



W.P.No.37465 of 2024 etc

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.Nos.37465, 37468, 37470, 37472, 37477, 37478, 37480,
37482, 37483, 37485 & 37486 of 2024
and**

**W.M.P.No. 40495 of 2024 in W.P. No.37465 of 2024
W.M.P.No. 40498 of 2024 in W.P. No.37468 of 2024
W.M.P.No. 40499 of 2024 in W.P. No.37470 of 2024
W.M.P.No. 40500 of 2024 in W.P. No.37472 of 2024
W.M.P.No. 40506 of 2024 in W.P. No.37477 of 2024
W.M.P.No. 40508 of 2024 in W.P. No.37478 of 2024
W.M.P.No. 40509 of 2024 in W.P. No.37480 of 2024
W.M.P.No. 40510 of 2024 in W.P. No.37482 of 2024
W.M.P.No. 40511 of 2024 in W.P. No.37483 of 2024
W.M.P.No. 40512 of 2024 in W.P. No.37485 of 2024
W.M.P.No. 40513 of 2024 in W.P. No.37486 of 2024**

Rosiammal ... Petitioner
in W.P. No.37465 of 2024

Subbamma .. Petitioner
in W.P. No.37468 of 2024

Chinnammal .. Petitioner
in W.P. No.37470 of 2024

Vasanthi .. Petitioner
in W.P. No.37472 of 2024

Prema .. Petitioner
in W.P. No.37477 of 2024

1.Kanchana

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2.Loganathan

.. Petitioners
in W.P. No.37478 of 2024

Sasikala

.. Petitioner
in W.P. No.37480 of 2024

S.Gowri

.. Petitioner
in W.P. No.37482 of 2024

Valliamma

.. Petitioner
in W.P. No.37483 of 2024

Dhanalakshmi

.. Petitioner
in W.P. No. 37485 of 2024

Saritha

.. Petitioner
in W.P. No.37486 of 2024

VS

1.The Assistant Engineer,
Water Resources Department,
Irrigation Division,
Arakkonam, Ranipet District.

2.The Commissioner,
Arakkonam Municipality,
Arakkonam, Ranipet District.

3.The Tahsildar,
Arakkonam Taluk
Arakkonam, Ranipet District.

... Respondents
in all WPs

Writ Petitions filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the
records relating to the impugned orders dated 06.07.2022 and
15.11.2024 in Letter No. File No.34/A.E/Arakkonam/2024 issued by

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the 1st respondent, quash the same and consequently direct the respondents to regularize the petitioners' occupation over the sarkar poramboke as per the Circular vide Letter No.F3/11339/2018 dated 07.12.2020 issued by the Commissioner of Land Administration, Chepauk, Chennai.

For Petitioner : Mr.T.M.Mano
for Mr.P.Krishnan
in all WPs

For Respondents : Mr.V.Ravi
Special Government Pleader
for R1 & R3 in all WPs
Mr.T.K.Saravanan
Government Advocate
for R2 in all WPs

COMMON ORDER

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

This common order will govern the captioned 11 'Writ Petitions' (hereinafter 'WPs' in plural and 'WP' in singular for the sake of convenience and clarity) and 11 captioned 'Writ Miscellaneous Petitions' (hereinafter 'WMPs' in plural and 'WMP' in singular for the sake of convenience and clarity) thereat.



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2. In all the 11 WPs, two sets of notices, one set dated 06.07.2022 and another set dated 15.11.2024 bearing reference கடித எண்.கோ.எண்.34/உ.பொ./அரக்கோணம்/2024 both issued by R1 (The Assistant Engineer, Water Resources Department, Irrigation Division, Arakkonam, Ranipet District) have been called in question. These notices shall be collectively referred to as 'impugned notices' for the sake of convenience and clarity. However, wherever it becomes necessary, '06.07.2022 notices' shall be referred to as 'I impugned notices' and '15.11.2024 notices' shall be referred to as 'II impugned notices'.

3. Impugned notices have been issued under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) and they pertain to 'Survey Nos.43 and 69 in Arakkonam Town, Arakkonam Taluk, Ranipet District' (hereinafter 'said lands' for the sake of convenience and clarity).

4. The writ petitioners are noticees qua impugned notices.

5. Mr.T.M.Mano, learned counsel representing the counsel on



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record for writ petitioners submits that said lands may not qualify as Tank within the meaning of Tanks Act in its entirety. It is his specific say that some parts of the said lands (according to A Register i.e., revenue records) have been classified as பாட்டை and களம் viz., pathway and threshing floor respectively, however, substantial parts of the lands have also been classified as கால்வாய் (channel).

6. Learned counsel submits that the writ petitioners sent a response to the I impugned notices in 2023 itself, no orders were passed, there was a lull and the II impugned notices have now been issued.

7. Issue notice to respondents.

8. Mr.V.Ravi, learned Special Government Pleader accepts notice for R1 and R3 and Mr.T.K.Saravanan, learned Government Advocate accepts notice for R2.

9. Learned State counsel submits that impugned notices have been issued as said lands are channel and therefore are 'Tank' within the meaning of Tanks Act, however there is no dispute or



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disagreement that when the writ petitioners responded to I impugned notices in 2023, no orders have been passed.

10. Considering the limited legal perimeter within which the captioned WPs will have to perambulate, with the consent of learned counsel on both sides, main WPs were taken up in the Admission Board itself.

