



W.P.No.14239 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.14239 of 2024

&

W.M.P.Nos.15434, 15436 & 28899 of 2024

K.Manimegalai

... Petitioner

vs.

1. The District Collector
Kallakurichi District
Kallakurichi

2. The Revenue Divisional Officer
Kallakurichi
The Chairperson/Convener
Divisional Monitoring Committee (Encroachment)
Kallakurichi
Kallakurichi District

3. The Tahsildar
Kallakurichi Taluk
Kallakurichi District

4. The Assistant Engineer
Water Resource Department (Irrigation Division)
P.W.D
Kallakurichi

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Kallakurichi District

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5. The Assistant Electrical Engineer (Town)

TANGEDCO

Kallakurichi

Kallakurichi District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records related to the “Eviction Order No.Nil dated 17.05.2024 passed by the fourth respondent and quash the same.

For Petitioner : Mr.M.Venkatesh
for Mr.R.M.Makesh Kumaravel

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R5

ORDER

[Order of the Court was made by **M.SUNDAR., J.,**]

Captioned main 'Writ Petition' ['WP' for the sake of brevity] has been filed with a prayer for issue of writ of certiorari assailing a notice issued by R4 (signed by R4 on 17.05.2024). This notice shall hereinafter be referred to as 'impugned notice' and a scanned reproduction of the same is as



follows:

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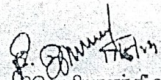


தமிழ்நாடு அரசு

நீர்வளத்துறை

ஆக்கிரமிப்பு அகற்றுவது தொடர்பாக சுற்றறிக்கை

கள்ளக்குறிச்சி மாவட்டம், கள்ளக்குறிச்சி வட்டம் நீர்வளத்துறைக்கு சொந்தமான கள்ளக்குறிச்சி பெரிய ஏரியில் இருந்து செல்லும் பாசன வாய்க்காலில் உள்ள ஆக்கிரமிப்பை அகற்ற 01/02/2020 அன்று ஆக்கிரமிப்பாளர் ஆகிய தங்களுக்கு கள்ளக்குறிச்சி உதவி பொறியாளர், நீர்வளத்துறை அவர்கள் மூலம் தமிழ்நாடு ஏரிகளைப் பாதுகாத்தல் மற்றும் ஆக்கிரமிப்பை அகற்றுதல் சட்டம் 2007 ன் கீழ் படிவம் -III வழங்கப்பட்டது. இதன் தொடர்பாக ஆக்கிரமிப்பில் ஒருவரான திருமதி. சரோஜினி, க/பெ.முத்துசாமி என்பவர் உயர்நீதிமன்றத்தில் ஆக்கிரமிப்பை அகற்ற தடை செய்ய வேண்டி வழக்கு தாக்கள் செய்ததை தொடர்ந்து ஆக்கிரமிப்பு தற்காலிகமாக நிறுத்தி வைக்கப்பட்டது (வழக்கு எண். 7053/2020). தற்போது மாண்புமிகு உயர்நீதிமன்றம் மேலே குறிப்பிட்டுள்ள வழக்கை தள்ளுபடி செய்ததை தொடர்ந்து 8 வார காலத்திற்குள் ஆக்கிரமிப்பை அகற்ற உத்தரவு பிறப்பித்துள்ளது. எனவே மாண்புமிகு உயர்நீதிமன்றத்தின் ஆணையை செயல்படுத்த வேண்டி 28.05.2024 அன்று ஆக்கிரமிப்பை அகற்ற உத்தேசம் செய்யப்பட்டுள்ளது. எனவே ஆக்கிரமிப்பாளர் ~~இந்த உத்தரவை மீறியதால்~~ உடனடியாக ஆக்கிரமிப்பை அகற்றிக்கொள்ள அறிவுறுத்தப்படுகிறது.


உதவிபொறியாளர்,ந.வ.து,
பாசனப்பிரிவு,
கள்ளக்குறிச்சி.



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2. Mr.M.Venkatesh, learned counsel representing the counsel on record for writ petitioner, who is before us, submits that the impugned notice issued by R4 directly fixes 28.05.2024 as the date for removal of alleged encroachment and calls upon the writ petitioner to remove the alleged encroachment forthwith without show-causing or giving an opportunity to the writ petitioner.

3. Mr.T.K.Saravanan, learned Additional Government Pleader for the respondents submits that the impugned notice has been issued as encroachment in a water body has been noticed. Impugned notice has been issued under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) is further say of learned State counsel.

