

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.18149 & 18150/2017 and WMP.Nos.19692 & 19693/2017

P.Munusamy

.. Petitioner
in WP.No.18149/2017

P.Raji

.. Petitioner
in WP.No.18150/2017

Vs

1.The District Collector
Kancheepuram District.

2.The Tahsildar
Thiruporur Taluk
Kancheepuram District.

3.The Assistant Engineer, PWD
Irrigation Section
Thiruporur-603110.

.. Respondents in
both the WPs

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records relating to the impugned notice dated 14.06.2017 issued under Form III Notice [Sub Rule [1]] of Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules,

<http://www.judis.nic.in> 2007 issued by the 3rd respondent to the petitioners and quash the same

and consequently direct the 2nd respondent to issue patta to the land comprised in Survey No.128A/20 of Mambakkam Village, Thiruporur Taluk, Kancheepuram District in the name of the petitioners.

For Petitioners in
both WPs

: Mr.P.Senthilkumar

For Respondents in
both WPs

: Mr.A.N.Thambidurai, Spl.GP

COMMON ORDER

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

By consent, both the writ petitions are taken up for final disposal since the issue to be adjudicated is one and the same. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 5.

2 The petitioners claim that the lands comprised in Survey No.128A/20 of No.5, Mambakkam Village, was owned and possessed by their grandfather and after his demise, their father. The father of the petitioners and his brothers along with their respective families were living in the said property continuously and after the demise of their father, the petitioners and their brothers had succeeded to the said estate and the petitioners had also put up a small construction. The petitioners would further claim that they are living

under the indigent circumstances along with their families and due to poor, economic background, they could not put up any pucca construction also.

3 The lands in which the petitioners are in possession was the subject matter of proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the Tahsildar, Thiruporur, vide proceedings dated 18.03.2015, has directed the petitioners to vacate and deliver the possession of the lands as the lands are located on "Vaaikkal Poramboke" [water course]. The petitioners, challenging the legality of the order, had filed appeal petitions before the 1st respondent, who vide proceedings dated 21.02.2017, has found that the land admeasuring to an extent of 0.73.5 Hectares in Mambakkam Village Survey No.128A/20 is an objectionable encroachment, as it is located in Government "Vaaikkal Poramboke" [water course]. Accordingly, the impugned notices were issued to the petitioners by the 3rd respondent under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and challenging the legality of the same, the petitioners have come forward to file the above writ petitions.

4 The learned counsel for the petitioners would submit that

challenging the legality of the order / proceedings of the 1st respondent dated 21.02.2017, the petitioners had filed appeal petitions before the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai-5, and they have also been issued with the Hearing Notices dated 04.07.2017 in RC.No.T1/4922/2017 and till the disposal of the appeals by the said official, further proceedings in terms of the impugned notices may be deferred and prays for appropriate orders.

5 *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader would submit that the petitioners are encroachers of the lands located in Vaaikkal Poramboke and the proceedings are rightly initiated under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007.

6 This Court has carefully considered the rival submissions and also perused the materials placed before it.

7 Original the petitioners and others were proceeded under the Tamil Nadu Land Encroachment Act, 1905, by the 2nd respondent and challenging the proceedings in and by which, their eviction was ordered, appeals were preferred under section 10 of the Tamil Nadu

Land Encroachment Act, 1905, before the 1st respondent, who vide proceedings dated 21.02.2017, has directed the concerned official to remove the encroachments under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 and accordingly, the 3rd respondent has issued the impugned notices. The fact remains that the petitioners challenging the legality of the proceedings of the 1st respondent dated 21.02.2017, have filed appeals before the Commissioner of Land Administration, Chepauk, Chennai – 600 005 and it was entertained and the petitioners were also issued with Hearing Notices dated 04.07.2017 from the office of the Additional Chief Secretary and Commissioner of Land Administration, calling upon them to appear on 08.08.2017 and therefore, this Court is of the view that unless and until the said appeals are disposed of by the Commissioner of Land Administration, further proceedings in terms of the impugned notices are to be deferred.

8 In the result, the writ petitions are disposed of and the 3rd respondent is directed to defer further proceedings in terms of the impugned notices dated 14.06.2017 till the disposal of the appeal petitions dated 06.03.2017 filed by the petitioners herein, by the Deputy Chief Secretary and Commissioner of Land Administration, Chepauk,

Chennai-5 and the said official is also directed to expedite the disposal of the appeals and pass final orders in accordance with law within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioners as well as to the 3rd respondent herein. No costs. Consequently, the connected miscellaneous petitions are closed.

[M.S.N., J.,]

[N.S.S., J]

18.07.2017

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No
Yes



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To

- 1.The District Collector
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- 3.The Assistant Engineer, PWD
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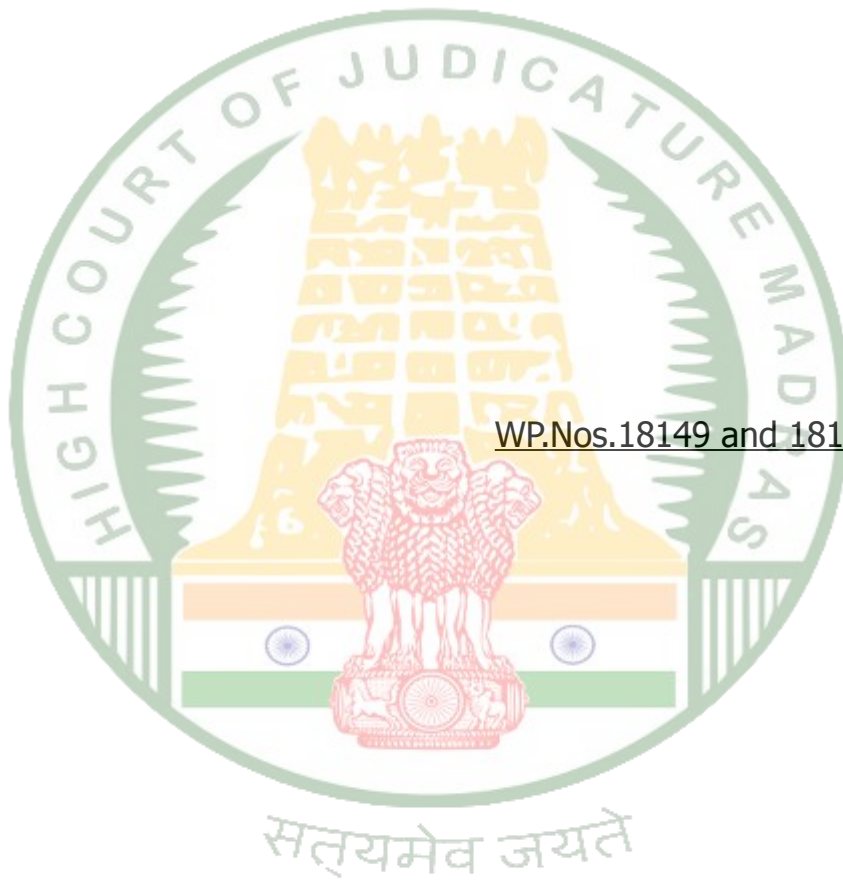
Copy to:-

The Additional Chief Secretary
and Commissioner of Land Administration
Department, Ezhilagam, Chepauk,
Chennai 600 005.



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M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,
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