

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.Nos.7806 and 7810 of 2019

Sankar

.. Petitioner in WP.7806/2019

Perumal

.. Petitioner in WP.7810/2019

Vs

1 The District Collector
Thiruvallur District
Thiruvallur.

2 The Tahsildhar
Avadi Taluk
Thiruvallur District.

3 Tamil Nadu Public works Department
(Water Resources Department)
Rep. by Section Officer
Sengundran Irrigation Division
Sengundram, Chennai - 600 052.

.. Respondents

PRAYER: Petitions under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the entire records of the third respondent with respect to the impugned notices bearing number:40/SA.PA/ENCROACHMENT/2018/dated 27.7.2018 issued in Form III under Section 6(1)(i) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act to the petitioners and quash the same.

For Petitioners : Mr.S.Sai Shankar

For Respondents : Mr.V.Jayaprakash Narayanan
Government Pleader (i/c.)

COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Heard Mr.S.Sai Shankar, learned counsel for the petitioners and Mr.V.Jayaprakash Narayanan, learned Government Pleader (i/c.) for the respondents.

2. The learned counsel for the petitioners submitted that Form III notice dated 27.7.2018 was issued to the petitioners in relation to the land which is situated in Survey No.365, which is a Big Eri, Catchment Area, belonging to the Public Works Department. The learned counsel for the petitioners further submitted that the said Form III notice dated 27.7.2018 was issued to the petitioners without issuing Form II notice. He also submitted that in the Form III notice, there is no mention of the extent of encroachment, even though it is mentioned that Survey No.365 is a Big Eri, Catchment Area, belonging to the Public Works Department. He prayed that the said notice be quashed.

3. At this juncture, it is apposite to refer to the order dated 14.12.2017 passed in W.P.[MD] No.23003 of 2017, wherein at paragraph (16), it is observed as under:

"16. Be that as it may, in view of the candid fact that Form-III [Vde Sub-Rule (1) of Rule 6] 'Notice to Order For Removal of Encroachment' as per Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007', dated 28.11.2017, does not refer to the extent of encroachment made in Pothiyankulam in S.F.No.73/1 in Amarasimmendrapuram Village, Alangudi Taluk, Pudukkottai District, this Court comes to a consequent conclusion that the impugned notice dated 28.11.2017 is not in accordance with the prescribed format, as envisaged under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. On this simple score alone, this Court interferes with the impugned notice dated 28.11.2017 issued to and in favour of the Petitioner and sets aside the same, to secure the ends of justice. Resultantly, the Writ Petition succeeds."

4. Similar view was taken by this Court in its order dated 6.9.2018 in W.P.Nos.23288 and 23289 of 2018, pertaining to the very same land which is situated in

Survey No.365, which is a Big Eri, Catchment Area, belonging to the Public Works Department

5. The above said orders dated 14.12.2017 in W.P.[MD] No.23003 of 2017 and dated 6.9.2018 in W.P.Nos.23288 and 23289 of 2018 are squarely applicable to the facts of the present case. As such, this Court by following the said orders, sets aside the impugned Form III [See Sub-Rule (1) of Rule 6] notices dated 27.7.2018 and allows the writ petitions, for the simple reason that the said notices do not refer to the extent of encroachment made in Survey No.365, Vellanur, Big Eri Catchment Area, said to be belonging to the Public Works Department.

6. Before parting with the case, this Court grants liberty to the third respondent to issue a fresh notice keeping in mind the true letter and spirit of the ingredients of the relevant provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and also the Rules, by providing sufficient opportunity to the petitioners by adhering to the principles of natural justice. If situation so warrants and if any personal hearing/opportunity requires to be provided to the petitioners to submit their grievances, then it is open to the petitioners to raise all factual and legal pleas before the third respondent, who after issuance of notice to the petitioners shall consider the same in accordance with law.

7. In the result, the writ petitions are allowed with the above observations. No costs. Consequently, W.M.P.Nos.8443 and 8446 of 2019 are closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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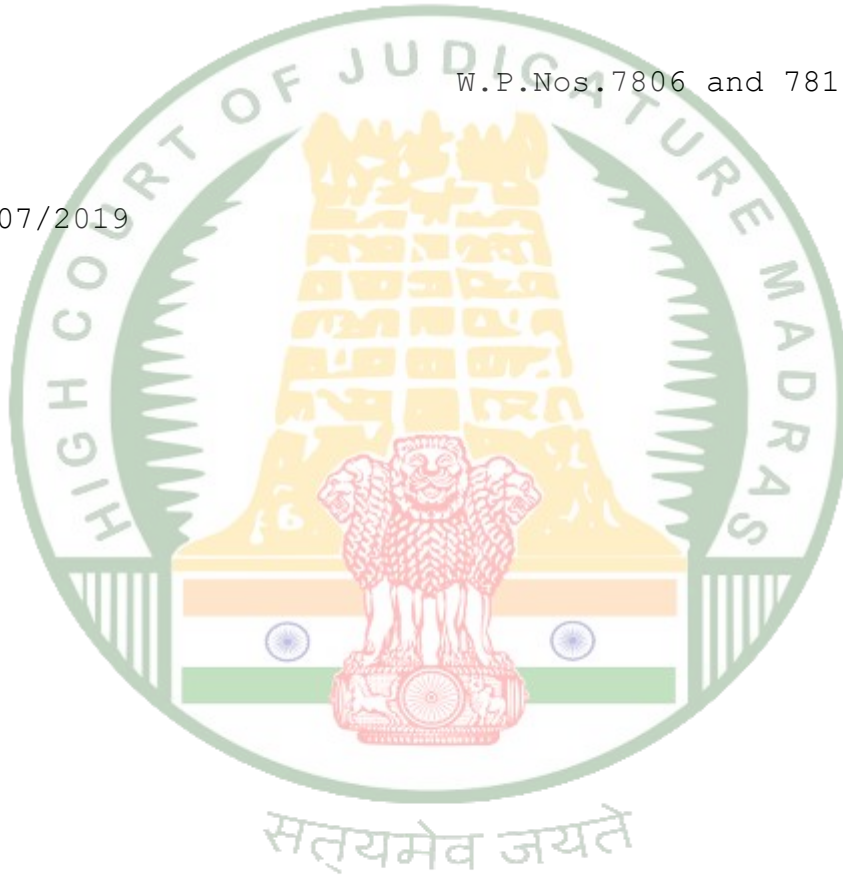
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