



W.P.No.7964 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.7964 of 2021

N.R.Subramani
S/o.Natesan

... Petitioner

Vs.

1. The Tahsildar
Tambaram Taluk
Having Taluk Office at Tambaram
Chennai-600 045.
2. The Revenue Divisional Officer
Tambaram Taluk
Having RDO Office at Tambaram
Chennai-600 045.
3. The District Revenue Officer
Chengalpattu District
Having RDO Office at Chengalpattu
Chengalpattu District,
Pincode - 603 001.
4. The District Collector
Chengalpattu District
Having Collector Office at Chengalpattu

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Chengalpattu District, Pincode - 603 001.

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5. Selvaraj
S/o.Perumal

6. Manoharan
S/o.Perumal

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the respondents 1 to 4 to take action on the basis of petitioner's representation dated 09.02.2021 against the respondents 5 and 6 to demolish and remove all kinds of encroachment made by them in water channel comprised in Odai Poromboke land in Survey No.52 of Madurapakkam Village, Tambaram Taluk, Chengalpattu District.

For Petitioner : Mr.P.Kothandaraman
for Mr.M.Thangadurai

For Respondents : Mr.T.K.Saravanan
Government Advocate
for R1 to R4

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity}



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pertains to 'Survey No.52 of Madurapakkam Village, Tambaram Taluk, Chengalpattu District' {hereinafter 'said property' for the sake of brevity}.

2. Learned counsel for writ petitioner submits that said property is water body and writ petitioner has sent a representation dated 09.02.2021 seeking removal of encroachment.

3. Learned State Counsel, submits that proceedings under 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' {hereinafter 'Tanks Act' for the sake of convenience, clarity and brevity} and 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' {hereinafter 'Tanks Rules' for the sake of convenience, clarity and brevity} will be initiated.

4. Proceedings under Tanks Act will necessarily mean that an opportunity will be given to alleged encroachers / noticees in the light of the procedure laid down by Hon'ble Full Bench in ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} more particularly clauses (i) to (iii) of sub-paragraph (f) of paragraph No.15 which reads as follows:

'15. Certain provisions of Tank Act namely, Sections 4



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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 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



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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.'

5. We are of the considered view that it will suffice to record the stated position of learned State Counsel and dispose of the captioned WP.

6. We do so but while doing so, though obvious, we make it clear that all rights and contentions of private respondents, noticees and other alleged encroachers are preserved and their response for show cause notice under Tanks Act will remain untrammelled by this order. As the rights and



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contentions of private respondents, alleged encroachers and noticees under Tanks Act are preserved, there is no impediment in disposal of captioned WP.

Captioned WP disposed of as closed recording the stated position of learned State Counsel. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

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