

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.06.2019

CORAM

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

W.P.No.13433 of 2019

N.Janaki

.. Petitioner

Vs.

1.The Tasildhar,
Ambattur,
Chennai-600 053.

2.The Junior Engineer,
PWD/Water Resources Department,
Adyar Division,
St. Thomas Mount,
Chennai-600 016.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records of the second respondent issued in Form III (Under Rule 6(1) of the TN Protection of Tanks and Eviction of Encroachments Rules) dated Nil and quash the same and consequently, forebear the respondents from evicting the petitioner without following the due process of law.

For Petitioner : Mr.R.Parthiban

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

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

The petitioner has preferred this writ petition being aggrieved by the notice dated 17.11.2018 issued by the second respondent under Form-III of the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007.

2. The learned counsel for the petitioner contended that the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007 contemplates issuance of a notice under Form-II before a notice is issued under Form-III of the said Rules.

3. The learned Government Pleader (i/c), on instructions, admits that no notice was issued to the petitioner under Form-II of the said Rules prior to the notice being issued under Form-III. The learned Government Pleader (i/c) further submitted that the Tamil Nadu Protection of Tank and Eviction of Encroachment Rules, 2007 does not provide for issuance of notice to a particular party, but Form-II only contemplates that public at large are ordered not to encroach upon any land within the boundaries. Any encroachment within the boundaries is liable for eviction under Section 7 of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act and the offenders shall be punished with imprisonment for a term which may extend to three months or fine of Rs.5,000/- or with both under Section 7 of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act.

4. This Court had earlier dealt with a similar issue in the case of T.S.Senthil Kumar v. The Government of Tamil Nadu, rep. by its Secretary, Public Works Department, Fort St. George, Chennai-9 and others, reported in (2010) 3 MLJ 771 : 2010 SCC OnLine Mad 1347, wherein a direction was issued in relation to encroachment on tanks. The learned Government Advocate admitted that they are following the said decision scrupulously.

5. It is pertinent to note that in paragraph 20 of the decision in T.S.Senthil Kumar (supra), it is clearly stated that Form-II notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued. Thus, the decision in T.S.Senthil Kumar (supra) clearly states that Form-II notice has to be issued to the alleged encroacher before Form-III notice is issued. Admittedly, in the present case, Form-II notice has not been issued to the petitioner.

6. The learned Government Advocate submitted that the notice dated 17.11.2018 issued to the petitioner under Form III shall be treated as a notice under Form II and the petitioner can send a reply to the said notice, which will be considered by the authority concerned in accordance with law before evicting the petitioner.

7. The learned counsel for the petitioner states that he will send reply to the said notice dated 17.11.2018 within two

weeks from today. On receipt of the said reply, the authority concerned shall consider the same and thereafter proceed in accordance with law.

The writ petition is disposed of in the above terms. No costs. Consequently, W.M.P.No.13538 of 2019 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bbr

To

1.The Tasildhar,
Ambattur, Chennai-600 053.

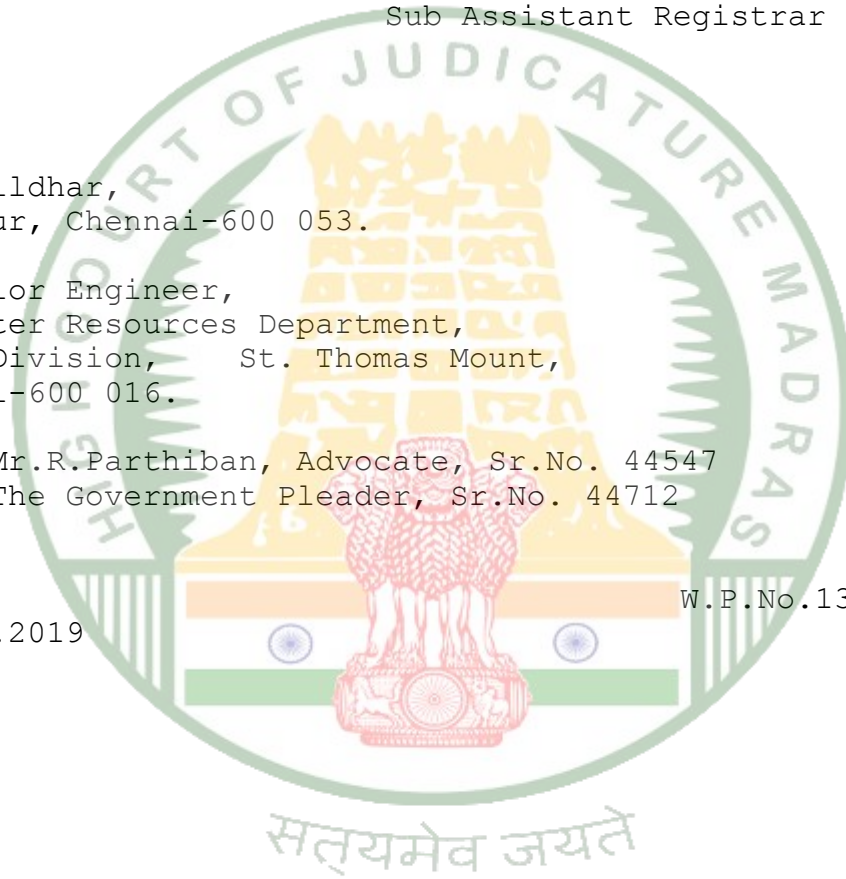
2.The Junior Engineer,
PWD/Water Resources Department,
Adyar Division, St. Thomas Mount,
Chennai-600 016.

+1 cc to Mr.R.Parthiban, Advocate, Sr.No. 44547

+1 cc to The Government Pleader, Sr.No. 44712

CSL/28.06.2019

W.P.No.13433 of 2019



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