4. We examined the rival submissions and the impugned notice.

5. The impugned notice refers to disposal of வழக்கு எண்.7053/2020. It is submitted by both sides that this is a reference to order dated 19.03.2024 made in W.P.No.7053 of 2020 and WMP thereat by another Hon'ble Division Bench. W.P.No.7053 of 2020 has been filed by one Ms.Sarojini Muthusamy. Learned State counsel submits that she is another



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alleged encroacher who is similarly placed qua writ petitioner.

WEB COPY 6. The vires of certain provisions of Tanks Act was assailed in ***T.S.Senthil Kumar*** case {***T.S.Senthil Kumar Vs. Government of Tamil Nadu and others***} and a Hon'ble Division Bench in and by order dated 10.02.2010 reported in **(2010) 3 MLJ 771: 2010 Writ LR 113:MANU/TN/0281/2010** upheld the vires of the Act but read into the Statute /provisions, a provision for giving opportunity to the alleged encroachers. This is vide paragraph 42 and relevant portion of paragraph 42 is as follows:

'42. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases in Mysore v. J.V. Bhat (supra) and (ii) Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka (supra), where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a)

(b)

(c)



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(d)

(e)

(f) *We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.*

(i) *When the officer of the Public Works Department publishes the notice in Form -II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, 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.*

(ii) *On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.*

(iii) *Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.'*

7. Thereafter, a Full Bench of this Court in ***T.K.Shanmugam*** {***T.K.Shanmugam Vs. State of Tamil Nadu*** reported in **2015 (5) LW 397**} reiterated ***T.S.Senthil Kumar*** principle and held that an alleged encroacher has to be given an opportunity. This is vide sub-sub-paragraphs (i), (ii) and (iii) of sub-paragraph (f) of paragraph 15 which read as follows:

'15. Certain provisions of Tank Act namely, Sections 4 to 10 were challenged in a Writ Petition with a prayer to declare those provisions as null and void and contrary to Article 14 of the Constitution of India on the ground that those provisions confer



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upon the executive, unguided and uncanalised discretionary power; since they denied to the persons aggrieved an opportunity of being heard. The said Writ petition was heard by a Division Bench to which one of us (M.Sathyanarayanan,J.) was a party. The Division Bench took note of the various decisions including the decision in the case of Sivakasi Region Tax Payers Association (supra), disposed of the Writ Petitions without declaring the provisions of the Act as unconstitutional, since no opportunity is given and held that there is nothing in the Act which excludes the principles of natural justice, the Act (Tank Act) does not specifically indicate that the encroachers do not have right to be heard and issued the following directions vide judgment dated 10.02.2010, reported in 2010 3 MLJ 771.

(a)

(b)

(c)

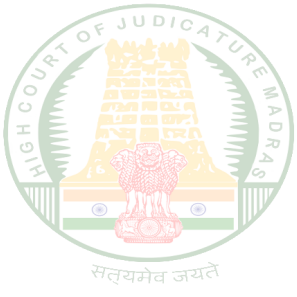
(d)

(e)

(f) *We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.*

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, 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.

(ii) On receipt of the said notice, the encroacher



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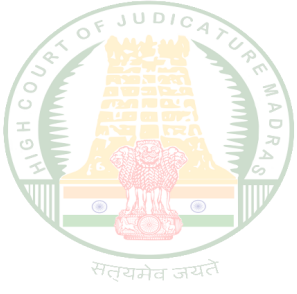
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may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.'

8. There can be no disputation or contestation on the point that Hon'ble Full Bench ratio i.e., ***T.K.Shanmugam*** principle has to be followed.

9. In the aforesaid backdrop and obtaining legal position, learned State counsel, on instructions, submits that Form III under the Tanks Act has already been served on the writ petitioner and has placed before us a copy of the same and a scanned reproduction of the same is as follows:



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படிவம் - III

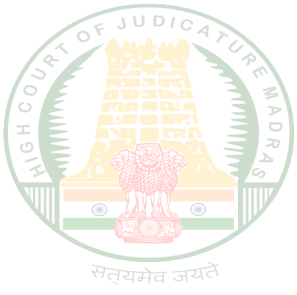
(தமிழ்நாடு ஏரிகளைப் பாதுகாத்தல் மற்றும் ஆக்கிரமிப்பை அகற்றுதல் சட்டம் 2007)
(தமிழ்நாடு சட்டம் 8/2007 விதி 6 / துணைப்பிரிவு 1-ன் படி)

