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W.P.No.9465 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

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

W.P.No.9465 of 2021

G.Chandra Babu

... Petitioner

VS

1.The Chief Engineer,
Public Works Department,
Plan Formation, Aaraniyaru Kottal incharge,
Chepauk, Chennai – 600 005.

2.The Assistant Executive Engineer,
Public Works Department,
Adyar Sub Division, Chepauk,
Chennai – 600 005.

3.Kanniammal

4.The Chief Engineer,
Water Resources Department,
Chennai Region, Chepauk,
Chennai – 600 005.

... Respondents

(R4 impleaded suo motu vide
order dated 07.11.2024 in
W.P.No.9465 of 2024)



W.P.No.9465 of 2021

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the first and second respondents to remove the encroachment on the Virugambakkam – Arumbakkam canal constructed by the third respondent.

For Petitioner : Ms.V.Pavithra
for Ms.V.Srimathi

For Respondents : Mr.V.Ravi,
Special Government Pleader
for R1, R2 and R4
No appearance for R3

ORDER

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

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) pertains to alleged encroachment in 'a canal that runs between Virugambakkam and Arumbakkam' (a water body which shall hereinafter be referred to as 'said canal' for the sake of convenience and clarity).

2. Ms.V.Pavithra, learned counsel representing Ms.V.Srimathi, learned counsel on record for writ petitioner is before us. Learned counsel submits that said canal has been obstructed allegedly by construction that has been put up on the same by R3.

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3. Hon'ble Predecessor Bench has issued notice on 17.04.2021.

As regards R1 and R2 (official respondents), Mr.V.Ravi, learned Special Government Pleader is before us. As regards R3 (private respondent), R3 has been duly served and name of R3 is shown in the cause list. There is no representation for R3 either in the physical Court or on VC (video conferencing) platform (to be noted, this is a hybrid hearing, which is a regular/routine/daily feature in this Court). We are informed by the Registry that R3 has not chosen to enter appearance through any counsel.

4. In aforementioned circumstances, it comes to light that the applicable statute would be 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) and Rules thereunder i.e., 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' (hereinafter 'Tanks Rules' for the sake of convenience and clarity). Therefore, we suo motu implead Chief Engineer, Water Resources Department, Chennai Region, Chepauk, Chennai – 600 005 as R4. Learned Special Government Pleader Mr.V.Ravi accepts notice for R4 also.



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5. Therefore, let the official respondents commence proceedings under Tanks Act and Tanks Rules thereunder. This means that R3 will be put on notice owing to the procedure put in place by Hon'ble Full Bench in *T.K.Shanmugam's case {T.K.Shanmugam Vs. State of Tamil Nadu reported in 2015 (5) LW 397}*. However, R3 has been duly served in captioned WP but R3 has not chosen to come before this Court. In any event, as a matter of fair procedure, we deem it appropriate to say that all rights and contentions of R3 will stand preserved when the proceedings under Tanks Act and Tanks Rules are taken out. Likewise, the rights and contentions of writ petitioner will also stand preserved.

6. As regards Tanks Act, vires of Tanks Act was challenged in *T.S.Senthil Kumar's case [T.S.Senthil Kumar vs. Government of Tamil Nadu] reported in 2010 (3) MLJ 771* and a Division Bench in *T.S.Senthil Kumar's case* upheld the vires. Subsequently, a Full Bench in *T.K.Shanmugam's case {T.K.Shanmugam Vs. State of Tamil Nadu reported in 2015 (5) LW 397}*, while reiterating *T.S.Senthil Kumar's case* upheld the vires of the Tanks Act and laid down the procedure to be followed when proceedings under Tanks Act and Tanks Rules are initiated. The



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procedure has been set out / adumbrated in sub-clauses (i), (ii) and (iii) of sub-paragraph (f) of paragraph 15 thereat, which reads as follows:

'15(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. Let the official respondents commence action under Tanks Act and Tanks Rules, follow **T.K.Shanmugam** procedure and conclude the same as expeditiously as the business of official respondents would permit but in any event within twelve weeks from today i.e., by 30.12.2024. Though obvious, we make it clear that we have not expressed any view or opinion on the alleged encroachment and as already alluded to supra, we have preserved all the rights and contentions of the writ petitioner as well as R3 qua proceedings under Tanks Act and Tanks Rules which are to be commenced.

8. Captioned WP is disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.) (K.R.S.,J.)
07.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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