



W.P.No.38670 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.38670 of 2024

G.Shanthi

W/o.D.Gunasekaran

... Petitioner

Vs.

1. The District Collector
Collectorate Campus
C..Chitarasu House, Sathuvacheri
Vellore - 632 009.
2. The Executive Engineer
W.R.O. P.W.D
Upper Palar Division, Gandhinagar
Katpadi
Vellore - 632 006.
3. The Assistant Engineer
Irrigation Section
Vellore - 632 006.
4. The Tahsildar
Anaicut Taluk Office
Anaicut
Vellore - 632 101.

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5. The Executive Officer
Pallikonda Town Panchayat
Pallikonda
Vellore - 635 809.
6. T.Venkatesan
S/o.Thambaan
7. C.Babu
S/o.Jittaan

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the 1st to 4th respondents to remove the encroachments made by 6th, 7th respondents on the Mordhana Dam Canal at Keelachur Village, Pallikonda, Anaicut Taluk, Vellore District.

For Petitioner	:	Mr.G.Jaisivaramaraj
For Respondents	:	Mr.T.K.Saravanan
		Government Advocate
		for R1 to R4
		Mr.D.Ravichander
		Special Government Pleader, for R5

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed complaining that there is encroachment in மோர்தானா நீர்தேக்க திட்டகால்வாய், which according to writ petitioner is a water



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body i.e., Tank.

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2. Mr.G.Jaisivaramaraj, learned counsel for writ petitioner submits that R6 is the alleged encroacher, representations have been sent, there is inaction and that has necessitated the filing of captioned WP.

3. Issue notice to official respondents i.e., R1 to R5.

4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for R1 to R4 and Mr.D.Ravichander, learned Special Government Pleader accepts notice for R5.

5. Learned State Counsel submits that R1 has already addressed a letter to R4 vide communication dated 29.10.2024 bearing reference No.Oo.Mu.P3/E-2566870/2024 and pursuant to such letter, a survey would be conducted and if any encroachment is found, action will be taken 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}. Action under Tanks Act necessarily means that alleged encroacher/(s) i.e., R6 or any other person would be put on notice in the light of ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} more particularly sub sub-paragraphs (i)



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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)

(b).....

(c).....

(d).....

(e).....



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(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.'

6. In the light of the above, we make it clear that rights and contentions of R6 or any other alleged encroacher, who is show caused will be preserved for sending suitable reply.



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7. In this view of the matter, captioned WP is taken up in the Admission Board with the consent of both sides.

8. We find from the facts and circumstances of the case that it will suffice to record the stated position of learned State Counsel and dispose of the captioned WP as closed. We do so.

Captioned WP disposed of as closed in the aforesaid manner. 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

Speaking order / Non-speaking order

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