

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP Nos.15554 to 15557 of 2017 and 15363 to 15366 of 2017
and
W.M.P.Nos. 16857 to 16860 of 2017 and 16668 to 16671 of 2017

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|------------------|---------------------------------------|
| 1. Mariyam Beevi | .. Petitioner in W.P.No.15554 of 2017 |
| 2. Abdul Raheem | .. Petitioner in W.P.No.15555 of 2017 |
| 3. Mobintaj | .. Petitioner in W.P.No.15556 of 2017 |
| 4. Fathima Beevi | .. Petitioner in W.P.No.15557 of 2017 |
| 5. A.Jayavelu | .. Petitioner in W.P.No.15363 of 2017 |
| 6. N.Murugan | .. Petitioner in W.P.No.15364 of 2017 |
| 7. Premavathi | .. Petitioner in W.P.No.15365 of 2017 |
| 8. A.Sakthivel | .. Petitioner in W.P.No.15366 of 2017 |

Vs

1. The Assistant Engineer,
Public Works Department
(Water Resource Organization),
Adayar Irrigation Division,
St.Thomas Mount, Chennai - 16.
 2. The Commissioner,
Anakaputhur Municipality,
Kancheepuram District,
R-2 Suo Motu impleaded as per order Dt:25.07.2017
in W.P.No.15554/17 to 15557/17 and
WMP.Nos.16857 to 16860/2017.
 3. The Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.
R-3 Suo Motu impleaded as per the order dated
20.09.2017 in WP.Nos.15554 to 15557/2017
..Respondents in W.P.Nos.15554 to 15557/2017
1. Government of Tamil Nadu Rep. by its Chief Secretary
Public Works Department,
Fort St.George, Chennai - 9.

2. The District Collector
Kanchipuram District.
3. The Tasildar
Pallavaram Taluk Office
Kanchipuram District
4. The Assistant Engineer
Public Works Department
Water Resources Organization,
Adyar Irrigation Division
St.Thomas Mount, Chennai - 16.
5. The Member Secretary
Chennai Metropolitan Development Authority
Chennai.
6. The Commissioner,
Anakaputhur Municipality,
Kancheepuram District,
R-6 Suo Motu impleaded as per
order Dt:25.07.2017
in W.P.No.15363 to 15368/17 and
WMP.Nos.16668 to 16671/2017
..Respondents in W.P.Nos.15363 to 15366 of 2017

Prayer in W.P.Nos. 15554 to 15557/2017: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari call for records with respect of impugned order issued by the respondent dated 31.05.2017 in his proceedings Nos./Adayar/E3, E1, E2 and E4 respectively and quash the same.

Prayer in W.P.Nos.15363 to 15366 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari call for records of the 4th respondent in proceedings bearing Nos.Adayar/E11, E7, E9 and E5 dated 31.05.2017 respectively and the quash the same as without jurisdiction.

For petitioners in all
writ petitions : Mr.R.Chandrasudan

For RR 1 to 4 in WP.Nos.
15363 to 15366 of 2017 &
For RR1&2 in WP.Nos.15554
to 15557/2017 : Mr.A.N.Thambidurai, Spl.GP

For R5 in WP.Nos.15363 to
15366 of 2017 & For R3 in
WP.Nos.15554 to 15557/2017 : Mr.C.Johnson

COMMON ORDER

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

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

2 The petitioners in W.P.No.15554 to 15557 of 2017, in the affidavit filed in support of these writ petitions would aver among other things that they have occupied the particular extent of land in S.F.No.235 at Anakaputhur Village and put up superstructures which are also subjected to statutory levies and the said portion of the land along with the superstructures which are in possession and enjoyment of the petitioners, lie 300 meters from the Adayar River and in the revenue records it is shown as "Stony Ground". It is also the specific case of the petitioners that in respect of adjacent lands, layouts have been approved by Chennai Metropolitan Development Authority and very many superstructures had also came into being and even at the time of inundation which happened during the year 2015, the land / superstructures in occupation have not been affected.

3 The petitioners were issued with notice under Form III issued under Rule 6 (1) Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder, dated 02.11.2016 and they have made a challenge by filing W.P.No.42560 to 42663 of 2016 and vide common order dated 08.12.2016, the writ petitions were disposed of by this Court, by granting liberty to the petitioners therein to submit their representations within a stipulated time and with a further direction, directing the concerned respondent to dispose of the same within a stipulated time and till such time, the concerned respondents are directed to defer further decision. The petitioners in compliance of the said order, have also submitted detailed response and however, the respondents without taking note of the representations, had issued impugned proceedings dated 31.05.2017, calling upon them to vacate the site /land in question within a period of twenty-one days, failing which appropriate action will be taken to dispossess the petitioners and challenging the legality of the same came forward to file these writ petitions.

WP No.15363 of 2017 :-

4 The petitioner in W.P.No.15363 of 2017 would aver among other things that he is the owner of the property ad-measuring to an extent of 14678 Sq.ft. in plot No.3 comprised in Survey No.136 in Anakaputhur Village, Saidapet Taluk, Chennai District, through a registered Sale Deed bearing Document No.1407 of 1987, dated 15.07.1987 registered on the file of Sub-Registrar Office, Pallavaram and he is in possession and enjoyment of same and the same has been assessed to the statutory levies and however, to the shock and surprise, the 4th respondent has issued impugned notice dated 02.11.2016, under Rule 6 (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and making challenge to the said order, the petitioner came forward to file this writ petition.

