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W.P.No.19731 and 19734 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

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

and

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

W.P.Nos.19731 and 19734 of 2024

and

W.M.P. Nos.21609 and 21610 of 2024 in W.P.No.19731 of 2024

and

W.M.P. Nos.21615 and 21616 of 2024 in W.P.No.19734 of 2024

V.Malar

... Petitioner in
W.P. No.19731 of 2024

A.Ravikumar

... Petitioner in
W.P. No.19734 of 2024

Vs.

The Assistant Executive Engineer
(WRD) Irrigation Section,
Vellore – 6.

... Respondents in
both the W.Ps

Writ Petitions filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorari to call for the records relating to
impugned orders dated 25.06.2024 (Form III) (see Rule 6(1)) issued
by the respondent and quash the same.

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For Petitioner : Mr.P.Ganapathy
in both the WPs

For Respondent : Mr.T.K.Saravanan,
Government Advocate
in both the WPs

COMMON ORDER

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

This common order will now dispose of captioned two 'Writ Petitions' ('WPs' in plural and 'WP' in singular) captioned 'Writ Miscellaneous Petitions' ('WMPs' in plural and 'WMP' in singular) thereat.

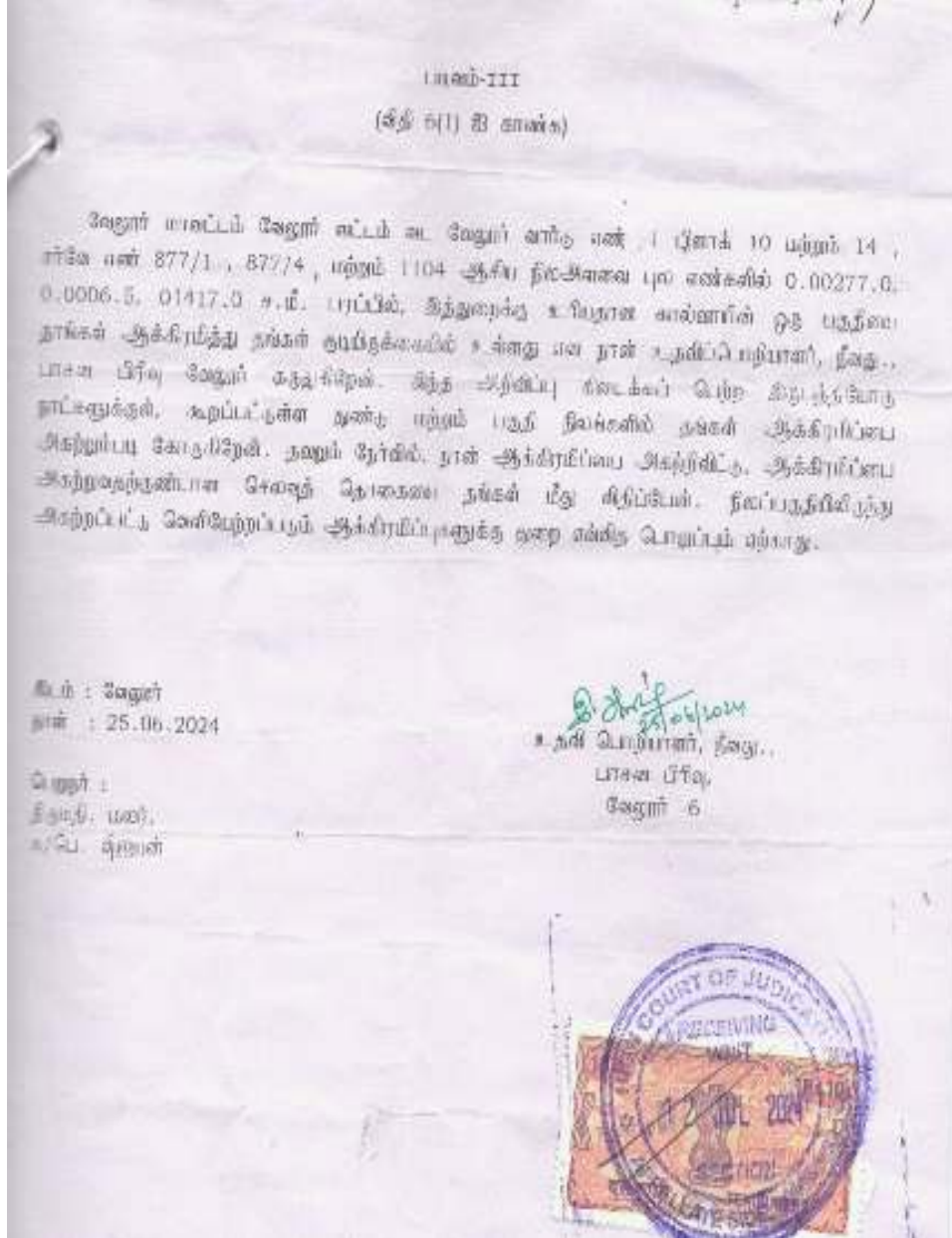
2. Notwithstanding very many averments in the writ affidavit, learned counsel for writ petitioners before us submits that the challenge against the 'notices dated 25.06.2024 issued by the sole respondent' (hereinafter 'impugned notices' for the sake of convenience and clarity) is on the ground that writ petitioners have not been show caused. The impugned notices are as follows:



