2014, which was filed as a Public Interest Litigation, to remove the encroachments in the said water body.

5. The learned Government Pleader appearing for the respondents submitted that all the petitioners are encroachers in the "B-Eri" and have obtained electricity service connection and provided with basic amenities and the Government has been assigning Government Poromboke lands to such of those encroachers who are occupying the lands for several decades subject to the condition that the poromboke land should be an unobjectionable site. It is submitted that in the instant case, the petitioners have encroached the "B-Eri" (lake) which is a water course poromboke and the same cannot be assigned in favour of the encroachers and they have no right to claim patta in respect of the land, which they have encroached upon. It is stated that the "B-Eri" (lake) has been classified as a minor lake and lies in a survey Nos.16/1 and 18/1 and as per the land records, the land comprised in Survey Nos.16 and 18 have been sub-divided as Survey Nos.16/1, 16/2, 18/1 & 18/2 respectively and the lands comprised in survey No.16/1, measuring an extent of 8.51.0 hectares is classified as "Eri Poromboke" and an extent of 0.02.5 hectares in survey No.16/2 is a patta land. The lands in survey No.18/1, measuring an extent of 5.42.0 hectares has been classified as "Eri Poromboke" and the land in survey No.18/2, measuring an extent of 0.39.0 hectares has been classified as "Gramanatham". The petitioners are stated to have encroached the water course Poromboke and therefore liable to be evicted. It is further submitted that the encroachment is on the bund of the lake and unless the bunds are protected the catchment area of the lake cannot be preserved. It is further submitted that due to the encroachment in the "B-Eri (lake)", the lake bunds are in poor shape resulting in the water body, losing water holding capacity and would become dry very soon. Hence, the bunds of the lake, are to be protected to prevent the loss of water holding capacity.

6. It is further submitted that after issuance of the direction in a Public Interest Litigation in W.P.No.18056 of 2014, a survey was conducted and it was found that there are 337 encroachers and when action was being taken, 254 encroachers have approached this Court and filed Writ Petitions and orders of Interim injunction were granted and the remaining 84 encroachers were duly cleared. In respect of 30 encroachers, who had put up huts, were provided with alternate accommodation and the Government does not propose to leave any persons in lurch and they have taken steps to provide alternative lands to the encroachers for their livelihood. It is further submitted that the District Collector directed the Sub-Collector, Tindivanam to identify alternate lands for being allotted to the

encroachers and a team was constituted headed by the Sub-Collector and alternative lands were identified in seven villages namely, Pappanthangal, Edamalai, Veeranamoor, Pulivanthi, Sorathur, Keezhvailamoor and Uranithangal. It is further submitted that after collection of details and based on socio economic condition, a list of 307 encroachers has been prepared for allotment of alternative site. Further, it is submitted that the District Administration has extended the benefit of the Indira Avas Yojana scheme to the encroachers including the petitioners by extending financial assistance of Rs.1,20,000/-, each, for construction of the house in the land allotted to them for which free house site patta would be issued. That apart a sum of Rs.12,000/- will be given to the encroachers for construction of toilets. In all each encroacher/beneficiary will be given Rs.1,47,030/- by the District Administration, so that they will be able to build their houses on the land allotted to them by issuing free house site patta and reside peacefully. It is further submitted that the Executive Officer of the Town Panchayat is the competent authority to initiate action in terms of the Government Order in G.O.Ms.No.298, dated 20.11.1996, as the "B-Eri" (lake) falls within his jurisdiction and therefore, the Executive Officer of the Town Panchayat issued the impugned notices. The Electricity Board has also issued notices for disconnection of the electricity supply. Therefore, the respondent would state that they have followed the provisions of the Act, while resorting to eviction. Further, it is submitted that no patta can be granted in a water course Poromboke and the claim for patta made by the petitioner in respect of the land on which they have encroached is not maintainable.

7. We have heard the learned counsels appearing for the parties and perused the materials placed on record.

8. It is not in dispute that all the petitioners are encroachers. The encroachment made is on a water course poromboke, therefore the question of granting patta in respect of the property in which the petitioners are in occupation does not arise. Therefore, the claim made by the petitioners for issuance of patta in respect of the land, which they have encroached upon, has to be necessarily rejected.

9. The next contention raised is by stating that the Executive Officer of the Town Panchayat has no jurisdiction to issue the impugned notices. The Government by virtue of G.O.Ms.No.298, dated 20.11.1996, has directed that the water bodies falling within the limits of a Town Panchayat to be under the control of the Town Panchayat. Therefore, the Executive Officer of the Town Panchayat is in control of the subject water body and consequently, he is vested with jurisdiction to initiate proceedings for eviction under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. Hence, the contention raised by the

petitioners that the Executive Officer of the Town Panchayat lacks jurisdiction to issue the impugned notices, stands rejected, more so when there is no challenge to G.O.Ms.No.298, dated 20.11.1996.

