



WEB COPY



W.P.No.16970 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.16970 of 2024

&

W.M.P.No.18687 of 2024

in W.P.No.16970 of 2024

K.K.Perumal

... Petitioner

Vs.

1. The District Collector
Namakkal District
Namakkal – 636 001
2. The Revenue Tahsildar
Raisipuram Taluk
Namakkal District
3. The Assistant Engineer
Water Resources Department
(Irrigation Division)
Rasipuram
Namakkal District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records
relating to the impugned orders in Letter No. File 3/2024/AE (RA) dated

Page Nos.1/20



W.P.No.16970 of 2024

11.06.2024 and Form III under Rule 6(1) dated 03.11.2022 issued by the 3rd respondent, quash the same and consequently direct the respondents 1 and 2 to grant patta for S.F.No.26/6 (0.30.5 Hrs) and S.F.No.466/2 (0.25.0 Hrs), R.Pudupatti Village, Rasipuram Taluk, Namakkal District.

For Petitioners : Mr.N.Manokaran
For Respondents : Mr.P.Balathandayutham
Special Government Pleader

ORDER

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

This common order will govern captioned main 'Writ Petition' ['WP' for the sake of brevity] and 'Writ Miscellaneous Petition' ['WMP' for the sake of brevity] thereat.

2. Captioned WP pertains to two parcels of land i.e., 'S.F.No.26/6 (0.30.5 Hectares) and S.F.No.466/2 (0.25.0 Hectares), both situate in R.Pudupatti Village, Rasipuram Taluk, Namakkal District' [hereinafter 'said land' for the sake of brevity].

3. Mr.N.Manokaran, learned counsel for writ petitioner advertent to the writ support affidavit submitted that the writ petitioner is an



W.P.No.16970 of 2024

Agriculturist, he had spent his life-time earnings /savings and purchased 2.95 acres of land comprised in three different survey numbers, namely S.F.Nos.26/5, 466/3C, 466/5C in R.Pudupatti Village, Rasipuram Taluk, Namakkal District with a Well and a 5 HP Motor thereon vide a Registered sale deed dated 11.03.2016 [Document No.518/2016 on the file of Sub-Registrar, Namagiripettai] from one S.R.Murugesan. It is the further case of the writ petitioner that the Well referred to in the sale deed is located in one parcel of said lands, namely S.F.No.26/6 as per 'A' Registrar extract and FMB for entire Survey Number i.e., S.F.No.26. It is submitted that said Well was dug prior to 1950s and the Electricity Service Connection S.C.No.129 for 5 HP motor itself was obtained on 05.03.1972. It is the further case of the writ petitioner that writ petitioner is in occupation of the second parcel of said lands, namely S.No.466/2 but it is writ petitioner's say that he never knew that it is a canal and according to the writ petitioner, on the ground there is no canal.

4. Considering that this is a writ petition and further considering the limited legal perimeter within which the captioned writ petition has to perambulate, we deem it appropriate to not to dilate further on facts and also



W.P.No.16970 of 2024

write that we express no opinion or view on the aforementioned averments.

The reason is, we would now be relegating the matter to the Officer of the 'Public Works Department' ['PWD'] concerned, who in this case is R3.

5. Though we have written that we would not be dilating more on facts, for the sake of completion of facts, we deem it appropriate to capture the further fact that according to the writ petitioner, a notice dated 26.09.2022 bearing reference ந.க.9617/2021/பி1 under Section 7 of 'The Tamil Nadu Land Encroachment Act, 1905' [hereinafter 'said Act' for the sake of brevity] was issued in respect of the aforementioned Well, followed by a eviction notice (issued by R2) under Section 6 of said Act being notice dated 31.10.2022 bearing reference ந.க.9217/2021/பி1 but thereafter, on protest by the writ petitioner and others in the neighbourhood, no further action was taken, is writ petitioner counsel's say.

6. Reverting to the captioned WP, close on the heels of the aforementioned notice under Section 6 of said Act, R3 issued two notices, both dated 03.11.2022, both being notices under the Rules under 'Tamil



W.P.No.16970 of 2024

Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act No.8 of 2007)' [hereinafter 'said Tank Act' for the sake of brevity and convenience]. To be noted, the Rules under said Tank Act is a piece of subordinate legislation and the title is 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' [hereinafter 'said Tank Rules' for the sake of brevity and convenience].

