

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.P.Nos.31998 to 32002/2017 & WMP.Nos.35154 to 35158/2017

Saghul Hameed	..	Petitioner in
		WP.No.31998/2017
Bangaru	..	Petitioner in
		WP.No.31999/2017
Adhilakshmi	..	Petitioner in
		WP.No.32000/2017
Kesavan	..	Petitioner in
		WP.No.32001/2017
Asaraf Ali	..	Petitioner in
		WP.No.32002/2017

Vs

The Assistant Divisional Engineer
Public Works Department, [Water
Resource Organization], Adayar
Irrigation Division, St.Thomas Mount
Chennai-16.

.. Respondent in all WPs

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the 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 Petitioners in all
Writ Petitions : Mr.R.Nalliyappan

For Respondent in all
Writ Petitions : Mr.A.N.Thambidurai, Spl.GP

COMMON ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondent.

2 Since the issue to be adjudicated in the above writ petitions are one and the same, all the writ petitions are taken up together for final hearing and are disposed of by the following common order.

WP.No.31998/2017:-

3 The petitioner claims to be a resident of Door No.19, Kayidhey Millath Nagar, Anakaputhur Village, Kancheepuram District and according to him, the said property is situate in SF.No.235 of the said village and as per the Revenue records, it is shown as "Stony Ground". It is the specific case of the petitioner that the superstructure put up by

him is about 300 metre away from the Banks of Adyar river and even during 2015 Mega Flood and the petitioner and other residents of the Locality have not been affected on account of the stagnation / inundation of the flood water. The grievance expressed by the petitioner is that the land in SF.No.235 of Anakaputhur Village, is water body according to the respondent and therefore, the respondent had issued the impugned notice in Form III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.31999/2017:-

4 The petitioner claims to be a resident of Stalin Nagar, Anakaputhur Village, Kancheepuram District and according to him, the said property is situate in SF.No.235 of the said village and as per the Revenue records, it is shown as "Stony Ground". It is the specific case of the petitioner that the superstructure put up by him is about 300 metre away from the Banks of Adyar river and even during 2015 Mega Flood and the petitioner and other residents of the Locality have not been affected on account of the stagnation / inundation of the flood

water. The grievance expressed by the petitioner is that the land in SF.No.235 of Anakaputhur Village, is water body according to the respondent and therefore, the respondent had issued the impugned notice in Form III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.32000/2017:-

5 The petitioner claims to be a resident of Door No.43, Stalin Nagar, Anakaputhur Village, Kancheepuram District and according to her, the said property is situate in SF.No.235 of the said village and as per the Revenue records, it is shown as "Stony Ground". It is the specific case of the petitioner that the superstructure put up by her is about 300 metre away from the Banks of Adyar river and even during 2015 Mega Flood and the petitioner and other residents of the Locality have not been affected on account of the stagnation / inundation of the flood water. The grievance expressed by the petitioner is that the land in SF.No.235 of Anakaputhur Village, is water body according to the respondent and therefore, the respondent

had issued the impugned notice in Form III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.32001/2017:-

6 The petitioner claims to be a resident of Door No.17, Stalin Nagar, Anakaputhur Village, Kancheepuram District and according to him, the said property is situate in SF.No.235 of the said village and as per the Revenue records, it is shown as "Stony Ground". It is the specific case of the petitioner that the superstructure put up by him is about 300 metre away from the Banks of Adyar river and even during 2015 Mega Flood and the petitioner and other residents of the Locality have not been affected on account of the stagnation / inundation of the flood water. The grievance expressed by the petitioner is that the land in SF.No.235 of Anakaputhur Village, is water body according to the respondent and therefore, the respondent had issued the impugned notice in Form III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed

thereunder and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.32002/2017:-

7 The petitioner claims to be a resident of Door No.1, kayidhey Millath Nagar, Anakaputhur Village, Kancheepuram District and according to him, the said property is situate in SF.No.235 of the said village and as per the Revenue records, it is shown as "Stony Ground". It is the specific case of the petitioner that the superstructure put up by him is about 300 metre away from the Banks of Adyar river and even during 2015 Mega Flood and the petitioner and other residents of the Locality have not been affected on account of the stagnation / inundation of the flood water. The grievance expressed by the petitioner is that the land in SF.No.235 of Anakaputhur Village, is water body according to the respondent and therefore, the respondent had issued the impugned notice in Form III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder and challenging the legality of the same, the petitioner came forward to file the present writ petition.