10. The petitioners would state that they have not constructed their houses/huts inside the lake and they are only residing in the bund area and there is no disturbance to the water catchment area and hence, they should be permitted to continue to occupy the lands and their possession to be regularised. This submission is liable to be outrightly rejected for the simple reason that the land comprised in Survey No.16/1, measuring an extent of 8.51.0 hectares is classified as "Eri Poromboke" and the lands in Survey No.18/1, measuring an extent of 5.42.0 hectares has also been classified as an "Eri Poromboke". As per the counter affidavit of the District Collector, Vilupuram, all the 337 encroachers are in Survey Nos.16/1 and 18/1. Therefore, the encroachments have to be necessarily removed.

11. A contention was raised by the petitioners stating that they have not encroached into the lake area/catchment area and therefore, their encroachment should be regularised. This contention also deserves to be rejected, since the bund area of a lake or a water body is vital to preserve a water body, unless and until the bund is strengthened and maintained properly, the water catchment area cannot be maintained. Therefore, it is essential to maintain the bund and keep the same free from encroachment.

12. Having held so, we should examine the conduct of the petitioners. The respondents have taken a fair stand stating that they do not propose to leave the petitioners/encroachers in the lurch, but have decided to provide alternative lands for which the lands have been identified in seven villages. The list of encroachers has been enumerated and classified based on their socio economic background and 307 persons have been identified to be treated as beneficiaries for issuance of free house site patta. That apart a sum of Rs.1,20,000/- will be paid to each of the beneficiaries for construction of house, apart from Rs.12,000/- to be paid for construction of toilets. It is stated in the counter affidavit that the total amount payable to each beneficiary is Rs.1,47,030/-. Therefore, the encroachers have received a fair treatment at the hands of the respondents and the respondents have taken care to ensure that they are rehabilitated, given free house site patta and also funds for construction of houses and toilets. Therefore, we find that the petitioners/encroachers have been given a fair deal.

13. The learned counsel appearing for the petitioners submitted that the lands have never been surveyed and all the encroachers are poor daily wage earners and they are sought to be re-located in

places which are more than 35 kms away from the present place and the children would be unable to attend school as they would be compelled to travel long distances. Further, there is a grievance that the lands identified are not habitable. The learned counsel appearing for the petitioners produced photographs of the existing construction in the encroached land and from the photographs, we find the houses put up are terraced and some of the houses have more than one floor and it is hard to believe that all the encroachers are daily wage earners.

14. The learned counsel appearing for the Public Interest Litigant submitted that most of the persons residing in the area, are tenants in the houses constructed by the real encroachers and there is absolutely no bonafide in the plea raised by the petitioners. In the Public Interest Writ Petition in W.P.No.18056 of 2014, a compliance report has been filed by the District Collector and the Sub-Collector is also present in Court today, he has categorically affirmed that survey was conducted of the entire area before action was initiated for eviction and only after the survey, the number of encroachers were identified as 337 to whom eviction notices have been issued. In the counter affidavit it has been stated that the team of officers headed by Sub-Collector, Tindivanam, has identified alternate sites in seven villages to accommodate 307 encroachers based on their socio economic status they being Pappanthangai, Edamalai, Veeranamoor, Pulivanthi, Sorathur, Keezhvailamoor & Uranithangal villages, and total number of beneficiaries are 43, 20, 18, 119, 27, 60 & 20 respectively. From the counter affidavit filed by the District Collector and the compliance report filed on 09.07.2015, it is clear that the lands have been identified in seven villages. However, the petitioners now seek to contend that they would shift to the lands so identified only if they are satisfied and it is convenience. We do not appreciate the stand taken by the petitioners, who are encroachers of Government land, which is classified as a water body. Though a submission was made that the alternate lands chosen are at a distance of about 35kms, the said contention appears to be incorrect going by the rejoinder affidavit filed by the petitioners, dated 07.04.2015, wherein in paragraph 4, the petitioners themselves have admitted that some of the sites identified are for a distance of about 4, 10, 12, 14, 15 & 26kms. Therefore, the contention that the lands chosen are at a distance of about 35kms appears to be an incorrect statement going by the admission of the petitioners themselves. The petitioners being encroachers of Government land cannot dictate terms to the State that they will not clear the encroachment, until they are allotted a land very near to the encroached site and the allotted site is to their satisfaction. The respondents taking note of the plight of the encroachers and considering their socio economic background, have identified 307 persons, who are to be given free house site patta, apart from a sum of Rs.1,47,030/-, for construction of house, toilets etc. Therefore, the action of the respondents satisfies the test of fairness. As pointed out earlier, the petitioners cannot dictate

terms and it is for them to accept alternative the sites offered by the respondents with a view to rehabilitate to them, or not to accept those site, but the same cannot be a reason to resist eviction from a water body.

