

IN THE HIGH COURT OF JUDICATURE AT MADRAS

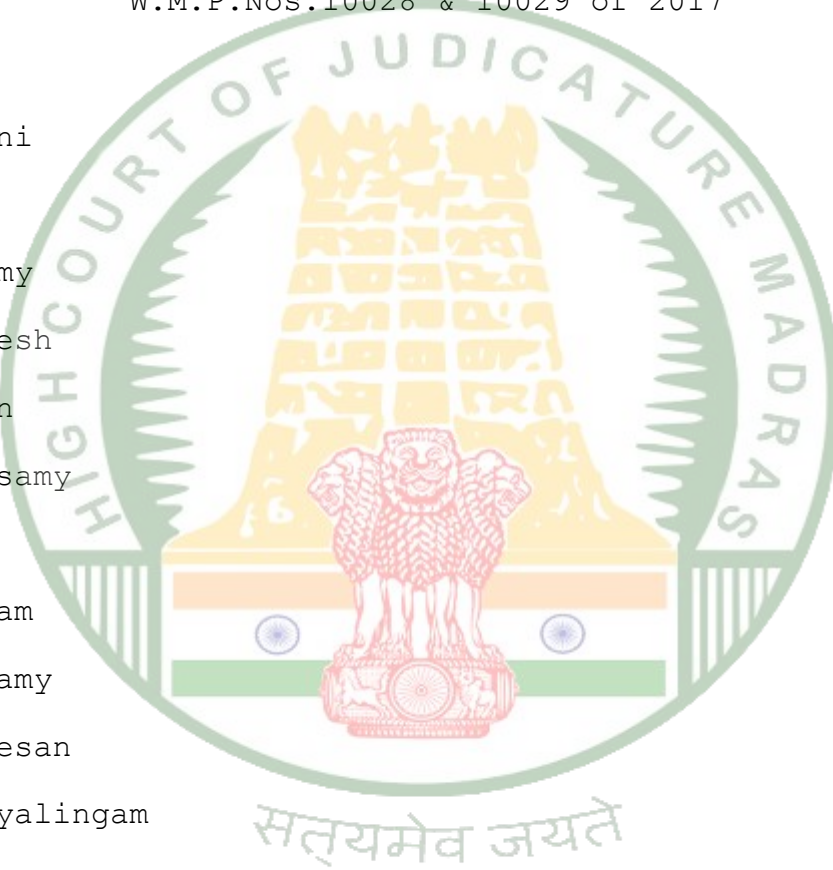
DATED : 18.04.2017

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.SUNDAR

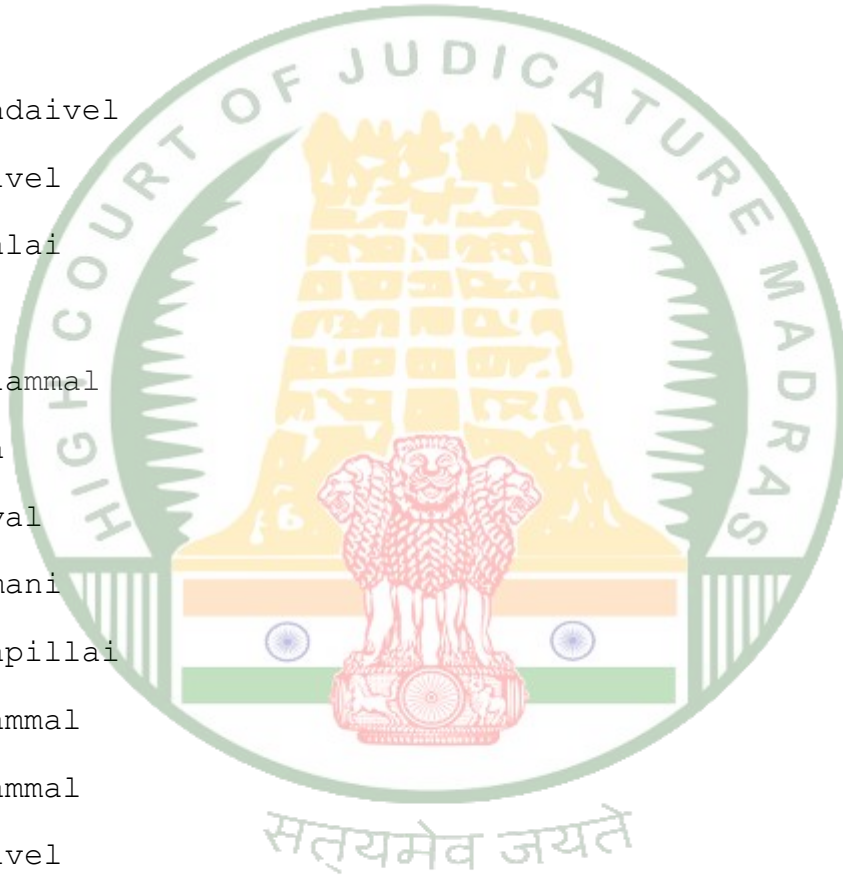
W.P.No.9086 of 2017
and
W.M.P.Nos.10028 & 10029 of 2017