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Impugned notice in W.P. No.19731 of 2024:

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WP.No.19731 and 19734 of 2024

Impugned notice in W.P. No.19734 of 2024:

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படிவம்-III
(விதி 6(1) கி காண்க)

வேலூர் மாவட்டம் வேலூர் வட்டம் வட வேலூர் வார்டு எண் -1 பிளாக் 10 மற்றும் 14 , சர்வே எண் 877/1 , 877/4 , மற்றும் 1104 ஆகிய நிலஅளவை புல எண்களில் 0.00277.0, 0.0006.5, 01417.0 ச.மீ. பரப்பில், கித்துறைக்கு உரியதான கால்வாயின் ஒரு பகுதியை தாங்கள் ஆக்கிரமித்து தங்கள் குடியிருக்கையில் உள்ளது என நான் உதவிப்பொறியாளர், தீவது., பாசன பிரிவு வேலூர் கருதுகிறேன். கிந்த அறிவிப்பு கிடைக்கப் பெற்ற கிதபத்தியோடு நாட்களுக்குள், கூறப்பட்டிருக்கின்ற துண்டு மற்றும் பகுதி நிலங்களில் தங்கள் ஆக்கிரமிப்பை அகற்றுப்படி கோருகிறேன். தவறும் நேரவில், நான் ஆக்கிரமிப்பை அகற்றிவிட்டு, ஆக்கிரமிப்பை அகற்றுவதற்குண்டான செலவுத் தொகையை தங்கள் மீது விதிப்பேன். நிலப்பகுதியிலிருந்து அகற்றப்பட்ட வெளியேற்றப்படும் ஆக்கிரமிப்புகளுக்கு துறை எவ்வித பொறுப்பும் ஏற்காது.

கி.மீ. : வேலூர்
நாள் : 25.06.2024

பெறுநர் :
திரு. ரவிக்குமார்
த/பெ. அருணாச்சலம்

தி.அ.சி.சி. 15/06/2024
உதவி பொறியாளர், தீவது.,
பாசன பிரிவு,
வேலூர் -6

3. Issue notice to respondent.



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4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for sole respondent and submits that the captioned matters are directly and squarely covered by *K.K.Perumal* order i.e., order dated 28.06.2024 made in W.P. No.16970 of 2024 and WMPs thereat.

5. The most relevant paragraphs of *K.K.Perumal* order are paragraphs 13 to 17, which read as follows:

'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 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]



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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:



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'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.'

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



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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.'

6. As the learned State counsel submits that **T.K.Shanmugam (FB)** as set out in **K.K.Perumal** order would be followed qua the aforementioned impugned notices, that douses the anxiety and the lone point on which challenge to impugned notices is predicated.

7. Be that as it may, we make it clear that when opportunity is given to the writ petitioners, all questions are left open for the writ petitioners to raise in response to **T.K.Shanmugam (FB)** procedure as set out in paragraphs 13 to 17 of **K.K.Perumal** order.



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8. In the light of the narrative thus far, captioned WPs are disposed of recording the stated position of the learned State counsel that *T.K.Shanmugam (FB)* principle as referred to in paragraph 17 of *K.K.Perumal* order will be followed qua impugned notices. Consequently, captioned WMPS thereat are disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
16.07.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

The Assistant Executive Engineer
(WRD) Irrigation Section,
Vellore – 6.



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

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