



WEB COPY



WP.No.34147 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

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

W.P.No.34147 of 2024
and
W.M.P.No.36970 of 2024
in
W.P.No.34147 of 2024

1. Mr.India Selvam
S/o.Narayanasamy
2. Mr.Pandiyarajan
S/o.Devendiran
3. Mr.Prakash
S/o.Elumalai
4. Mr.Kumaresan
S/o.Raman

... Petitioners

Vs.

1. The District Collector
Collectorate of Kanchipuram
Kanchipuram - 631501.
2. The Engineer-in-Chief
Water Resource Organization (W.R.O.)
P.W.D., Chepauk

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Chennai-600 005.

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3. The Tahsildar
Kundrathur Taluk Office
Mehta Nagar Main Road
Kundrathur
Chennai-600 069.

4. The Assistant Engineer
Department of Water Resources
Irrigation Division
Sembarapakkam, Kundrathur
Kancheepuram - 600 069.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorarified Mandamus

(a) to call for the records pertaining to the impugned notice dated
25.07.2024 issued by the fourth respondent Assistant Engineer, Water
Resources Department and quash the same.

(b) to direct the first and second respondents to remove the category
of the "Odai Poramboke" land from the village land and revenue records
with regard to schedule mentioned property.

(c) to direct the respondents to issue patta to the petitioners over
schedule mentioned B property.

For Petitioners	:	Mr.P.Arularasu
For Respondents	:	Mr.V.Ravi Special Government Pleader



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ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed with a Certiorarified Mandamus prayer qua a notice dated 25.07.2024 and a scanned reproduction of the same is as follows:





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2. Mr.P.Arularasu, learned counsel for writ petitioners submitted that after notice, noticee / first petitioner has sent a detailed response dated 06.08.2024. Learned counsel submits that writ petitioners are under pain of being dispossessed notwithstanding the representation dated 06.08.2024.

3. Issue notice to respondents.

4. Mr.V.Ravi, learned Special Government Pleader accepts notice for all four respondents.

5. Learned Special Government Pleader very fairly submits that the afore-referred notice dated 25.07.2024 is 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 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 will be followed and the same reads 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 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)The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b)The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies



which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c)As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.(emphasis laid)

(d)The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands. (emphasis laid)

(e)The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. (emphasis laid)

(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.'

6. The fair submission of learned State Counsel means that the representation of first petitioner dated 06.08.2024 will now to be treated as a reply to 25.07.2024 notice and proceedings will continue. Further proceedings obviously, will be subject to the outcome qua **T.K.Shanmugam** procedure.



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WP is disposed of as closed. Consequently, Writ Miscellaneous Petition is also disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

25.11.2024

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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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