7. The said Tank Act kicked in on 23.05.2007 and said Tank Rules thereunder kicked in on 01.10.2007. As regards two 03.11.2022 notices, one is vide Form-II of said Tank Rules (Rule 5(3) of said Tank Rules) and another is Form-III of said Tank Rules (Rule 6(1) of said Tank Rules) [hereinafter 'I impugned notice' for the sake of convenience]. After I impugned notice, R3 has issued another notice being 'notice dated 11.06.2024 bearing reference க.எண் /கோ 3/2024/உ.பொ(இரா)' [hereinafter 'II impugned notice' for the sake of convenience]. *Inter alia* assailing I and II impugned notices, captioned WP has been filed.



W.P.No.16970 of 2024

8. Notwithstanding very many averments and grounds in the writ support affidavit, learned counsel for writ petitioner predicated his argument in the Admission Board before us on one point and that one point is, no prior opportunity has been given to the writ petitioner i.e., prior to the impugned notice.

9. Before we proceed further, for the sake of convenience and clarity, we deem it appropriate to scan and reproduce the impugned notices and the same are as follows:

I Impugned Notice

30/11/2024

126656/2024 (C) (R) (L)

NOTICE TO REMOVE FOR REMOVAL OF ENCROACHMENT

I, Mr. [Name], Revenue Officer, [District], do hereby give notice to the owner of the land situated at [Location], [Village], [Taluk], [District], belonging to the Water Resources Organization, of Public Works Department, to remove the encroachment on your land in your own portion and upon you to seek your encroachment from the said land and within twenty one days from the date of receipt of this notice, failing which I shall remove the encroachment and impose the cost for removal of encroachment upon you. The Department shall not take any responsibility for encroachment and removed from within the said one month of.

Date: 30/11/2024

Name: [Signature]

Designation: [Signature]

Official Seal: [Seal]



W.P.No.16970 of 2024

WEB COPY

10. Issue notice i.e., notice regarding admission.

11. Mr.P.Balathandayutham, learned Special Government Pleader has accepted notice for all three respondents.

12. Owing to the limited legal perimeter qua the legal drill on hand about which there is allusion supra, with the consent of both sides, main WP itself was taken up and heard out in the Admission Board.

13. As regards the lone point on which the impugned notice is being assailed i.e., no prior opportunity has been given or in other words, the writ petitioner has not been given an opportunity to show-cause, learned counsel for writ petitioner pressed into service a Full Bench judgement of this Court in *T.K.Shanmugam's* case {*T.K.Shanmugam Vs. State of Tamil Nadu* reported in *2015 (5) LW 397*}. As there is more than one *T.K.Shanmugam* case pertaining to water bodies, we shall be referring to this '*2015 (5) LW 397* Full Bench order [order dated 30.10.2015]' as '*T.K.Shanmugam (FB)* case' {'FB' denoting 'Full Bench'}.

14. In *T.K.Shanmugam (FB)* case, a Hon'ble Full Bench of three Judges of this Court was considering a reference made by a Division Bench being a reference vide order dated 05.08.2015 in W.P.No.1294 of 2009. In



W.P.No.16970 of 2024

T.K.Shanmugam (FB) case, the reference broadly stated is, as regards

L.Krishnan principle [**L. Krishnan vs. State of Tamil Nadu** reported in

2005 (4) CTC 1] which was followed in **Sivakasi Region Tax Payers**

Association vs. State of Tamil Nadu reported in **(2008) 5 MLJ 1425**. In

L.Krishnan's case, the need to protect water bodies was emphasized and

that gave birth to said Tank Act and obviously the said Tank Rules

thereunder as it is a piece of Subordinate legislation made by the Executive

Arm in exercise of Rule making powers under said Tank Act being Rule

making power under Section 13(1) of said Tank Act. Be that as it may,

dilution of this principle (**L.Krishnan** principle) happened by way of three

Executive Fiats, namely G.O.Ms.No.854 dated 30.12.2006, G.O.Ms.No.498

dated 05.09.2007 and G.O.Ms.No.34 dated 23.01.2008 wherein and

whereby provision was made for grant of patta for those who are in

occupation for ten years, this ten years was subsequently reduced to five

years and further reduced to three years vide the three Government Orders.

