

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

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

W.P.No.28054 of 2018

Bharathiyar Nursery and Primary School
rep. by its Correspondent, Bertie Edwin
No.119/9, Indhira Gandhi Street
Mahalakshmi Nagar
Guduvancheri
Chennai - 603 202. .. Petitioner

Vs.

1. The District Collector
Kanchipuram District.
2. The Assistant Engineer
PWD, WRD Irrigation Section
Chengalpattu.
3. The Zonal Deputy Tahsildar
Guduvancheri.
4. The Tahsildar
Chengalpattu.
5. The Revenue Inspector
Guduvancheri. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to Sub Rule (1) of Rule 6 of the notice to order for removal of encroachment dated 6.10.2018 issued by the Assistant Engineer PWD, WRD, Irrigation Section, Chengalpattu in so far as the land on extent of 0.50 acre in survey field number 129C in the village Guduvancheri in Chengalpattu Taluk in Kanchipuram District and quash the same.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.S.Kamalesh Kannan
Government Advocate

ORDER

(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 6.10.2018 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 Advocate, 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 Advocate 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 6.10.2018 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 6.10.2018 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.Nos.32674 and 32690 of 2018 are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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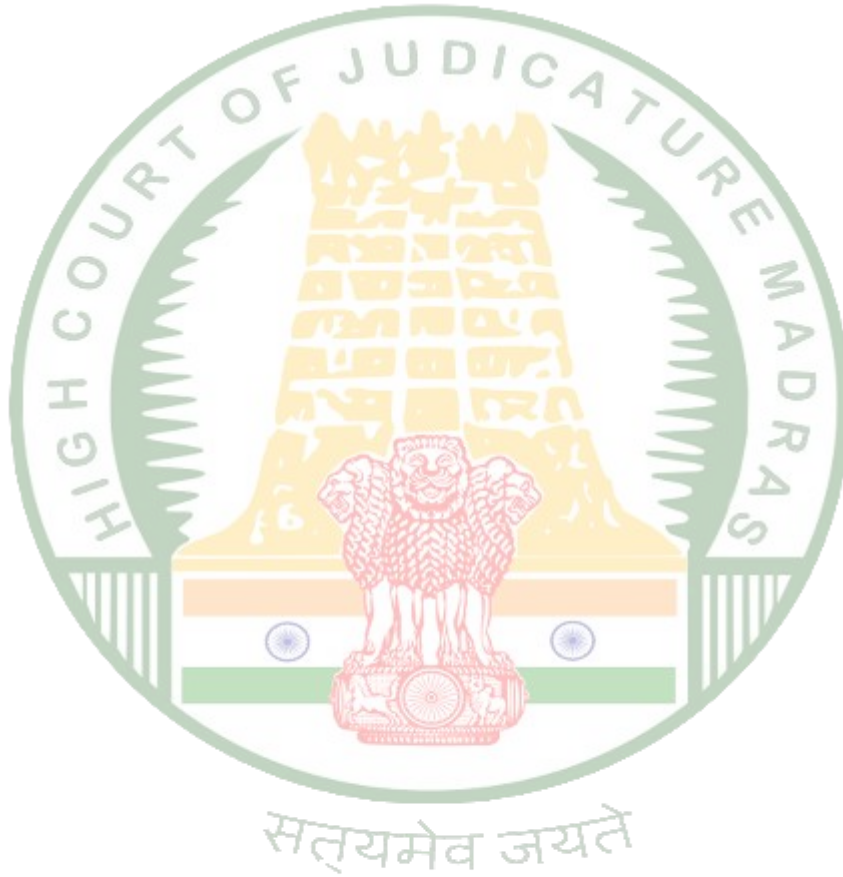
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5. The Revenue Inspector
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+1cc to M/s.G.Murugendran, Advocate SR.No.7439

+1cc to Government Pleader SR.No.7220

W.P.No.28054 of 2018

SPD (CO)
GMY (12/02/2019)



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