

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.30514 of 2015
and
M.P.No.1 of 2015

1.M.Rajaram
2.S.Kamaraj
3.Lakshmi
4.Duraikkannu
5.Porkalai
6.Kasinathan
7.G.Ayyappan

.... Petitioners

-Vs-

The Assistant Engineer,
Public Works Department,
Water Resources Organization,
Irrigation Section No.1,
Villupuram 605 602.

.... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the entire records relating to the order dated 11.09.2015 regarding the removal of encroachment in Survey No.380-2 to the extent of 0010 acres situated at Asur Village, Vikravandi Taluk, Villupuram District, on the file of the respondent herein and quash the same.

For Petitioners : Mr.C.Munusamy

For Respondent : Mr.T.N.Rajagopalan
Special Government Pleader

O R D E R

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

The petitioners have approached this Court on account of threat perceived of action being taken by the respondents to remove them from the occupation of the area in S.No.380-2 to the extent of 0010 acres situated at Asur Village, Vikravandi Taluk,

Villupuram District. The petitioners undisputedly acknowledge that they are encroachers, though they say there are many other encroachers also in that area. The petitioners claim that there is a threatened action under the Tamil Nadu Encroachment Act, 1905.

2.The counter-affidavit filed by the respondent clarifies that the encroachment is in the lake area in S.No.380/2 measuring 0010 acres and the area is, thus, not governed by the aforesaid Act but by the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007. It is also averred that the Revenue Tahsildar furnished a detailed report dated 31.08.2015 in Form I under Sub Rule (1) of Rule 2 of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Rules, 2007, to the respondent / Public Works Department, which was duly published on 03.09.2015 in the Panchayat Board office and the Village Administrative Office. Notice in Form III under Rule 6 (1) of the said Rules was issued granting sufficient time to the petitioners to remove the encroachments, but to no avail.

3.On our query, learned counsel for the petitioners is not able to point out any document on record to show that the area is a Government poramboke land and not a lake area. Thus, the petition is based on an incorrect premise both as to fact and as to the legal provision under which the action is sought to be taken by the respondent.

4.In view of the Full Bench judgment of this Court in T.K.Shanmugam v. The State of Tamil Nadu, rep. by its Secretary and others, 2015-5-L.W. 397, there can be no question of issuance of patta in water area or tank area. There can also be no re-categorisation of the area. Thus, unless the petitioners are able to show that their area is something other than the tank, there can be no question of entertaining their request which they have failed to do at least in this proceeding. If they have such material in their possession, it is always open to them to approach the respondent authorities with such material.

Writ petition is dismissed with the aforesaid observation. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sra

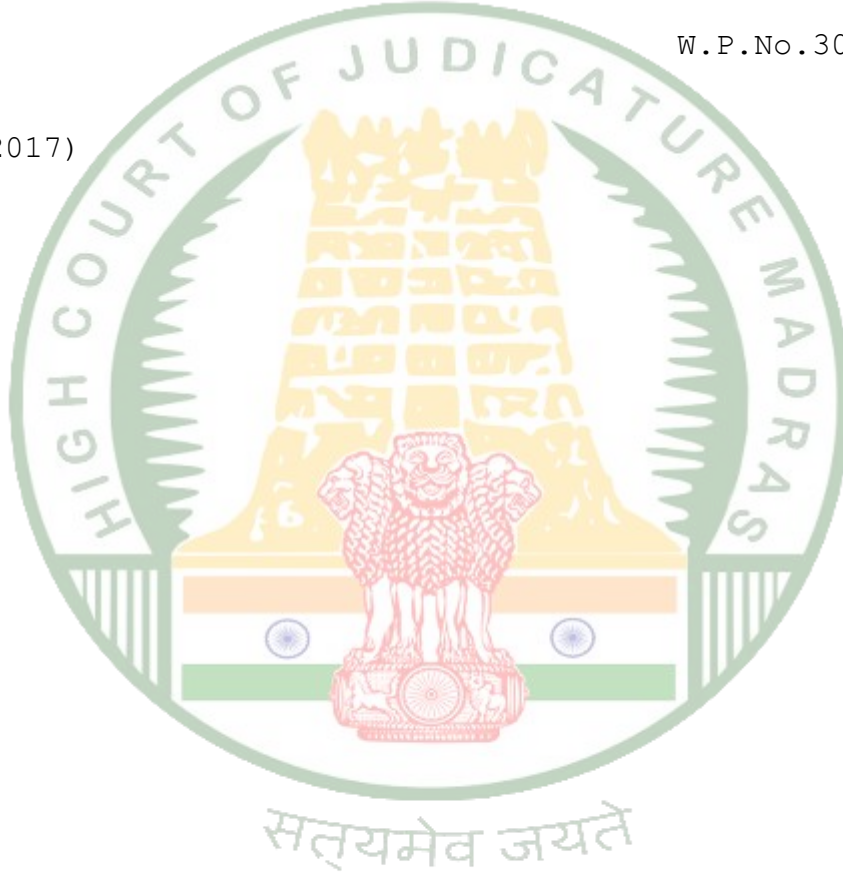
To

The Assistant Engineer,
Public Works Department,
Water Resources Organization,
Irrigation Section No.1,
Villupuram 605 602.

+lcc to Mr.C.Munusamy, Advocate, S.R.No.2446
+lcc to the Government Pleader, S.R.No.2480

W.P.No.30514 of 2015

SV(CO)
CA(27/01/2017)



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