WP No.15364 of 2017 :-

5 The petitioner would aver among other things that he is the owner of the property ad-measuring to an extent of 729 Sq.ft. in plot No.1B, comprised in Survey No.136 in Anakaputhur Village, Saidapet Taluk, Chennai District through a registered Sale Deed bearing dated 11.07.1991 and he is in possession and enjoyment of same and the same has been assessed to statutory levies and however, to the shock and surprise, the 4th respondent has issued impugned notice dated 02.11.2016 under Rule 6 (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and making challenge to the said order, the petitioner came forward to file this writ petition.

WP No.15365 of 2017 :-

6 The petitioner in W.P.No.15365 of 2017 is the owner of the property bearing Door No.1, Shanthi Colony, Anakaputhur, measuring an extent of 1815 Sq.ft. in plot No.5, comprised in survey No.136 in Anakaputhur village, Saidapet Taluk, Chennai District and purchased through a registered Sale Deed dated 02.09.1987 bearing Document No.2917 of 1987 and he is in possession and enjoyment of same and the same has been assessed to statutory levies and however, to the shock and surprise, the 4th respondent has issued impugned notice dated 02.11.2016 under Rule 6 (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and making challenge to the said order, the petitioner came forward to file this writ petition.

WP No.15366 of 2017 :-

7 The petitioner is the owner of the property in question and purchased the same through a registered Sale Deed dated 02.09.1987 bearing document No.2917 of 1987 and he is in possession and enjoyment of same and the same has been assessed

to statutory levies and however, to the shock and surprise, the 4th respondent has issued impugned notice dated 02.11.2016 under Rule 6 (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and making challenge to the said order, the petitioner came forward to file this writ petition.

8 The learned counsel appearing for the petitioners submitted that without adhering to the mandatory/statutory provision under Rule 6 (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder, the impugned notices came to be issued and fair and sufficient opportunity had not been given to the petitioners to establish the fact that the land in question is not classified as water body and therefore prays for one more opportunity to put forth their contentions, with a further direction, directing the concerned respondent to consider the claim and dispose of the representations of the petitioners at an early date and till such time, prays for deferment of further proceedings.

9 Per contra Mr.A.N.Thambidurai, learned Special Government Pleader has drawn the attention of this Court to the counter affidavit of the Assistant Engineer in the above writ petitions and would submit that pursuant to the direction issued by this Court in order dated 25.07.2017 in WP Nos.15554 to 15557 of 2017, directing the Commissioner of Anakaputhur Municipality to cause inspection of the area with the assistance of the concerned department and to submit a report as to whether the layouts are approved and the constructions exist, are as per the sanctioned/approved plan, the status report is filed before this Court. The learned Special Government Pleader, would submit that the provisions of Rule 6 (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder had been strictly adhered to and the petitioners not entitled to stall the proceedings which have been initiated in a lawful manner and would further state that superstructures put up by the petitioners are also unauthorised.

10 The Court heard 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 claims projected by the petitioners, permits each of the writ petitioners to submit a detailed representation along with the copy of this order and also enclosing the relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order to the Assistant Engineer, Public Works Department, Water Resources Organisation, Adyar Irrigation Division, St. Thomas Mount, Chennai 16 and upon receipt of the same, the said

official after putting the Tahsildar Pallavaram Taluk, Kancheepuram District as well as the Commissioner, Anakaputhur Municipality, on notice, shall consider and dispose of the said representations on merits and in accordance with law and pass appropriate orders within a further period of ten weeks thereafter and communicate decision taken to each of the petitioners and till such time, shall defer further decision in terms of the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder. If the said official of the opinion that the action has to be initiated under the provisions of Tamil Nadu Land Encroachment Act, 1905, he is liberty to entrust the same to the jurisdictional Revenue Tahsildar to carry out the said exercise. It is also made clear that till the disposal of the representations to be submitted by the petitioners to the said official, the petitioners shall not create any third party rights in respect of the site and superstructure in question and shall not alter the physical features also. The local body is also authorised to carry out the inspection as to whether the superstructures put up by the petitioners are authorised or not / deviated and pending result of the same, he is also at liberty to initiate appropriate action against the petitioners.

12 In the result, the writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kv/sk

To

1. The Chief Secretary
Government of Tamil Nadu
Public Works Department,
Fort St.George, Chennai - 9.
2. The District Collector
Kanchipuram District.
- 3.The Assistant Engineer,
Public Works Department
(Water Resource Organization),
Adayar Irrigation Division,
St.Thomas Mount, Chennai - 16.

4.The Commissioner,
Anakaputhur Municipality,
Kancheepuram District

5.The Member Secretary
The Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

6. The Tasildar
Pallavaram Taluk Office
Kanchipuram District.

+ 2 ccs to Mr. R. Nalliyappan, Advocate Sr.89261
+ 1 cc to Mr. Johnson, Advocate SR.89404
+ 4 ccs to Mr. R. Chandrasudan, Advocate Sr.89334

WP Nos.15554 to 15557 of 2017
and 15363 to 15366 of 2017

MG(CO)
EU(30/01/2018)