8 Mr.R.Nalliyappan, learned counsel for the petitioners has drawn the attention of this Court to the typed set of documents and would submit that the petitioners are the residents of the above said places and their predecessors were in title and by way of succession, they continue to remain in possession of the land and superstructures in question for over 50 years and even as per the Revenue Records the lands in question is classified as "Stony Ground" and as such, the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder, have no application at all and would further add that if an opportunity is given, the petitioners may be in a position to produce the documents to project their cases and prays for appropriate orders.

9 *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondent would submit that though the petitioners would uniformly state that they are in possession of the site and superstructures in question, for over 50 years, except the Aadhar Cards and Ration Cards, no other materials have been produced to substantiate their claim and admittedly, the petitioners are encroachers and being encroachers, they are not entitled to make a claim that they should be permitted to reside in the site and

superstructures in question and further that action is taken by the respondent, strictly in accordance with law and prays for dismissal of the writ petitions.

10 The Court has considered the rival submissions and also perused the materials placed before it.

11 Though the petitioners have 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 them in these writ petitions, permits the petitioners to submit an individual and detailed representation evidencing their right to be in possession of the land and superstructures in question in the light of the averment that they are in possession for over 50 years, by enclosing the relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent is directed to consider the said representations on merits and in accordance with law and pass appropriate orders within a further period of four weeks thereafter and communicate the decision taken, to the petitioners and the respondent, till the disposal of the representations to be submitted by the petitioners, shall defer further

decision in terms of the impugned notice dated 02.11.2016 issued to the petitioners. It is also made clear that till the disposal of the representations by the respondent, the petitioners shall not create any third party rights in respect of the site and superstructures in question and shall also not alter the physical features of the same.

12 The writ petitions stand disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

[M.S.N., J.] [P.R.M., J]
18.12.2017

Internet : Yes

AP

To
The Assistant Divisional Engineer
Public Works Department, [Water
Resource Organization], Adayar
Irrigation Division, St.Thomas Mount
Chennai-16.

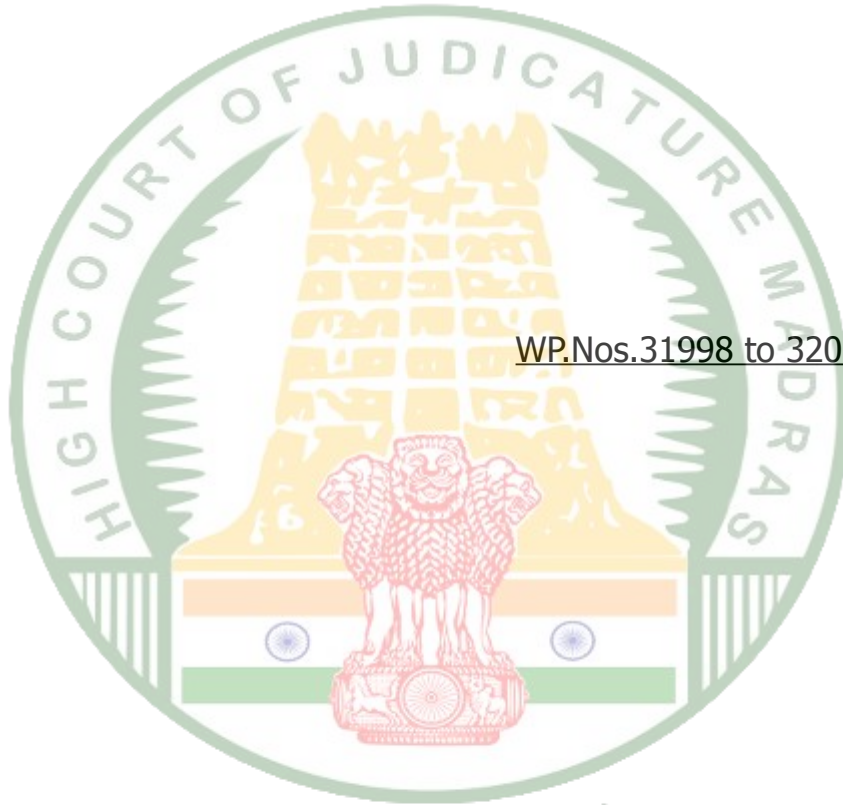
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M.SATHYANARAYANAN, J.,

AND

P.RAJAMANICKAM, J.,

AP



WP.Nos.31998 to 32002/2017

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