Thereafter the vires of the said Tank Act was assailed in **T.S.Senthil**

Kumar's case [**T.S.Senthil Kumar vs. Government of Tamil Nadu**] and

vide order dated 10.02.2010 reported in **2010-3-MLJ-771**, the vires was



upheld albeit providing for 'principles of natural justice' ['NJP' for the sake of brevity] being telescoped qua said Tank Act and said Tank Rules. This **T.S.Senthil Kumar** case was affirmed by the Full Bench in **T.K.Shanmugam (FB)** case. This is articulated in paragraph 15 of the **T.K.Shanmugam (FB)** case and the most relevant part of the order is sub-sub-paragraphs (i), (ii) and (iii) of sub-paragraph (f) thereat, which read 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



WEB COPY



W.P.No.16970 of 2024

the provisions of the Act, giving time to the encroachers to remove the encroachment.'

15. From hereon and henceforth, we shall refer to aforementioned procedure as '(f)(i)(ii)(iii) procedure of **T.K.Shanmugam (FB)** case law' for the sake of convenience and clarity.

16. In the case on hand, as the lone grievance of the writ petitioner is that the writ petitioner / noticee has not been show-caused prior to the impugned notice, we are of the considered view that the same can be addressed and redressed by directing R3 and other Officers of PWD Department under said Tank Act and said Tank Rules to adhere to (f)(i)(ii)(iii) procedure of **T.K.Shanmugam** case law by treating the impugned notices as a 'show-cause notices' ('SCNs' in plural and 'SCN' in singular for the sake of brevity and convenience).

17. As we have already extracted and reproduced (f)(i)(ii)(iii) procedure of **T.K.Shanmugam (FB)** case, we are not setting out the same again.

18. In the light of the narrative, discussion and dispositive reasoning



W.P.No.16970 of 2024

thus far, we dispose of the captioned WP by holding that the impugned notices will now be treated as SCNs and '(f)(i)(ii)(iii) procedure of **T.K.Shanmugam (FB)** case' shall be followed by R3 and other Officers of PWD Department under said Tank Act and said Tank Rules, proceed with the same and conclude the proceedings as expeditiously as the business of R3 would permit. As regards, f(ii) of (f)(i)(ii)(iii) procedure of **T.K.Shanmugam (FB)** case law, two weeks will now be computed from today i.e., 12.07.2024.

19. Before we write the concluding paragraph of this order, though obvious, we make it clear that we have not expressed any view or opinion on the merits of the matter and we are leaving open all questions as the same can be raised by the writ petitioner in response to the impugned notices, which have now become SCNs by virtue of this order.

20. We deem it appropriate to capture one more submission before writing the concluding paragraph and that is the submission made by the State counsel. Learned State counsel pointed out that the I impugned notice



W.P.No.16970 of 2024

has been issued in November of 2022 and preceded by notices under said Act but the captioned WP has been filed only on 18.06.2024. As the impugned notices are not SCNs and as they do not call upon the writ petitioner to show-cause, we are of the view that this aspect of the matter is condonable in the case on hand but we make it clear that it will not serve as a precedent in all cases of similar/same nature. We have also taken into account the literacy level of the writ petitioner (school drop out) and that he is an agriculturist by avocation in a village.

21. We also deem it appropriate to capture that there was an earlier writ petition in W.P.No.22167 of 2022 filed by one Thiru.M. Kandasamy as a Public Interest Litigation [PIL] with a prayer to remove the alleged encroachment and in the prayer, there is a mention about one parcel of said lands i.e., S.F.No.26/6 but the order therein brings to light that in W.P.No.22167 of 2022, the State counsel has not referred to S.F.No.26/6 as a water body but we refrain from expressing any view or opinion as we are relegating the matter to R3. We also deem it appropriate to extract and reproduce the order of another Hon'ble Division Bench dated 05.07.2022 in a PIL i.e., W.P.No.22167 of 2022 and a scanned reproduction of the same is



W.P.No.16970 of 2024

as follows:

WEB COPY



WEB COPY



W.P.No.22167 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.22167 of 2022

M.Kandasamy

.. Petitioner

Vs.