- 1 Selvam
- 2 Jayamani
- 3 Subbu
- 4 Ramasamy
- 5 Jaiganesh
- 6 Arjunan
- 7 Kandhasamy
- 8 Ammasi
- 9 Arumugam
- 10 Rangasamy
- 11 Venkatesan
- 12 Vaithiyalingam
- 13 Thangavel
- 14 Chinnasamy
- 15 Lakshmi
- 16 Periyasamy
- 17 Sivagami
- 18 Neelambal
- 19 Govindan



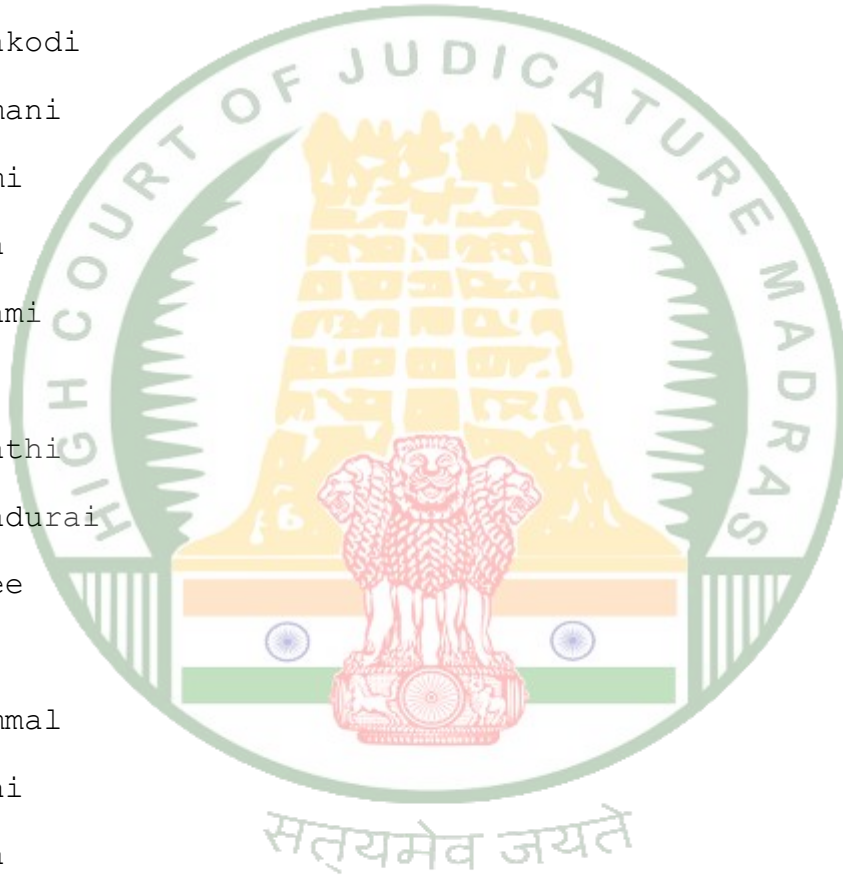
WEB COPY

20 Malathi
21 Kanagavalli
22 Mani
23 Bhatharunisha
24 Manjula
25 Syed Zubikar Ali
26 Rani
27 Kuzhandaivel
28 Sakthivel
29 Panchalai
30 Booma
31 Palaniammal
32 Ambiga
33 Ponnayal
34 Dhanamani
35 Thangapillai
36 Periyammal
37 Maniyammal
38 Palanivel
39 Santha
40 Malar
41 Selvi
42 Chellammal
43 Chandra
44 Anjalai
45 Murugesan



WEB COPY

46 Kaveri
47 R.Chinnathambi
48 Janakiammal
49 Jayanthi
50 Alli
51 Selvi
52 Pavalakodi
53 Manonmani
54 Lakshmi
55 Amutha
56 Sivagami
57 Radha
58 Bhoopathi
59 Thangadurai
60 Ambayee
61 Amsa
62 Kannammal
63 Sumathi
64 Saroja
65 Poongavanam
66 Alamelu
67 Kulanthaitherasa
68 Kasthuri
69 Ranganathan
70 Ramachandiran
71 Jaya



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72 Suresh
73 Maheswari
74 Selvaraj
75 Valli
76 Chitra
77 Arul
78 Venkatachalam
79 Tamilselvi
80 Palaniyammal
81 Chitra
82 Sathya
83 Selvaraj
84 Anuradha
85 Rasathi
86 Poogar
87 Mannakatti .. Petitioners

1 The State of Tamil Nadu,
Rep. by its Secretary to Government,
Public Works Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2 The District Collector,
Villupuram District,
Villupuram.

3 The Assistant Engineer,
PWD, Irrigation Department,
Chinnasalem,
Villupuram District,
Villupuram.

4 The Thasildar,
Kallakurichi,
Villupuram District,
