



WP.No.35063 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

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

W.P.No.35063 of 2024

U.P.Prabhujothi

... Petitioner

vs

- 1.The District Collector,
Collectorate, Palladam Road,
Tiruppur, Tiruppur District.
- 2.The Revenue Divisional Officer,
Udumalpet, Tiruppur District.
- 3.The Revenue Tahsildar,
Madathukulam Taluk, Tiruppur District.
- 4.The Block Development Officer,
Madathukulam Union, Madathukulam,
Tiruppur District.
- 5.N.Natarajan
- 6.Sakunthala
- 7.Dharani Natraj

... Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Mandamus directing the respondents 1 to 4
to remove the encroachment made in the Odai in S.F.No.495 of

Page Nos.1/10



WP.No.35063 of 2024

Myvadi II Village, Madathukulam Taluk, Tiruppur District and restore the water body to its original position, by considering petitioner's representation dated 25.07.2023 and petitioner's reminders dated 10.12.2023, 07.03.2024, 29.08.2024 and 17.10.2024.

For Petitioner : Mr.S.Shrish
for Mr.N.Manokaran

For Respondents : Mr.V.Ravi
Special Government Pleader
for R1 to R3
Ms.M.Geetha Thamaraiselvan
Special Government Pleader
for R4

ORDER

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

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) pertains to 'S.F.No.495, Myvadi II Village, Madathukulam Taluk, Tiruppur District' (hereinafter 'said land' for the sake of brevity, convenience and clarity).

2. Mr.N.Manokaran, learned counsel for the writ petitioner, Mr.V.Ravi, learned Special Government Pleader for R1 to R3 and Ms.M.Geetha Thamaraiselvan, learned Special Government Pleader for



WP.No.35063 of 2024

R4 are before us.

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3. This order has to be read in conjunction with and in continuation of our earlier proceedings made in the listing on 02.12.2024 which reads as follows:

'W.P. No.35063 of 2024

***M.SUNDAR,J.,
and
K.RAJASEKAR, J.,***

(Order of the Court was made by M.SUNDAR, J.)

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 27.11.2024, which reads as follows:

'W.P.No.35063 of 2024

***M.SUNDAR, J.,
and
K.RAJASEKAR, J.,***

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

When the matter was taken up, Mr.T.K.Saravanan, learned State counsel has placed before us certain portions of TN PWD Code. Learned State counsel drew our attention to Rule 384 under Chapter V of TN PWD Code, which reads as follows:

'384. All Minor Irrigation tanks, irrigating less than 40



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WP.No.35063 of 2024

hectares excepting those which do not form part of a river irrigation system and those which are for special reasons kept under the control of Public Works Department and all Minor Irrigation tanks not forming part of a chain of tanks shall rest with the Panchayat Union Council concerned.'

2. The following questions arise:

i) Whether definition of 'Tank' under Section 2 (l) of 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) be altered by TN PWD Code;

ii) Under what provision TN PWD Code has been made;

iii) Merely because of the TN PWD Code, should removal of encroachments in water bodies irrigating less than 40 Hectares also be under 'the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' [hereinafter 'TN Panchayats Act' for the sake of brevity] when Tanks Act is operating.

3. Learned State counsel requested for a short accommodation to get instructions and revert to this Court as regards above points.

4. List in the Admission Board i.e., Motion List on Monday.

5. List on 02.12.2024.'

2. Today Mr.N.Manokaran, learned counsel for writ petitioner is before us.



WP.No.35063 of 2024

3. *Mr.V.Ravi, learned Special Government Pleader for the official respondents, adverting to earlier proceedings, more particularly paragraph 2 thereat, requested for a short accommodation to file a report and bring it on Board. Request acceded to.*

4. *List one week hence in the Admission Board i.e., Motion List.*

5. *List on 09.12.2024.'*

4. Adverting to the aforementioned earlier proceedings, learned Special Government Pleader placed before us a communication dated 07.12.2024 bearing reference Letter No.7234/P2/2024-1 from Special Secretary to Government, Water Resources Department, Secretariat, Chennai – 9 (to be noted this is a letter from the said Secretary to the State counsel). Learned State counsel requested this letter along with annexures thereto to be treated as a report. Ideally, communications between client and counsel should be avoided qua circulation more so in the light of Section 126 of the Indian Evidence Act, 1872 (privileged communication), however, in the instant case, considering the facts and circumstances of instant case, we make an exception and accede to the request of learned State counsel.



WP.No.35063 of 2024

5. As regards the three questions set out in paragraph 2 of our 27.11.2024 proceedings, the first question has been answered with clarity saying that Tanks Act would prevail over TN PWD Code. There is absolutely no difficulty in accepting this submission. This means that waterbodies, even if they are irrigating less than 40 hectares would be covered by Tanks Act and the State need not necessarily resort to TN Panchayats Act. However, we hasten to add that Section 11 of Tanks Act makes it clear that it is in addition to and not in derogation of any other statute and therefore though there may be no bar in resorting to TN Panchayats Act, we make it clear that it would not be mandatory for the State to resort only to TN Panchayats Act when it comes to waterbodies irrigating less than 40 hectares. To add specificity, we make it clear that even waterbodies irrigating less than 40 hectares will qualify as Tank within the meaning of Tanks Act and Tanks Act can be resorted to.

6. As regards the second question, it has been mentioned that TN PWD Code has been issued superseding various Rules and orders contained in Public Works Department Code. However, Mr.N.Manokaran learned counsel for writ petitioner clarified that TN



WP.No.35063 of 2024

PWD Code has been made by State by resorting to Entry 17 of List II of the Seventh Schedule to the Constitution.

7. Answer to third question stands captured vide recording answer to second question. Learned Special Government Pleader also drew our attention to obtaining position that the process of drafting Tamil Nadu Land Encroachment Act, 2024 by revisiting the Tamil Nadu Land Encroachment Act, 1905 is underway and that is pursuant to orders of this Court dated 28.04.2015 in W.P. No.12821 of 2015. We capture all this only for completion of facts, for clarity and specificity qua the obtaining position.

8. Reverting to the case on hand, as rights of the private respondents i.e., R5 to R7 can be preserved, we take up the main WP with the consent of both sides in the Admission Board.

9. Learned State counsel submits on instructions that survey has been conducted, encroachments have been found and action under Tanks Act will be initiated. If action under Tanks Act is initiated, 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} will



WP.No.35063 of 2024

be followed, in other words, private respondents (R5 to R7) and or any other encroacher should be show caused and if there are objections, orders (which are appealable/revisable qua statutory appeal/revision) will have to be passed. This safeguards the rights of the R5 to R7 and we make it clear all the rights and contentions of R5 to R7 are preserved for this purpose. It is with this safety value, the main writ petition has been taken up.

10. Let State commence proceedings under Tanks Act and carry it to its logical end in accordance with the **T.K.Shanmugam (FB)** principle more particularly sub sub-paragraphs (i), (ii) and (iii) of sub- paragraph (f) of paragraph 15 thereat as expeditiously as the business of respondents would permit preferably within twelve weeks from today i.e., by 03.03.2025.

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

(M.S.,J.) (K.R.S.,J.)
09.12.2024

Index : Yes / No
Neutral Citation : Yes / No
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Page Nos.8/10



WP.No.35063 of 2024

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To

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Collectorate, Palladam Road,
Tiruppur, Tiruppur District.
- 2.The Revenue Divisional Officer,
Udumalpet, Tiruppur District.
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WP.No.35063 of 2024

**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

mmi

W.P.No.35063 of 2024

09.12.2024

Page Nos.10/10