

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.31717 of 2017
and
WMP No.34862 of 2017

Udhaya

..Petitioner

Vs

The Assistant Engineer
Public Works Department (Water Resource Organization),
Adaya Irrigation Division,
St.Thomas Mount, Chennai - 16. ..Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for records with respect of impugned notice issued by the respondent dated 02.11.2016 under Form III under Rule 6 (1) of the Tamil Nadu Protection of Tanks and Eviction of encroachment Rules, 2007 and quash the same.

For petitioner : Mr.R.Nalliyappan

For Respondent : Mrs.M.E.Raniselvam
Additional Government Pleader

ORDER

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal.

2. The petitioner filed an affidavit in support of this writ petition would aver among other things that the land comprised in Survey No.235 at Anakaputhur Village is classified as "Stony Ground" in the revenue records wherein, by way of succession, the petitioner is residing for more than fifty years. The petitioner on the ground of long possession and enjoyment, also submitted a representation before the concerned revenue officials for issuance of patta and the said application is yet to be disposed of.

3. The petitioner would further aver that the land in which he claims to be in possession is existing 300 meters from the Adyar River and in respect of the land which is situated very close by Adyar River, pattas have been granted by the revenue officials and CMDA have also approved the house sites and very many superstructures are came into being. However, to the shock and surprise of the petitioner, all of a sudden, the respondent has issued a notice under Form III under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and rules framed thereunder and challenging the legality of the same, came forward to file this writ petition.

4. The learned counsel appearing for the petitioner would submit that superstructure put up by the petitioner is also subjected to statutory levies and the construction is authorized and he has been issued with Aadhar Card, Ration Card and other amenities and without affording any opportunity whatsoever to put forth the grievance, the respondent had straight away issued the eviction notice and hence, prays for appropriate interference.

5. Per contra, Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondent would submit that after strictly adhering to the process of law, action is taken and admittedly the petitioner is a rank encroacher and he has also put up the superstructure without any authorization / permission and since, he being the violator of law, is not entitled to get any indulgence and hence, prays for dismissal of this writ petition.

6. This Court heard the rival submissions and also perused the materials placed before it.

7. Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner in this writ petition and also in the light of the stand taken by them that his forefathers and he is said to be in occupation of the land in question for very many years, this Court permits the petitioner to submit a detailed representation by enclosing relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider and dispose of the said representation on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken to the petitioner. The respondent, till such time, shall defer further proceedings in terms of the impugned notice issued under Form III under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. It is also made clear that till the

disposal of the representation by the respondent, the petitioner shall not create any third party right in respect of the land in question and shall not alter the physical features also.

8. The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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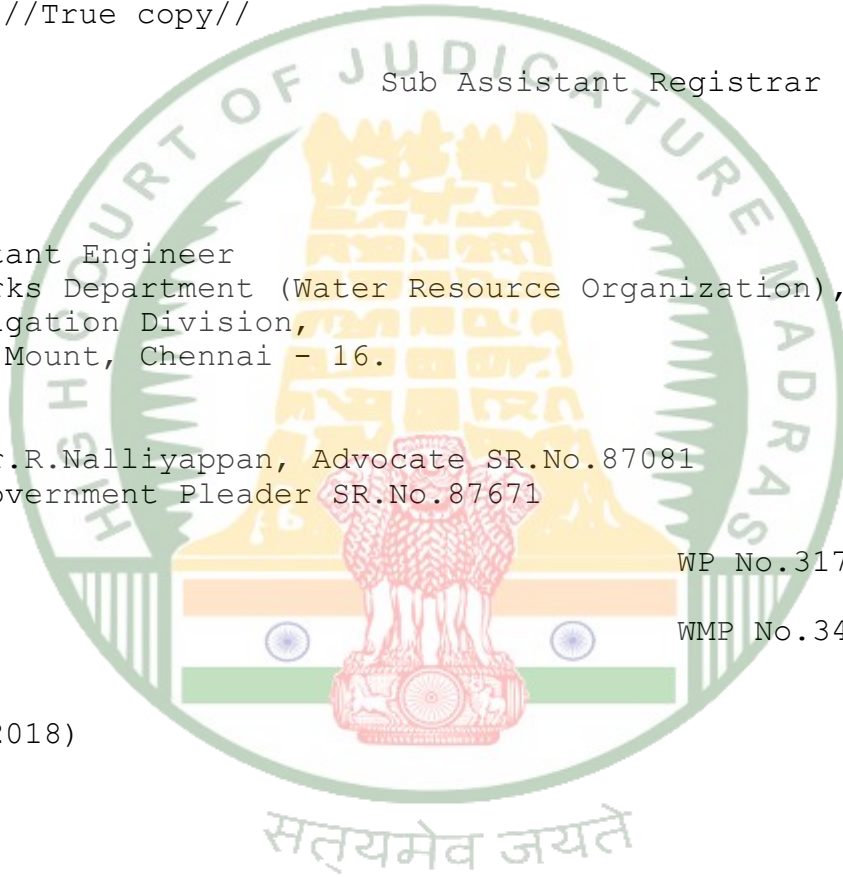
To

The Assistant Engineer
Public Works Department (Water Resource Organization),
Adaya Irrigation Division,
St.Thomas Mount, Chennai - 16.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.87081
+1cc to Government Pleader SR.No.87671

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