



W.P.No.32557 of 2024

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.32557 of 2024

R.Thirumavalavan

... Petitioner

VS

- 1.The District Collector,
Cuddalore District,
Cuddalore.
- 2.Sub Collector,
Chidambaram,
Cuddalore District.
- 3.Tahsildar,
Bhuvanagiri,
Cuddalore District.
- 4.Block Development Officer,
Kilavadinatham Panchayat,
Panchayat Union,
Melbhuvanagiri,
Bhuvanagiri Taluk,
Cuddalore District.



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5.The President,
Kilavadinatham Panchayat,
Kilavadinatham Village,
B.Udaiyur Post,
Bhuvanagiri Taluk,
Cuddalore District.

6.The Superintending Engineer (PWD),
Water Resources Department,
Cuddalore, Cuddalore District.

... Respondents

(R6 impleaded suo motu vide
order dated 07.11.2024 in
W.P.No.32557 of 2024)

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Mandamus to direct the respondents 1 to 5
to implement the order of the 4th respondent in his proceedings in
Na.Ka.No.A2/1803/23 dated 01.08.2023 by removing the
encroachments in the water body in S.No.64/3, Kilavadinatham
Village, Melbhuvanagiri Panchayat Union, Bhuvanagiri Taluk, Cuddalore
District.

For Petitioner : Ms.P.Srividhya

For Respondents : Mr.M.S.Arasakumar,
Government Advocate
for R1 to R3
Mr.M.Venkateswaran,
Spl. Government Pleader
for R4 and R5



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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 prayer for removal of encroachment. This is a case where R2 (Sub Collector) has written to R3 (Revenue Tahsildar) regarding alleged encroachment in a water body (குளம் நீர்நிலை புறம்போக்கு). A perusal of this communication from R2 to R3 (signed by R2 on 21.05.2024) brings to light that there are about ten encroachers.

2. Issue notice to respondents.

3. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1 to R3 and Mr.M.Venkateswaran, learned Special Government Pleader accepts notice for R4 and R5.

4. Learned State counsel submits in one voice that Tanks Act and Tanks Rules will apply. To be noted, if it is a water body, 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007'



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(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) will apply. This means that action if any has to be initiated as per the ratio in *T.K.Shanmugam's case* {*T.K.Shanmugam Vs. State of Tamil Nadu* reported in 2015 (5) LW 397}.

5. As regards the Tanks Act, the vires 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. Thereafter, 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 and the procedure is adumbrated in sub-clauses (i), (ii) and (iii) of sub-paragraph (f) of paragraph 15 thereof 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.



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(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.'

6. Therefore, we suo motu implead Superintending Engineer (PWD), Water Resources Department, Cuddalore, Cuddalore District as R6 and Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R6 also.

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7. Learned State counsel submits that R6 will now initiate action in accordance with Tanks Act and Tanks Rules. It will suffice to record the submission. Let the law take its own course. All the rights and contentions of alleged encroachers are preserved to the extent that they can raise all their grounds while action under Tanks Act and Tanks Rules is initiated.

8. Captioned WP is disposed of recording the stated position of the learned State counsel. 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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To

1.The District Collector,
Cuddalore District,
Cuddalore.

2.The Sub Collector,
Chidambaram,
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3.The Tahsildar,
Bhuvanagiri,
Cuddalore District.

4.The Block Development Officer,
Kilavadinatham Panchayat,
Panchayat Union,
Melbhuvanagiri,
Bhuvanagiri Taluk,
Cuddalore District.

5.The President,
Kilavadinatham Panchayat,
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and
K.RAJASEKAR, J.,**

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