Villupuram.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of declaration declaring that the 3rd respondent has no jurisdiction to issue orders under Form III under Tamil Nadu Protection of Tank and Eviction of Encroachment Act 2007 for Eviction of the petitioners from S.F.No.239 in Chinnasalem (North) Village, Kallakurichi Taluk, Villupuram District without complying with the mandatory procedure set out under Sections 3,4,5,6 and 7 of Tamil Nadu Protection of Tank and Eviction of Encroachment Act 2007 and consequently direct the 2nd respondent to re-classify 0.50 hectares of land out of 94.13.5 hectares of land in S.F. No.239 in Chinnasalem (North) Village Kallakurichi Taluk, Villupuram District from Eri Poramboke to natham and issue house pattas to the petitioners as per G.O.Ms.No.854, dated 30.12.2006 issued by the Revenue Department, Government of Tamil Nadu.

For Petitioners : Mrs.Nalini Chidambaram
Senior Counsel
for
M/s.N.R.R.Arun Natarajan

For Respondents : Mr.T.N.Rajagopalan
Spl. Government Pleader

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

In this writ petition, the petitioner has prayed for a declaration that respondent No.3 has no jurisdiction to issue orders under Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007 for eviction of the petitioners from S.F.No.239 of Chinnasalem (North) Village, Kallakurichi Taluk, Villupuram District without complying with the mandatory procedure set out under Sections 3, 4, 5, 6 and 7 of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007. A direction has also been sought on the respondent No.2 to re-classify 0.50 hectares of land out of 94.13.5 hectares of land in S.F.No.239 in Chinnasalem (North) Village, Kallakurichi Taluk, Villupuram District from "Eri poramboke" to "Natham" and issue house pattas to the petitioners as per G.O.Ms.No.854, dated 30th December, 2006 issued by the Revenue Department, Government of Tamil Nadu.

