

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P.Nos.34837, 34840, 34847, 34850, 34853, 34867 and 34872 of
2018
and WMP.Nos.40386, 40389, 40395, 40399, 40401, 40418 and 40424
of 2018

M.Loganadhan ... Petitioner in
W.P.No.34837 of 2018

M.Varusai Mohamed ... Petitioner in
W.P.No.34840 of 2018

A.Venkatesan ... Petitioner in
W.P.No.34847 of 2018

M.Viswanathan ... Petitioner in
W.P.No.34850 of 2018

N.Ayub Khan ... Petitioner in
W.P.No.34853 of 2018

S.Padmanaban ... Petitioner in
W.P.No.34867 of 2018

C.Sankar ... Petitioner in
W.P.No.34872 of 2018

-vs-

1.The Tahsildar,
Ambattur, Chennai 600 053.

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

.. Respondent in all WPs.

Prayer : Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent issued in Form III (Under Rule 6(1) of the TN Protection of Tanks & Eviction of Encroachments Rules) dated 17.11.2018, quash the same and consequently, forbear the respondents from evicting the petitioners without following the due process of law.

For Petitioners : Mr.R.Parthiban
in all WPs

For Respondents : Mr.V.Jayaprakash Narayanan,
in all WPs Government Pleader (i/c)

COMMON ORDER

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

The petitioners have preferred these writ petitions 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, with regard to the lands of the petitioners in S.No.151/Pt situated in Karampakkam Village, Maduravoyal Taluk, Chennai District.

2. The learned counsel for the petitioners 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 petitioners under Form-II of the said Rules prior to the notice 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. He further submitted that notice under Form-II was affixed at the office of the Village Administrative Officer. However, the learned Government Pleader (i/c) admits that no personal notice was given to the petitioners.

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 Pleader (i/c) 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 cases, Form-II notice has not been issued to the petitioners. Hence, the notice issued under Form-III, prior to the notice being issued under Form-II, cannot be allowed to stand. Therefore, the notices dated 17.11.2018 issued under Form-III to the petitioners are quashed. It would be open to the second respondent to proceed hereafter in accordance with law.

6. The writ petitions are allowed in terms aforesaid. No costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

सत्यमेव जयते

bbr

To

1.The Tahsildar,
Ambattur, Chennai 600 053.

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

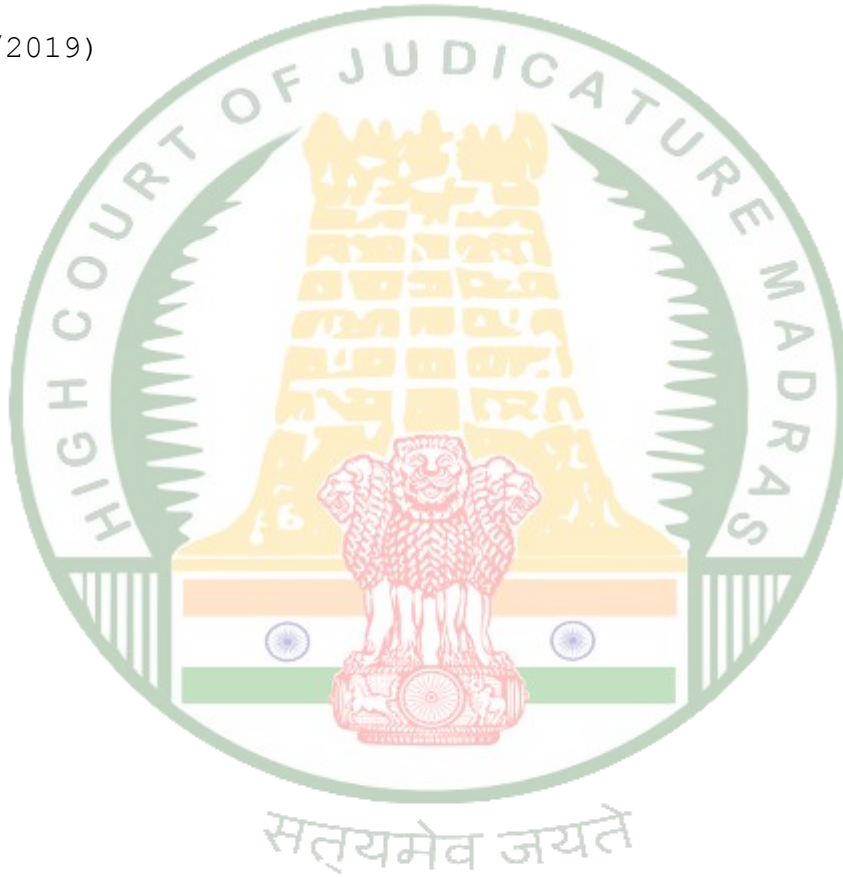
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+7cc to Mr.R.Parthiban, Advocate SR.No.2152, 2155, 2158, 2156,
2157, 2153 and 2154 of 2019

+1cc to Government Pleader SR.No.2717, 2718, 2719, 2716, 2715,
2714 and 2713 of 2019

W.P.Nos.34837, 34840,
34847, 34850, 34853, 34867 and
34872 of 2018

SSV(CO)
GMY(05/02/2019)



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