



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.4946 of 2018

and

W.M.P. (MD) No.4927 of 2018

A.P.Sundari

... Petitioner

-vs-

1.The District Collector,
Madurai District, Madurai.

2.The Public Works Department and
Water Resource Organization,
rep. by its Chief Engineer,
Periyar Main Canal Section,
Sub Division-1, Madurai - 2.

3.The Public Works Department and
Water Resource Organization,
rep. by its Assistant Engineer,
P.W.O.W.R.O (i/c)
Periyar Main Canal Section,
Sub Division-1, Madurai - 2.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned notice passed by the 3rd respondent in Form No.III (Sub-Rule(1) of Rule 6) dated 08.02.2018 signed on 23.02.2018 and served on 24.02.2018 and quash the same as devoid of merits and consequently direct the 1st respondent to issue patta to the petitioner's lands situated at Survey No.49/2A, Rajakambeeram Village, Madurai East Taluk, Madurai District in the light of the common order passed in W.P.Nos.14349 to 14351, 2168 to 2171, 5328 to 5330 of 2011 dated 18.01.2012.

For Petitioner : Mr.G.Solai Raja

For Respondents : Mr.S.Dhayalan, G.A.

O R D E R

(Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.G.Solai Raja, learned counsel appearing for the petitioner and Mr.S.Dhayalan, learned Government Advocate for the respondents.



2.The petitioner is aggrieved by a notice issued by the third respondent under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules. The impugned notice is not a show cause notice, but an order of eviction and there is a reference to an order in W.P.(MD) Nos.14911 to 14913 of 2011, however, date of the order has not been mentioned in the impugned notice.

3.The learned counsel for the petitioner has produced a copy of the said order, where, we find that the petitioners, three in numbers had challenged the eviction notices issued by the Executive Officer of Y.Othakadai Panachayat dated 05.12.2011. The said writ petitions were allowed quashing the notices dated 05.02.2011 and directing the authorities to conduct a survey afresh and issue notice to the writ petitioners and then undertake the procedures set out under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007). The authority was directed to pass final orders after giving due opportunity to the writ petitioners.

4.The writ petitioners in those cases appear to be encroachers as that of the petitioner herein. The petitioner's case is that she has not encroached into the tank or bund and the encroachment is only adjoining the bund. In any event, the Division Bench in the earlier order has directed the authorities to conduct a fresh survey.

5.Needless to state that during the course of survey, if there is encroachment, then, the encroached portion should be clearly marked in the presence of the encroachers, for which, it is necessary that a notice is issued prior to conduct survey. The notice shall also be by way of public notice and giving wide publicity in the area by beat of Tom-Tom etc. After demarcating the encroachment, the third respondent is directed to issue show cause notice giving 7 days time to the petitioner and other encroachers, if any to file their objections. After considering the objections, the third respondent shall take action in accordance with law, within a reasonable time. Till then, the status quo as prevailing in respect of the petitioner's property shall be maintained.

6.With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(T&P)

/True copy/

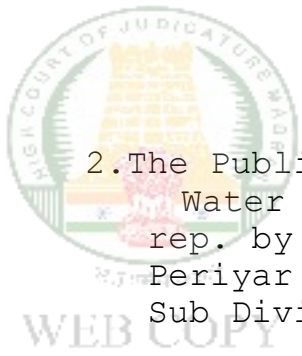
Sub Assistant Registrar

To

1.The District Collector,
Madurai District,

<https://hcservices.ecourts.gov.in/hcservices/>

Madurai.



2.The Public Works Department and
Water Resource Organization,
rep. by its Chief Engineer,
Periyar Main Canal Section,
Sub Division-1, Madurai - 2.

3.The Public Works Department and
Water Resource Organization,
rep. by its Assistant Engineer,
P.W.O.W.R.O (i/c)
Periyar Main Canal Section,
Sub Division-1, Madurai - 2.

+1cc to Mr.G.SOLAI RAJA Advocate, SR.No. 54453

W.P. (MD) No.4946 of 2018
and
W.M.P. (MD) No.4927 of 2018
08.03.2018

ARUL
KK/SKN RSK/14.03.2018/SAR-2/3P-5C