

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED 02.08.2019  
CORAM  
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos.6498 to 6500 of 2008  
and M.P.Nos.1, 1 & 1 of 2008  
and 1, 1 & 1 of 2011

G.Mariappan ...Petitioner in W.P.No.6498 of 2008

M.Vishnupriya ...Petitioner in W.P.No.6499 of 2008

Chinthamaniammal ...Petitioner in W.P.No.6500 of 2008

Vs

1. State of Tamil Nadu,  
Rep. by the Secretary to Govt.,  
Public Works Department,  
Chennai.

2. The District Collector,  
Kancheepuram District,  
Kancheepuram.

3. Junior Engineer,  
Public Works Department,  
Water Resources organisation,  
Padappai - 601 301.

..Respondents in all the  
petitions

Prayer in W.P.No.6498 of 2008:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the order bearing No.Nil, dated 26.02.2008 on the file of the 3rd respondent issued in respect the petitioner Residential Plot and House bearing New D.No.6 (Old D.No.23), Dharma Thottam Street, Irumbuliur, Tambaram, Chennai 600 045 and quash the same.

Prayer in W.P.No.6499 of 2008:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the order bearing No.Nil, dated 26.02.2008 on the file of the 3rd respondent issued in respect the petitioner Residential Plot and House bearing New D.No.17

(Old D.No.10), Krishnan (Yadaval) Street, Irumbuliyur, Tambaram, Chennai 600 045 and quash the same.

raayer in W.P.No.6500 of 2008:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the order bearing No.Nil, dated 26.02.2008 on the file of the 3rd respondent issued in respect the petitioner property bearing New D.No.15 (Old D.No.9), Krishnan Street, Irumbuliyur, West Tambaram, Chennai 600 045 and quash the same.

For Petitioners : Mr.T.P.Manoharan,  
Senior Counsel  
for Mr.P.Jotheeswaran  
For Respondents : Mr.I.Sathish, AGP

#### COMMON ORDER

These Writ Petitions have been filed challenging the notice issued by the third respondent in Form III under sub-rule (1) of Rule 6 of Tamil Nadu Protection of Banks and Eviction of Encroachment Rules, 2007.

2. Heard Mr.T.P.Manoharan, learned Senior Counsel appearing for Mr.K.P.Jotheeswaran, learned counsel for the petitioners and Mr.I.Sathish, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3. The learned Senior Counsel appearing for the petitioners would argue that the impugned notice has been issued without following the mandatory provisions contained in the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. According to the learned Senior Counsel, the third respondent has to measure the water body, fix the boundaries and prepare chart and Register in Form No.I and after preparing report in Form No.II, the third respondent is authorised to issue the impugned notice.

4. The learned Senior Counsel by citing the decision of the Apex Court in the case of Kunwar Pal Singh v. State of U.P. reported in 2007 5 SCC 85 would urge that when a particular procedure has been prescribed under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act 8 of 2007) and the Rules

framed thereunder, the respondents are not entitled to deviate the same.

5. In the counter affidavit filed by the third respondent, in paragraph 9, it is stated that the petitioners are encroachers in the water body and the survey was made by the survey officer under Act 8 of 2007. The details thereon were sent to the respondents by the Tahsildar in Form II and the impugned notice has been issued as per Rules made in Act 8 of 2007.

6. It is the submission of the learned Additional Government Pleader, the impugned notice has been issued after following the mandatory provisions of the Act and the Rules made thereunder.

7. Though in the counter affidavit, it has been stated that the Government Survey Officer conducted survey and report was sent to the Tahsildar in Form No.II and thereafter the impugned notice has been issued, but no materials have been placed to substantiate the statement made in the counter affidavit.

8. In the light of the above facts and considering the grievance expressed by the petitioners these Writ Petitions are disposed of, directing the respondents to evict the encroachers from Survey No.348 after conducting proper survey and also informing the extent of encroachment made by them. The entire exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs  
To

1. The Secretary to Government,  
State of Tamil Nadu,  
Public Works Department,  
Chennai.

2. The District Collector,  
Kancheepuram District,  
Kancheepuram.

3. Junior Engineer,  
Public Works Department,  
Water Resources organisation,  
Padappai - 601 301.

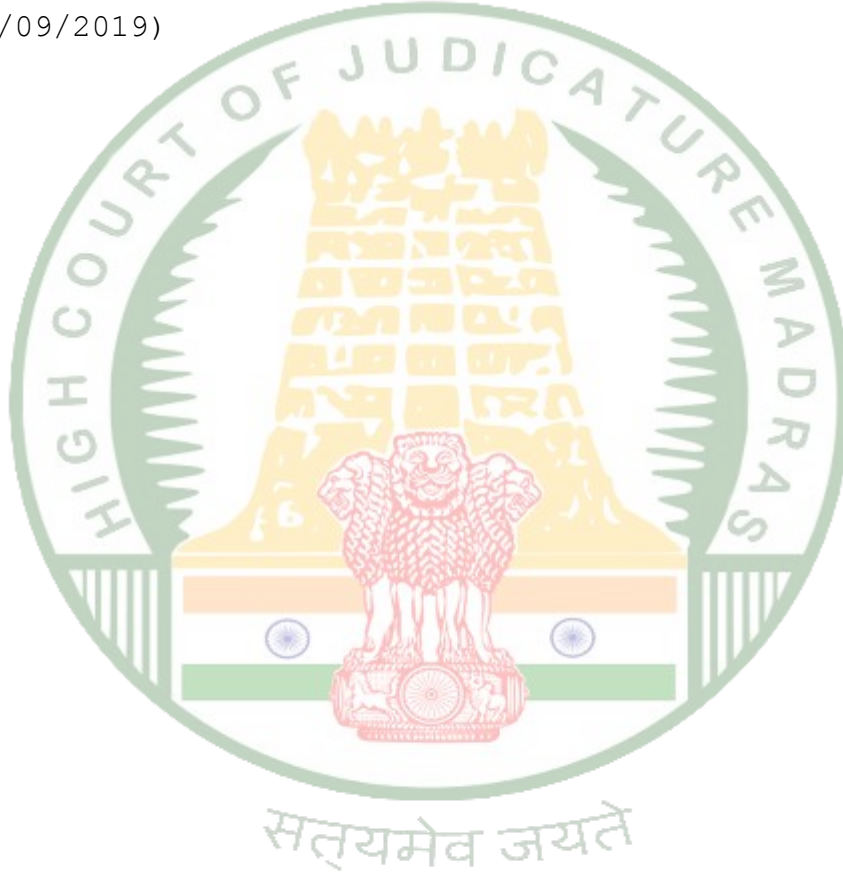
+1cc to Mr.K.P.JOtheeswaran , Advocate SR.No.66375

+1 cc to Government Pleader Sr.No. 66754,66753

W.P.Nos.6498 to 6500 of 2008

svd

A.SK (27/09/2019)



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