

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.15095 of 2018 and
W.M.P.Nos.17853 & 17854 of 2018 and 31182 & 31186 of 2018

1 E.P.Nandagopal
2 E.P.Yuvaraj
3 S.Vijayakumar
4 E.R.Palanisamy
5 S.Ekambaram ... Petitioners

vs.

1 State of Tamil Nadu
Rep. By the District Collector
Erode District - 368 011
2 The Assistant Engineer
Public Works Department
Irrigation Section
Water Resources Organization
Bhavani 638 301
Erode District
3 The Tahsildar
Bhavani Taluk, Bhavani
Erode District

4 E.A.Lakshmanan .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order made in Lr. No. File 12(1) 2018/JE (P) dated 29.05.2018 passed by the 2nd respondent, quash the same and consequently direct the respondents 1 to 3 to conduct resurvey to identify the boundaries between the petitioners' patta lands bearing R.S. Nos. 43/1 to 43/9 and 44/1 to 44/8 of Elavamalai Village, Erode

Taluk and the River Bhavani bearing R.S. No. 808/1 of Bhavani Village and Taluk, Erode District by considering their objections dated 24.02.2018 and 09.03.2018 afresh.

For Petitioners : Mr.N.Manoharan

For Respondents : Mr.V.Jayaprakash Narayanan
Government Pleader (i/c) - for R1 to R3

Mrs.R.Shase - for R4

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 Mandamus to call for the records pertaining to the impugned order dated 29.05.2018 passed by the 2nd respondent, to quash the same and consequently direct the respondents 1 to 3 to conduct re-survey to identify the boundaries between the petitioners' patta lands bearing R.S. Nos. 43/1 to 43/9 and 44/1 to 44/8 of Elavamalai Village, Erode Taluk and the River Bhavani bearing R.S. No. 808/1 of Bhavani Village and Taluk, Erode District by considering their objections dated 24.02.2018 and 09.03.2018, afresh,

2. It is the case of the petitioners that the 4th respondent filed a Writ Petition in W.P.No.17399 of 2017 to issue a Writ of Mandamus directing the official respondents to remove the encroachment in the river bed of Bhavani River i.e. S.F.No.808/1 in Bhavani Taluk of Erode District. The Division Bench of this Court, by order dated 15.11.2017, disposed of the Writ Petition directing the Executive Engineer, Public Works Department (Water Resource Organization), Bhavani Sagar Dam, Sathyamangalam, Erode District, to initiate proceedings under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 by issuing private notice to the private respondents under section 7 of the said Act, within a period of six weeks from the date of receipt of a copy of the said order and upon receipt of the same, the private respondents were given liberty to submit their explanation by enclosing relevant authenticated documents within a period of four weeks thereafter.

3. Subsequently, the 2nd respondent passed an order dated

03.02.2018 in Form-III under Rule 6 (1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, calling upon the petitioners to remove the encroachments.

4. Admittedly, the petitioners have not challenged the Form-III order dated 03.02.2018 and the same has become final. Without challenging the said order, the petitioners gave an explanation dated 24.02.2018 to the 2nd respondent. The 2nd respondent considered the explanation dated 24.02.2018 and passed an order dated 29.05.2018 rejecting the explanation given by the petitioners.

5. When the petitioners have not challenged Form-III order and the same has become final, they are liable to be evicted from the encroached land. Mere giving an explanation to the final order passed under Rule 6(1) of the Act shall not prevent the authorities from evicting them from the encroached water body. It is needless to say than an order passed in Form-III under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, cannot be construed as a show cause notice. The alleged encroachers are entitled to give their reply only to the Form-II notice issued by the Authority.

6. In these circumstances, we do not find any merits in the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Rj

To

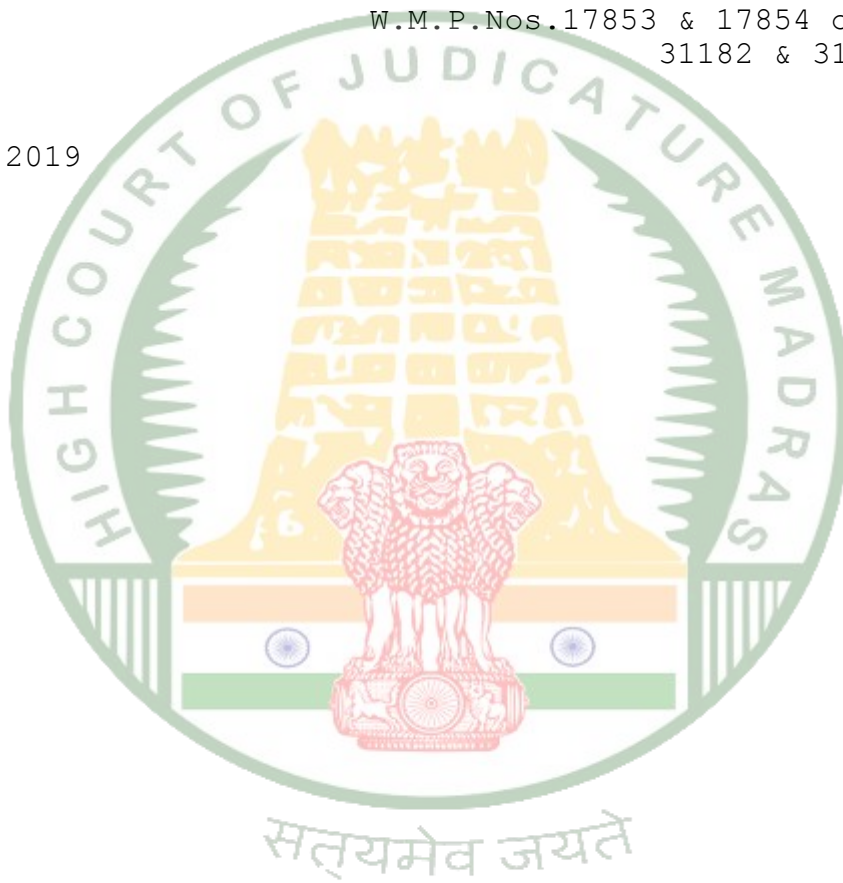
- 1 The District Collector
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Erode District

3 The Tahsildar
Bhavani Taluk, Bhavani
Erode District

+1 cc to Mr.N.Manokaran, Advocate SR.No.4888
+1 cc to Mr.M/Guruprasad, Advocate SR.Npo.5703
+1 cc to The Government Pleader, SR.No.4811

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PPA (CO)
CSL/15.02.2019



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