1. The District Collector
District Collector Office, Namakkal.
2. The Revenue Divisional Officer
Namakkal.
3. The Thasildar
Rasipuram, Namakkal District.
4. The Assistant Engineer
Public Works Department (WRO)
Rasipuram, Namakkal District.
5. Ganapathi
6. V.Ramasamy
7. C.Nadeshan
8. C.Muthusamy
9. Sethupathi
10. Perumal
11. Kanthasamy

Page 1 of 5

<https://www.mhc.tn.gov.in/judis>



W.P.No.16970 of 2024

WEB COPY



WEB COPY



W.P.No.22167 of 2022

12. Ramasamy
13. Subramani
14. Nathiyaa
15. P.M.Pazhaniyappan
16. Nallamaal
17. Pazhaniyappan
18. Maaraayi
19. Mogan
20. Jayabal
21. Ramasamy
22. Pazhaniyappan
23. Subramani
24. Ramasamy
25. Ganabathi
26. Ilamathi

[R5 to R26 impleaded vide order dated
28.10.2022 in W.M.P.No.23619 of 2022
in W.P.No.22167 of 2022]

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the respondents to take appropriate action to remove the encroachment caused over the odai poramboke land existing in SF.No.23/2A,23/3, 24/4, 25/4, 26/4, 26/6, 28/1, 28/5B, 466/1, 466/2, 467/1, 468/part, 469/1, 471/1, 471/3, 482 and 483 of R.Pudhupatti Village, Rasipuram Taluk, Namakkal District.

Page 2 of 3

<https://www.mhc.in/govintjudo>



WEB COPY



WEB COPY



W.P.No.16970 of 2024



W.P.No.22167 of 2022

For the Petitioner : Mr.R.Nalliyappan
For the Respondents : Mr.P.Muthukumar
State Government Pleader
for R1 to R4
No Appearance for R5 to R26
R24 died

ORDER

(Made by the Hon'ble Chief Justice)

None appears for the petitioner as well as for the added respondents, though served. Heard Mr.P.Muthukumar, learned State Government Pleader appearing for respondents 1 to 4.

2. Learned State Government Pleader submits that Survey Nos.23/2A, 24/3, 24/4, 25/4, 468 & 469 are water bodies. Form I has been issued to the concerned persons and further steps would be now undertaken expeditiously, subject to the prohibitory orders that may have been passed.

Page 3 of 3

<https://www.mhc.tn.gov.in/judis>



W.P.No.16970 of 2024

WEB COPY



WEB COPY



W.P.No.22167 of 2022

3. In view of the same, the writ petition stands disposed of.
There will be no order as to costs.

(S.V.G., C.J.)

(P.D.A., J.)

05.07.2023

Index : Yes/No
Neutral Citation : Yes/No

drm

To

1. The District Collector
District Collector Office, Namakkal.
2. The Revenue Divisional Officer
Namakkal.
3. The Thasildar
Rasipuram, Namakkal District.
4. The Assistant Engineer
Public Works Department (WRO)
Rasipuram, Namakkal District.

Page 4 of 5

<https://www.mhc.tn.gov.in/judis>



W.P.No.16970 of 2024

WEB COPY Captioned WP disposed of in the aforesaid manner albeit with
aforementioned directives and observations. Consequently, captioned WMP
thereat is also disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
28.06.2024

Index : Yes / No

Neutral Citation : Yes / No

gpa

P.S. I: Upload forthwith

**P.S.II : All concerned including Registry of Madras High Court to act forthwith
on the uploaded soft copy of this proceedings as uploaded in the official website
of this Court. To be noted, the soft copies uploaded in the official website of this
Court are water marked, besides being QR Coded.**



W.P.No.16970 of 2024

To

1. The District Collector
Namakkal District
Namakkal – 636 001
2. The Revenue Tahsildar
Raisipuram Taluk
Namakkal District
3. The Assistant Engineer
Water Resources Department
(Irrigation Division)
Rasipuram
Namakkal District



WEB COPY



W.P.No.16970 of 2024

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

gpa

W.P.No.16970 of 2024

28.06.2024

Page Nos.20/20