2. The issues raised in the writ petition are covered by the judgment of the Full Bench of this Court dated 30th October, 2015 in T.K.Shanmugam, Secretary, C.P.I.(M) North Chennai District Committee, 52, Cooks Road, Perambur, Chennai-600 011 v. The State of Tamil Nadu, rep. by its Secretary to Government, Department of Revenue, Fort St. George, Chennai-600 009 and others, reported in (2015) 5 LW 397 (FB).

3. Admittedly on the face of the averments in the writ petition, the land in occupation of the petitioners is classified as "Eri poramboke" that is, water body vested in Government and accordingly orders have been sought for re-classification of the land from "Eri poramboke" to "Natham". Significantly, in paragraph 2 of the affidavit of the petitioners, it is stated as under:-

"2. The petitioners state that Chinnasalem is classified as a town panchayat falling under Kallakurichi taluk located in Villupuram District, Tamil Nadu. Chinnasalem Tank, a water body, is located at the heart of Chinnasalem Taluk in S.F.No.239 in Chinnasalem (North) Village, Kallakurichi Taluk, Villupuram District. The petitioners 1 to 27 are residents of Thiru.Vi.Ka.Nagar which is located on the banks of Chinnasalem Taluk and the petitioners 28 to 87 are residents of Indra Nagar which is located 1 km away from the banks of the Chinnasalem tank and the petitioners have constructed houses in S.F.No.239."

4. From the extract of a portion of paragraph (2) of the writ affidavit of the petitioners extracted supra, two factual aspects (as admitted by the writ petitioners) emerge. First factual aspect is that S.F.No.239 of Chinnasalem (North) Village, Kallakurichi Taluk, Villupuram District, which is the subject matter of the instant writ petition, is admittedly a water body. Second factual aspect is that the petitioners have constructed houses in the said water body, namely, S.F.No.239 of Chinnasalem (North) Village, Kallakurichi Taluk, Villupuram District.

5. With regard to the Government Order dated 30th December, 2006 (G.O.Ms.No.854) on which reliance has been placed by the petitioners, the Full Bench of this Court held as under:-

"44. The Government Orders starting from 30.12.2006 in G.O.(Ms) No. 854, Revenue Department and subsequent Government Orders in G.O.Ms. No. 498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular

reference to encroachments in water bodies are in clear violation of the public trust doctrine. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularizing their possession which has to be deprecated.

45. In the light of the above, we answer the reference on the following terms:- The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations/directions issued in L. Krishnan v. State of Tamil Nadu reported 2005-3-L.W. 313 : 2005 (4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh v. State of Punjab, reported in 2011-3-L.W. 17 : (2011) 11 SCC 396, and the observations contained in paragraph 20(d)(e) of the judgment of the Division Bench in T.S. Senthil Kumar v. Government of Tamil Nadu, reported in 2010-3-MLJ-771 and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905."

6. In T.K.Shanmugam (supra), the Full Bench held that even the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 require protection from encroachment and any encroachment made

in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905. As a Division Bench, we are bound by the judgment of the Full Bench of this Court in T.K.Shanmugam (supra).

7. It prima facie appears to us, having regard to the pleadings of the petitioners in the writ petition, that the petitioners are liable in terms of the judgment in T.K.Shanmugam (supra) to be removed.

8. All water bodies and tanks require protection from encroachment whether under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 or by following the provisions of the Tamil Nadu Land Encroachment Act, 1905. Our interference is thus not warranted. The writ petition is not entertained.

9. The writ petition is dismissed. No costs. Consequently, W.M.P.Nos.10028 & 10029 of 2017 are also dismissed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

bbr

To:

- 1 The Secretary to Government,
Public Works Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
- 2 The District Collector,
Villupuram District,
Villupuram.
- 3 The Assistant Engineer,
PWD, Irrigation Department,
Chinnasalem,
Villupuram District,
Villupuram.
- 4 The Thasildar,
Kallakurichi,
Villupuram District,
Villupuram.

+1cc to Mr.C.Uma,Advocate sr.23478(19/4/2017)

W.P.No.9086 of 2017

sv1(co)

ss(18/4/2017)