

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.32919 to 32923/2017 &
WMP.Nos.36288 to 36292/2017

Mohammed Ismail ..Petitioner in WP.No.32919/2017
Rabiya ..Petitioner in WP.No.32920/2017
Mohammed Meeran Kani ..Petitioner in WP.No.32921/2017
Nirmala Devi ..Petitioner in WP.No.32922/2017
Mehar Banu ..Petitioner in WP.No.32923/2017

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
mandamus forbearing the respondent from evicting the
petitioners from the respective houses at Door Nos.11, 58A, 9,
13 and 14, Kayidhey Millath Nagar, Anakaputhur, Chennai-70,
existing in SF.No.235 of Anakaputhur Village, Pallavaram
Taluk, Kancheepuram District.

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.32919/2017:-

3 The petitioner claims to be a resident of Door No.11, 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 a notice dated 02.11.2016 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 hence, the petitioner came up with the present writ petition seeking the above said relief.

WP.No.32920/2017:-

4 The petitioner claims to be a resident of Door No.58A, Kayidhey Millath 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 a notice dated 02.11.2016 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 hence, the petitioner came up with the present writ petition seeking the above said relief.

WP.No.32921/2017:-

5 The petitioner claims to be a resident of Door No.9, 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 a notice dated 02.11.2016 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 hence, the petitioner came up with the present writ petition seeking the above said relief.

WP.No.32722/2017:-

6 The petitioner claims to be a resident of Door No.13, Kayidhey 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 a notice dated 02.11.2016 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 hence, the petitioner came up with the present writ petition seeking the above said relief.

WP.No.32923/2017:-

7 The petitioner claims to be a resident of Door No.14, Kayidhey Millath 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 a notice dated 02.11.2016 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 hence, the petitioner came up with the present writ petition seeking the above said relief.

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.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

AP

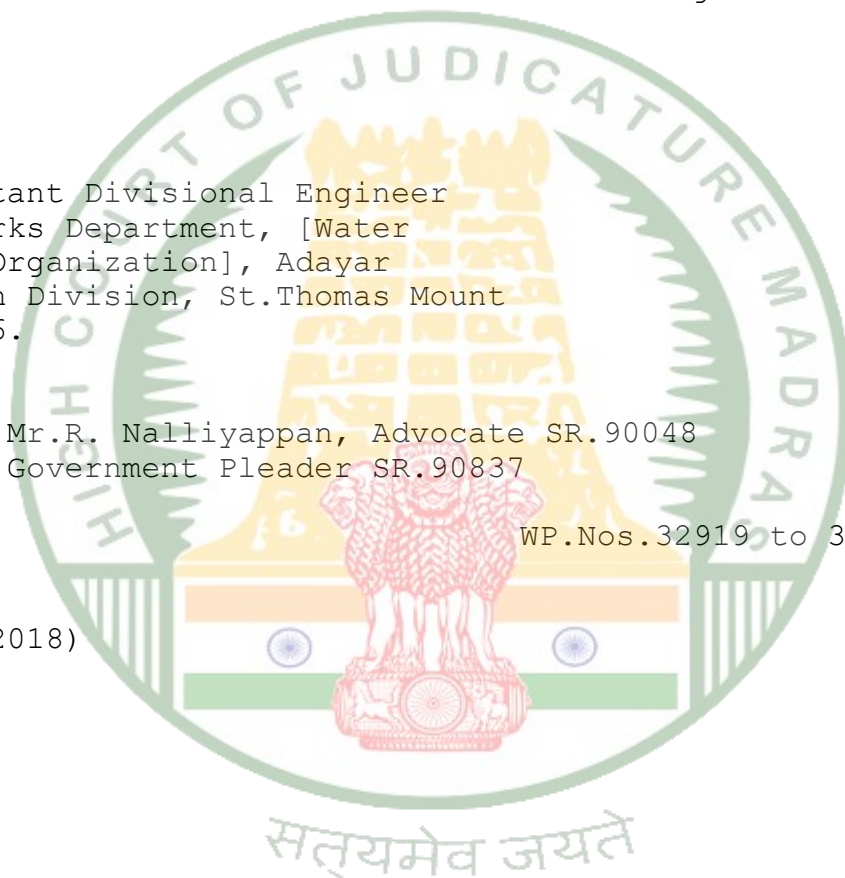
To

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

+ 1 cc to Mr.R. Nalliyappan, Advocate SR.90048
+ 1 cc to Government Pleader SR.90837

WP.Nos.32919 to 32923/2017

RR (CO)
EU (19/01/2018)



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