ஆக்கிரமிப்பு அகற்ற உத்தரவு அறிவிப்பு

பொதுப்பணித்துறை நீர்வள ஆதார அமைப்பு அலுவலர் பொறி. செள.வினோதினி.பி.இ., உதவிப்பொறியாளர் ஆகிய நான், கள்ளக்குறிச்சி மாவட்டம், கள்ளக்குறிச்சி வட்டம், கார்த்திகை கிராமம், புல எண் : 296/121A, ல் அமைந்துள்ள (செய்துள்ள) ஆகிய நிலங்கள் 6.03.0 பாட்டளவு நீர்வள ஆதார அமைப்பு, பொதுப்பணித்துறைக்கு சொந்தமான இடத்தினை ஆக்கிரமிப்பு செய்து அனுபவிப்பதாக அறிகிறேன். எனவே இந்நிலை ஆக்கிரமிப்புப் பாகத்தினை உடன் தாங்களே இந்த அறிவிப்பு தாங்களே இரண்டு 21 நாட்களுக்குள் அப்பாடுத்தலிடு இந்த அறிவிப்பு மூலம் தெரிவித்துக் கொள்ளப்படுகிறது. தவிரலால் துறை கார்பில் இந்த ஆக்கிரமிப்பு அகற்றப்படுவதோடு செலவினத்தை தாங்களோ ஈடு செய்ய வேண்டியதும் எனத் தெரிவித்துக் கொள்ளப்படுகிறது. இத்துறை மேற்கூறப்பட்ட தாவா சம்பந்தப்பட்ட ஆக்கிரமிப்பு அகற்றியதற்கும், வெளியேற்றியதற்கும் எவ்விதத்திலும் பொறுப்பு ஏற்காது என்கது ஆகன் மூலம் தெரிவித்துக் கொள்ளப்படுகிறது.

10. 11. 2024
9486282877

பெயர் : பொறி. செள.வினோதினி.பி.இ.,
பதவி : உதவிப்பொறியாளர்
O. Venkatesh
8/10/2024
உதவிப்பொறியாளர்
பெ.ப.து. : த.ஆ.து.
பா.ச.ப.பிரிவு
கள்ளக்குறிச்சி



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10. In the light of the narrative and discussion thus far, the following

WEB COPY order is passed:

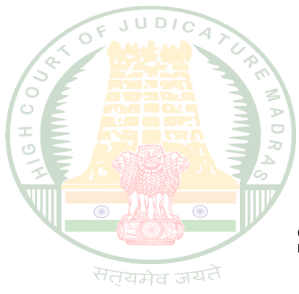
(i) The aforementioned Form III shall be construed to have been served on the writ petitioner today (18.03.2025);

(ii) The writ petitioner can now give her objections within a period of two weeks from today i.e., on or before 01.04.2025 and this is vide sub-sub-paragraph (ii) of sub-paragraph (f) of paragraph 15 of ***T.K.Shanmugam***;

(iii) Thereafter, the official respondent concerned, shall consider the objections and pass orders in accordance with the provisions of the Act giving time, if encroachment is found and this will be in accordance with sub-sub-paragraph (iii) of sub-paragraph (f) of paragraph 15 of ***T.K.Shanmugam***;

(iv) The order made in the aforesaid manner shall be duly served on the writ petitioner under due acknowledgment within five working days from the date on which the order is made;

(v) This Court makes it clear that all questions are left open and the rights and contentions of the writ petitioner as well as



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State are left open when the objections are sent and the same are considered. To put it differently, this Court has not expressed any view or opinion on alleged encroachment;

(vi) Though obvious this Court makes it clear that coercive action, if any and if that be so shall be subject to and depending on the orders to be made by the authorities concerned vide sub-sub-paragraph (iii) of sub-paragraph (f) of paragraph 15 of ***1.K.Shanmugam.***

Captioned WP disposed of in the aforesaid manner. As this Court has made it clear that coercive action (if any and if that be so) will be subject to and depending on the orders to be made, captioned three WMPs have become otiose and the same are disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

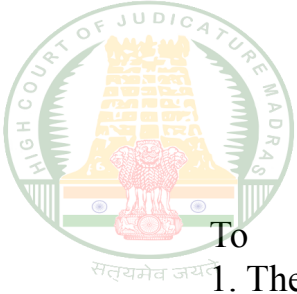
18.03.2025

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Index : Yes/No

Neutral Citation : Yes/No

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To

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Kallakurichi District
Kallakurichi

2. The Revenue Divisional Officer
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The Chairperson/Convener
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