

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

W.P.Nos.29003 to 29006 / 2017 and
WMP.Nos.31234 &31235, 31236, 31237, 31238/2017
and WP.Nos.28580 to 28585 / 2017
and WMP.Nos.30746,30747,30748,30749,30750,30751/2017
W.P.No.28992/2017 and WMP.No.31225/2017

Shanthi	... Petitioner in WP.No.29003/2017
Elumalai	... Petitioner in WP.No.29004/2017
Govindhammal	... Petitioner in WP.No.29005/2017
Balaraman	... Petitioner in WP.No.29006/2017
Shanmugam	... Petitioner in WP.No.28580/2017
Mannar	... Petitioner in WP.No.28581/2017
Rani	... Petitioner in WP.No.28582/2017
Subramani	... Petitioner in WP.No.28583/2017
S.Nirmala	... Petitioner in WP.No.28584/2017
Desammal	... Petitioner in WP.No.28585/2017
K.Umapathy	... Petitioner in WP.No.28992/2017

.Vs.

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1. The State of Tamil Nadu
 Represented by its Secretary,
 Ministry of Public Works Department,
 Fort St. George, Chennai-600 009.

2. The Principle Secretary,
Public Works Department/
Irrigation Department
Fort St. George, Chennai-600 009.

3. The District Collector,
Thiruvallur.

4. The Assistant Engineer
Public Works Department/
Irrigation Department
St. Thomas, Adyar, Chennai-600 016.

5. The Tahsildar,
Avadi, Chennai-600 054.

....Respondents in all W.P. Nos.

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records pertinent to the notice issued by the 4th respondent form No.III (rule 6 (1) i) dated 18.09.2017 and quash the same.

For Petitioners in : Mr.M.Prabakar
all WPs

For Respondents in : Mr.A.N.Thambi Durai
all WPs except Special Government Pleader
W.P.No.28992/2017

For Respondents in : Mr.M.Digvijayapandian
W.P.No.28992/2017 Additional Government Pleader

COMMON ORDER

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

By consent, all the writ petitions are taken up for final disposal since the issue to be adjudicated is one and the same and the writ petitions are disposed of by the following common order.

WP No.29003 of 2017

2. The petitioner claims to be a resident of Door No.76/34, Muthumariamman Kovil Street, Thirunindavur 602 024, and according to her, her husband Elumalai had come into possession of the site in Survey No.301/1 at Thiruninravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with her family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP No.29004 of 2017

3. The petitioner claims to be a resident of Door No.80/1, Dharmaraja Kovil Street, Thirunindravur, 602 024, and according to him, his father Arumugam had come into possession of the site in Survey No.301/1, at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with his family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

W.P.No.29005/2017

4. The petitioner claims to be a resident of Door No.62, Dharmaraja Kovil Street, Thirunindravur 602 024, and according to her, her husband Mannan, had come into possession of the site in Survey No.301/1 at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with her family is

residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.29006/2017

5. The petitioner claims to be a resident of Door No.85, Dharmaraja Kovil Street, Thirunindravur, 602 024, and according to him, his father Murugan had come into possession of the site in Survey No.301/1, at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with his family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.28580/2017:-

6. The petitioner claims to be a resident of Door No.38, Dharmaraja Kovil Street, Thirunindravur, 602 024, and according to him, his father Venkatesan had come into possession of the site in Survey No.301/1, at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with his family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.28581/2017:-

7. The petitioner claims to be a resident of Door No.12, Dharmaraja Kovil Street, Thirunindravur, 602 024, and according to him, his father Venkatesan had come into possession of the site in Survey No.301/1, at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with his family is

residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.28582/2017:-

8. The petitioner claims to be a resident of Door No.38, Dharmaraja Kovil Street, Thirunindavur 602 024, and according to her, her husband Rajendran had come into possession of the site in Survey No.301/1 at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with her family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.28583/2017

9. The petitioner claims to be a resident of Door No.28, Dharmaraja Kovil Street, Thirunindravur, 602 024, and according to him, his father Ramasamy had come into possession of the site in Survey No.301/1, at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with his family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.28584/2017:-

10 The petitioner claims to be a resident of Door No.24, Dharmaraja Kovil Street, Thirunindravur 602 024, and according to her, her husband Sekar had come into possession of the site in Survey No.301/1 at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with her family is residing there

and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.28585/2017

11 The petitioner claims to be a resident of Door No.28, Dharmaraja Kovil Street, Thirunindavur 602 024, and according to her, her husband Munusamy had come into possession of the site in Survey No.301/1 at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with her family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

WP.No.28992/2017

12 The petitioner claims to be a resident of Old No.26, New No.54/2, Dharmaraja Kovil Street, Thirunindravur, 602 024, and according to him, his father Kathirvel had come into possession of the site in Survey No.301/1, at Thirunindravur Village and put up a superstructure and it is also subjected to statutory levies. The petitioner along with his family is residing there and also provided with the Ration card, Voters Identity Cards. However to the shock and surprise of the petitioner, the 4th respondent issued the impugned notice dated 18.09.2017 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, the petitioner came forward to file this writ petition.

13 The learned counsel appearing for the petitioners would submit that the 4th respondent purportedly acted in compliance of the order dated 29.07.2016 in W.P.No.3466 of 2016 and has erroneously reached the conclusion that the land in survey No.301/1 at Thirunindravur Village, Avadi is classified as "Eri" [water body] and whereas, it is not so and the sites on which the superstructures of the petitioners are located lie far away from the water body and without taking note of the long

possession and enjoyment of the petitioners on the land in question, the 4th respondent is suddenly threatening to dispose them, without adhering to the due process of law and prays for appropriate orders.

