

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.27177 of 2018 and
W.M.P.Nos.31588, 31606 & 31608 of 2018

1.T.N.Balachandran
2.G.Kavitha
3.P.Anbarasan

...Petitioners

Vs.

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Revenue Divisional Officer,
Chengalpattu,
Kancheepuram District.

3.The Tahsildar,
Chengalpattu Taluk,
Chengalpattu, Kancheepuram District.

4.The Assistant Engineer,
Public Works Department,
WRO - Irrigation Section,
Chengalpattu Taluk,
Kancheepuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records relating to the order of the 3rd respondent made in Na.Ka.No.1782/2018/A2 dated 20.09.2018 and that of the consequential notice of the 4th respondent made in Form - III dated 27.09.2018 and to quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mr.Aravind Pandian,
Additional Advocate General,
assisted by Mr.V.Jayaprakash Narayanan,
Government Pleader (i/c)

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of certiorari to call for the records relating to the order of the 3rd respondent dated 20.09.2018 and that of the consequential notice of the 4th respondent made in Form - III dated 27.09.2018 and to quash the same insofar as the petitioners are concerned.

2.The final order passed under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 is under challenge primarily on the ground that it was selective eviction. According to the petitioners, they have constructed residential houses about 40 years ago and the houses were assessed to Property Tax by the Local Body.

3.The 3rd respondent filed a report dated 22.10.2018 wherein it has been stated that the encroachers have encroached in the Zero Point of the Adyar River and considering the Red Alert issued by the Meteorological Department, the officials proceeded with the eviction of encroachment in the water-bodies to avoid flooding in the channels, rivers and waterways through the Taluk of Chengalpattu. The 3rd respondent issued notices under Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and prescribed Forms were issued to the persons, who have encroached upon the water-bodies.

4.It is brought to the notice of this Court by the learned counsel for the petitioners that in similar circumstances, the 4th respondent had withdrawn the notice and liberty was also given to the 4th respondent to issue fresh notice to the petitioner in W.P.No.28937 of 2018. Further, the learned counsel for the petitioners submitted that since the facts and circumstances of the present case are identical, the 4th respondent may withdraw the impugned notices and issue fresh notices.

5.Countering the submissions made by the learned counsel for the petitioners, Mr.Aravind Pandian, learned Additional Advocate General appearing for the respondents submitted that this Court in W.P.No.32946 of 2017 filed by the petitioners

herein, by order dated 15.12.2017, observed as follows:

"...

6. Though the petitioner has 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 protected by the petitioners, permits the petitioners to submit individual representations to the respondents 4 to 6 along with a copy of this order and also enclosing the relevant and authenticated documents as to their long possession and enjoyment and also with regard to the approval/non-approval with regard to the superstructures put up on the land in question within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondents 4 to 6 are directed to consider and dispose of the said representations on merits and in accordance with law and pass appropriate orders within a period of six weeks thereafter and communicate the decision taken, to the petitioners. It is made clear that the respondents 4 to 6 till the disposal of the individual representations to be submitted by the petitioners, shall defer further decision/action in dispossessing the petitioners from the site and superstructures in question. It is also made clear that the petitioners, till the disposal of their representations to be submitted by them by the respondents 4 to 6, 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. It is also open to the 6th respondent to cause inspection of the area in question and find out whether the other superstructures exist in the said locality, are authorised or unauthorised and depending upon the result of the same, shall take further action with regard to the said offending constructions in accordance with law."

6. Further, the learned Additional Advocate General submitted that in view of the order passed by the Division Bench of this Court in the said Writ Petition, the 3rd respondent had passed the order dated 20.09.2018 and the 4th respondent also passed the impugned notices for removal of encroachment on 27.09.2018.

7. Since the respondents 3 & 4 have passed the impugned orders after following the directions given by the Division Bench of this Court in W.P.No.32946 of 2017, we do not find any irregularity in the impugned orders. Since the petitioners have encroached the water-bodies and that the impugned orders were

passed following the directions of the Division Bench of this Court, we are not inclined to interfere with the impugned orders. The Writ Petition is devoid of merits and the same is dismissed. No costs. consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
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Public Works Department,
WRO - Irrigation Section,
Chengalpattu Taluk,
Kancheepuram District.

+1cc to Mr.L.Chandrakumar, Advocate SR.No.82846

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AD (CO)
GMY (19/12/2018)