11. Before we proceed further, we make it clear that the writ petitioners do not have title or patta to said lands and whether it is pattai, kalam or kalvai, they can be treated as encroachers/unauthorised occupants for the purposes of impugned notices but we hasten to add that they may have some answer to the II impugned notices as post I impugned notices, as there have been some revenue proceedings and our attention has been drawn to post revenue proceedings more particularly proceedings bearing reference Na.Ka.Aa.1/230/2021 made in May of 2024 by R3 and proceedings said to have been made by jurisdictional Revenue Divisional Officer (RDO) in September of 2024 bearing reference Na.Ka.Aa.1/2014/2024. Therefore, in the light of ***T.K.Shanmugam*** {***T.K.Shanmugam Vs. State of Tamil Nadu***} principle i.e., ***T.K.Shanmugam***



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(FB) reported in 2015 (5) LW 397 and more particularly sub paragraph (f) of paragraph 15 and sub sub-paragraphs (i), (ii) and (iii) thereof, it is only imperative that the noticees/writ petitioners are given an opportunity to respond to II impugned notices raising all points and it is only apposite and appropriate that R1 passes an order considering the response. In other words, going by *T.K.Shanmugam (FB)* principle, the noticees have to be show caused and given an opportunity.

12. Before we proceed further, we deem it appropriate to record that impugned notices have been issued to many noticees and one such noticee viz., Thiru.Baskar filed W.P.No.35616 of 2024 and the same came to be disposed of by another Hon'ble Division Bench on 26.11.2024. A careful perusal of this 26.11.2024 order brings to light that Baskar's case order may not be of aid either to the writ petitioners or to the State in the captioned matters for two reasons. One reason is in Baskar's case, the writ petitioner has given an undertaking to the Court saying that the writ petitioner will vacate within the time frame captured therein. The second reason is in Baskar's case, when Thiru.Baskar responded to the I impugned notice vide objections dated 20.07.2022, orders were passed in the same on 06.09.2022 and it is also seen that Thiru.Baskar had also filed an

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appeal to jurisdictional District Revenue Officer. In the cases on hand, as already alluded to supra and as captured supra, State has not passed any orders on the objections of the writ petitioners qua I impugned notices.

13. This Court now reverts to the cases on hand. As regards the cases on hand, elaborating on ***T.K.Shanmugam (FB)***, we deem it appropriate to write that the vires of the Tanks Act was assailed in ***T.S.Senthil Kumar's case [T.S.Senthil Kumar vs. Government of Tamil Nadu]*** reported in **2010 (3) MLJ 771** and a Hon'ble Division Bench by order dated 10.02.2010 upheld the vires of the Tanks Act. This ***T.S.Senthil Kumar's case*** was reiterated in ***T.K.Shanmugam*** by the Hon'ble Full Bench reported in **2015 (5) LW 397** and while reiterating the Division Bench order in ***T.S.Senthil Kumar***, Hon'ble Full Bench put in a caveat with regard to the procedure to be followed when proceedings are initiated under the Tanks Act and an adumbration of said proceedings is found in sub sub-paragraphs (i), (ii) and (iii) of sub-paragraph (f) of paragraph 15 of ***T.K.Shanmugam (FB)*** which reads 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.'



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14. This Court has repeatedly held that the dictum/ratio or in other words the procedure laid down by way of a principle by a Hon'ble Full Bench has to be followed. It is only appropriate that alleged encroachers are show caused before coercive action is taken.

15. There is no dispute about the obtaining legal position qua *T.S.Senthil Kumar (DB)* or *T.K.Shanmugam (FB)*.

16. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:

16.1 The eleven II impugned notices all dated 15.11.2024 issued by R1 shall now be treated as Show Cause Notices (SCNs);

16.2 There is no dispute or contestation that the writ petitioners have received the II impugned notices. Therefore, the noticees/writ petitioners shall send their



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*objections within a fortnight from today i.e.,
by 23.12.2024;*

*16.3 Thereafter, R1 shall consider the
objections and pass appropriate orders in
accordance with the provisions of Tanks Act
within another fortnight therefrom i.e., by
06.01.2025;*

*16.4 If the orders made by R1 are in
favour of the writ petitioners, that may well be
the end of the road qua captioned matters. If
that not be so, the proceedings qua removal of
encroachments shall be commenced and
concluded as expeditiously as the business of
the respondents would permit preferably
within another fortnight therefrom i.e., by
20.01.2025;*

*16.5 For the abovesaid legal drill qua
T.K.Shanmugam (FB) principle all questions i.e.,*



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all contentions of both sides are left open.

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17. Captioned WPs are disposed of in the aforesaid manner with
aforereferred observations and directives. Consequently, captioned
WMPs thereat are disposed of as closed. There shall be no order as to
costs.

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

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Index : Yes / No

Neutral Citation : Yes / No

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P.S.: Though captioned WPs are disposed of, list under the cause list
caption 'FOR REPORT' on 10.01.2025.

To

1.The Assistant Engineer,
Water Resources Department,
Irrigation Division,
Arakkonam, Ranipet District.

2.The Commissioner,
Arakkonam Municipality,
Arakkonam, Ranipet District.

3.The Tahsildar,
Arakkonam Taluk,
Arakkonam, Ranipet District.

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and
K.RAJASEKAR, J.,**

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