14 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader as well as Mr.M.Digvijaya Pandian, learned Additional Government Pleader appearing for the respondents drawn the attention of this Court common counter affidavit filed by the 4th respondent and would submit that in compliance of the order dated 27.09.2016 in W.P.No.3466/2016 [cited supra], the inspection of the entire extent of land in Survey No.301/1 was carried out and it is classified as "Tank" and it is to be preserved with its boundaries and notices were also served on them to illicit their response and very few persons have responded and the persons who have been identified, have been given an alternate accommodation by the Tamil Nadu Slum Clearance Board tenements at Perumbakkam with financial assistance and also other amenities and despite such a fair offer given, the petitioners who are rank encroachers, not went upon to retain the possession of the site land in question but also put up unauthorised superstructures without any planning permission and hence prays for dismissal these writ petitions.

15 The Court heard the rival submissions and also perused the materials placed before it.

16 Though the learned counsel appearing for the petitioners would claim that the petitioners are eking out their livelihood by doing . agricultural and other minimal jobs, it has not been subsequently pleaded in the affidavit filed in support of these writ petitions and the typed set of documents filed by the petitioners would prima facie disclose that the petitioners are issued with Ration cards/Family Cards, Voter ID cards and Aadhar cards.

17 In the light of the plea made by the learned counsel appearing for the petitioners that the petitioners belong to poor and below poverty line category, and eking out their livelihood by doing minimal jobs, this Court is of the considered view that an opportunity is to be afforded to the petitioners to submit representations enclosing relevant and authenticated documents as to their claim that the site on which they had put up superstructures, is not a water body and that they are in possession and enjoyment of the site and superstructures for quite long

time, this Court permits each of the petitioners to submit a detailed individual representation to the 4th respondent enclosing relevant and authenticated documents as to their right and possession, more particularly, that they have not encroached upon the water body, within a period of four weeks from the date of receipt of a copy of this order and on receipt of the same, the 4th respondent is directed to consider and dispose of the said representation to be submitted by the petitioners on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision to the petitioners. The 4th respondent, till the disposal of the representations to be submitted by the each of the petitioners, 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 representations by the respondent, the petitioners shall not create any third party rights in respect of the land and superstructure in question and shall not alter the physical features also. The office of the respondents 3 and 4 shall extend maximum cooperation to the 4th respondent to carry out the said exercise as ordered by this Court.

18 The writ petition stands disposed of accordingly.
Consequently, the connected miscellaneous petitions are also closed.

(M.S.N.,J) (P.R.M.,J)

19.12.2017

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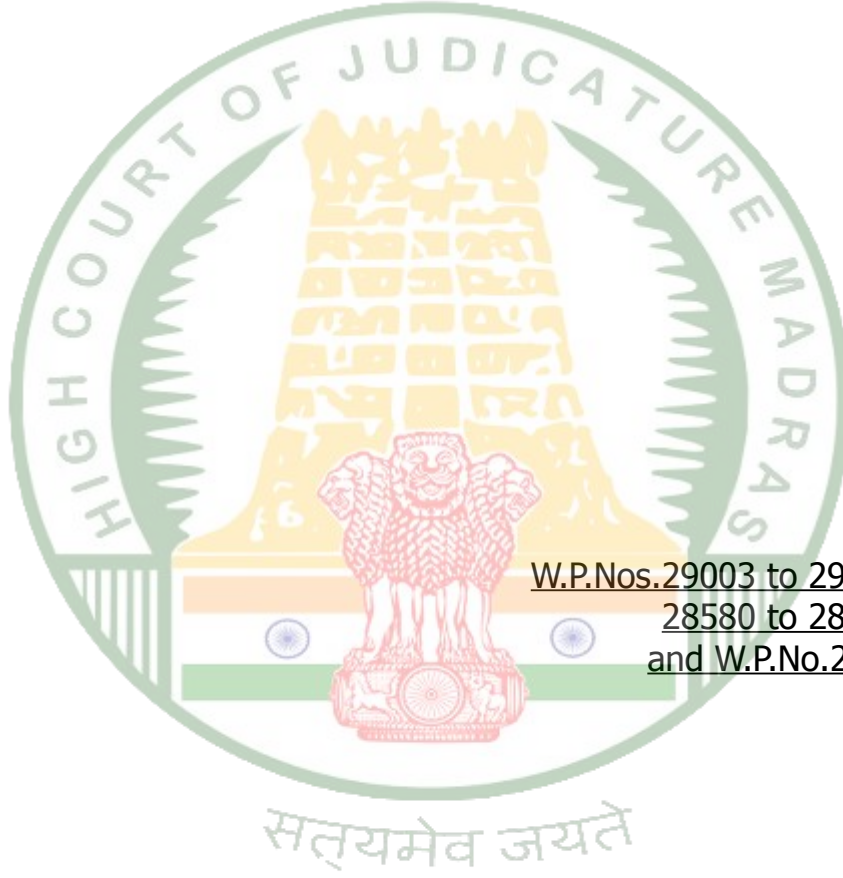
Internet: Yes

To

1. The Secretary,
The State of Tamil Nadu
Ministry of Public Works Department,
Fort St. George, Chennai-600 009.
2. The Principle Secretary,
Public Works Department/
Irrigation Department
Fort St. George, Chennai-600 009.
3. The District Collector,
Thiruvallur.
4. The Assistant Engineer
Public Works Department/
Irrigation Department
St. Thomas, Adyar, Chennai-600 016.
5. The Tahsildar,
Avadi, Chennai-600 054.

M.SATHYANARAYANAN, J.,
AND
P. RAJAMANICKAM, J.,

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W.P.Nos.29003 to 29006 / 2017
28580 to 28585 / 2017
and W.P.No.28992/2017

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