



W.P.No.35407 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

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

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J.Subramanian @ Suresh

... Petitioner

VS

- 1.The District Collector,
Villupuram, Villupuram District.
- 2.The Revenue Divisional Officer,
Villupuram, Villupuram District.
- 3.The Executive Engineer,
Water Resources Management,
Public Works Department,
Lower Pennaiyar Basin,
Thirukovilur Division,
Villupuram District.
- 4.The Assistant Executive Engineer,
Water Resources Management,
Public Works Department,
Lower Pennaiyar Basin,
Thirukovilur Division,
Villupuram District.
- 5.Mrs.Agilandam
- 6.Mrs.Yesodha
- 7.Mr.Anjumuthu
- 8.Mr.Balu

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9.Mrs.Radhika
10.Mr.Vijayakumar
11.Mr.Velu

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the 3rd and 4th respondents to remove the encroachments made by respondents 5 to 11 in water body in S.Nos.33, 34, 35, 36, 123, 124, 125 on the basis of the petitioner representation dated 31.07.2024 within a time limit fixed by this Court.

For Petitioner : Mr.S.Venkatesh
For Respondents : Mr.T.K.Saravanan
Government Advocate
for R1 to R4

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition has been filed for the issuance of a mandamus to direct respondents 3 and 4 to remove the encroachments made by respondents 5 to 11 in S.Nos.33, 34, 35, 36, 123, 124, 125 (waterbody), A-Koodaloor Village, Kandachipuram Taluk, Villupuram District, on the basis of the petitioner's representation dated 31.07.2024.



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2. The petitioner states that the channel bund at the aforesaid survey numbers is under the encroachment of several persons which prevents free flow of water and already he has sent a representation for removal of encroachment but no action is taken by the respondents. It is also stated that earlier the temple constructed at the channel bund was removed whereas the encroachments made by other persons were not removed.

3. Heard Mr.S.Venkatesh, learned counsel on record for petitioner.

4. Learned counsel for petitioner submits that inspite of several representations, no action was taken to remove the encroachments in the waterbody.

4. Issue notice to official respondents.

5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for respondents 1 to 4.



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6. Learned Government Advocate submits that since lands in above survey numbers are classified as waterbody (channel bund), the official respondents will conduct survey and if there is any encroachment, they will take action in accordance with 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (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). 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}.

7. 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* (which upheld the vires of the Tanks Act) laid down the procedure to be followed and the procedure is



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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.

(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



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

8. In view of the above, if there is any encroachment in the abovementioned survey numbers which are classified as waterbody, respondents 3 and 4 are directed to take action in accordance with the procedure contemplated in **T.K.Shanmugam (FB)**. 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.

9. With the above direction, the writ petition stands disposed of. There shall be no order as to costs.

(M.S.,J.) (K.R.S.,J.)
28.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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