15. For all the above reasons, we hold that the petitioners have failed to make out any case for interference and the Writ Petitions fail and they are dismissed. It is well open to the petitioners to avail the offer given by the respondents by way of alternate accommodation, if they so desire. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pbn
To

- 1 The Principal Secretary Revenue
Government of Tamilnadu
Department Fort St. George Chennai-9.
- 2 The Commissioner for Land
Administration Government of Tamil Nadu
Chepuak Chennai-5.
- 3 The District Collector
Villupuram District Villupuram
- 4 The Revenue Divisional Officer/
Sub Collector Gingee Revenue Division
Gingee Villupuram District
- 5 The Tahsildar
Gingee Taluk Gingee Villupuram District
- 6 The Executive Officer
Gingee Town Panchayat Gingee Villupuram
District
- 7 The Block Development Officer/
Commissioner Gingee Panchayat Union Gingee
Villupuram District
- 8 The Assistant Engineer (O&M) Tamil Nadu Electricity
Generation and Distribution Corporation
Gingee Town Villupuram District.
- 9 The District Revenue Officer,
Villupuram District

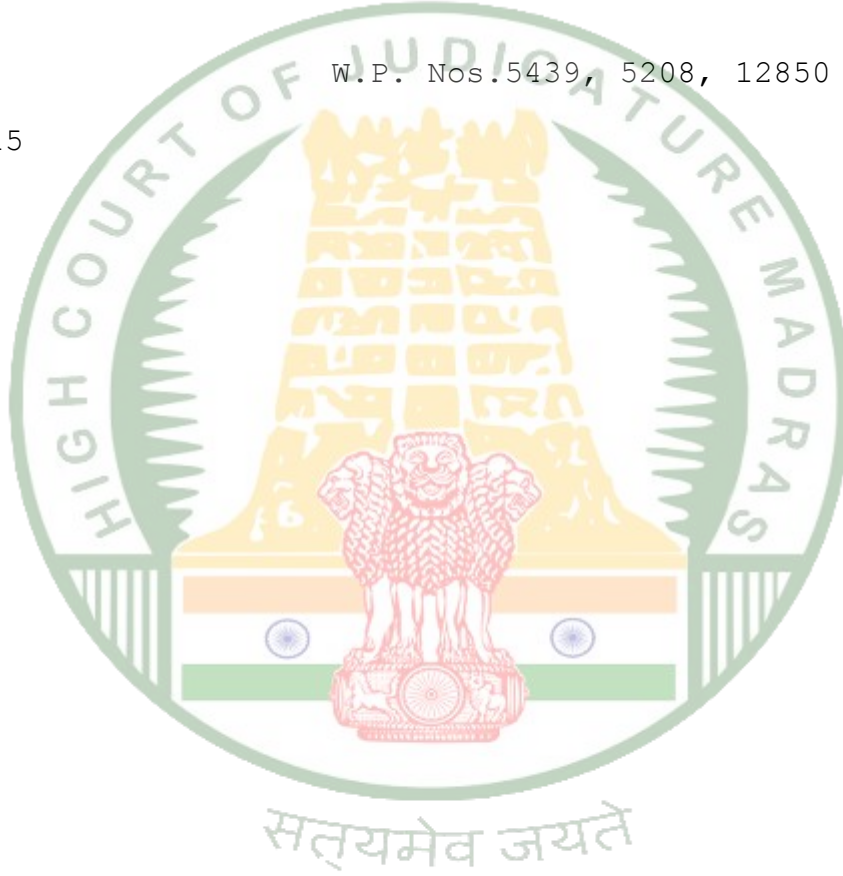
10. The Revenue Divisional Officer,
Tindivanam, Villupuram District.

11. The Assistant Engineer,
Tamil Nadu Electricity, Board,
Gingee, Villupuram District.

+ 3 ccs to Mr.M. Varunkumar, Advocate SR.34901 to 34903
+ 2 ccs to Mr.V.R. Appaswamee, Advocate Sr.35268
+ 1 cc to Mr.G. Ethirajulu, Advocate Sr.35071
+ 1 cc to Mr.M.R. Jothimanian, Advocate Sr.35620

W.P. Nos.5439, 5208, 12850 to 12859 of 2015

NM(CO)
Eu 27.07.15



WEB COPY