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W.P.No.1493 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2025

CORAM :

THE HON'BLE MR. JUSTICE M. SUNDAR
and
THE HON'BLE MR. JUSTICE R. SAKTHIVEL

W.P. No.1493 of 2023 and W.M.P.No. 1589 of 2023

- 1 R. Shanmugam
- 2 Saminathan
- 3 Parimala
- 4 Thangamani
- 5 Thulasimani
- 6 Sivaranjani
- 7 Santhiya
- 8 Loganayaki
- 9 Venkatachalam
- 10 Nagapandi
- 11 Deivathal
- 12 R. Eswari
- 13 Selvi
- 14 S. Eswari
- 15 Sumathi
- 16 Santhi
- 17 Vasanthamani
- 18 N. Marappan

Petitioners

vs.

- 1 The District Collector
Tiruppur District
Tiruppur
- 2 The Tahsildar
O/o.Tiruppur North
Tiruppur-641 061
- 3 The Assistant Engineer
Water Resources Department (Irrigation)
Bhavanisagar Dam Division
Tiruppur District

Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus to call for the records relating to the notice dated 02.04.2022 issued by the 3rd respondent, quash the same and consequently, direct the respondents to retain the petitioners in the existing house situated at Vaikkalmedu (AITUC Colony), Karumarampalayam, Mannarai Post, Uthukuli Road, Tirupur District - 641 067 by issuing patta in the name of petitioners.

For petitioners Mr. G. Ethirajulu
For RR 1 & 2 Mr. M.S. Arasakumar
 Government Advocate

- - - -

ORDER

(made by M. SUNDAR, J.)

Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed with a prayer for issue of a writ of certiorarified mandamus.

2. Mr. G. Ethirajulu, learned counsel on record for writ petitioners, is before us.

3. As regards the certiorari limb of the prayer, the same assails 18 separate notices issued to the 18 writ petitioners, all dated 02.04.2022, by R3 (Assistant Engineer, WRD-Irrigation). These 18



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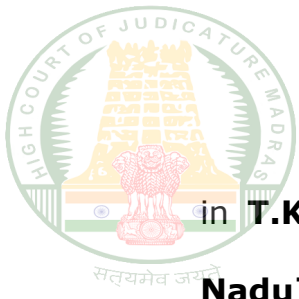
notices shall collectively be referred to as 'impugned notices' for the sake of convenience and clarity. As regards the impugned notices, learned counsel for writ petitioners submits that the writ petitioners have not been given an opportunity and the impugned notices straightaway call upon the writ petitioners to remove, what according to R3, is alleged encroachment in Vaikkalmedu (AITUC Colony), Karumarampalayam, Mannarai Post, Uthukuli Road, Tiruppur District - 641 067.

4. As regards the mandamus limb, learned counsel submits that the writ petitioners have sought issue of patta stating that similarly placed persons have been issued patta and there is inaction *qua* writ petitioners' plea for issue of patta. This has necessitated the mandamus limb of the prayer, is learned counsel's say.

5. Issue notice to respondents.

6. Mr. M.S. Arasakumar, learned Government Advocate, accepts notice for RR 1 and 2.

7. Learned State counsel submits that as regards impugned notices, **T.K. Shanmugam** principle will be followed, *i.e.*, procedure/mechanism put in place by Hon'ble Full Bench of this Court



in **T.K.Shanmugam case [T.K.Shanmugam Vs. State of Tamil Nadu]** reported in **2015 (5) LW 397.**

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8. As regards **T.K.Shanmugam** principle, relevant paragraphs are sub sub-paragraphs (i) to (iii) of subparagraph (f) of paragraph 15 and the same read 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)

(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.



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(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.'

To be noted, **T.K.Shanmugam** reiterates **T.S.Senthil Kumar** principle [**T.S.Senthil Kumar Vs. Government of Tamil Nadu** reported in **(2010) 3 MLJ 771**] rendered by Hon'ble Coordinate co-equal Division Bench.

9. Insofar as the mandamus limb of the prayer, learned State counsel submits, on instructions, that writ petitioners' plea for issue of pattas is under active consideration of R2 (Tahsildar) and R2 will take a call on the same within eight weeks from today *i.e.*, on or before 15.08.2025.

10. The aforementioned stated position of learned State counsel has made the task of disposal of captioned main WP fairly simple and therefore, finding that the perimeter within which the legal drill at hand should perambulate has been vastly descoped, we take up the captioned main WP with the consent of learned counsel on either side and make the following order:

- i. R2 shall now decide the writ petitioners' plea *qua* issue of pattas on its own merits and in accordance with law before 15.08.2025;



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- ii. The decision of R2 shall be communicated to each of the 18 writ petitioners under due acknowledgment within two weeks therefrom *i.e.*, on or before 29.08.2025;
- iii. As regards certiorari limb, certiorari prayer is not acceded to but the same is answered by writing that the 18 impugned notices, all dated 02.04.2022, issued by R3 shall now be treated as show cause notices (SCNs) *vide* **T.K. Shanmugam** principle;
- iv. As impugned notices are now ordered to be treated as SCNs *vide* **T.K. Shanmugam** principle alluded to *supra*, writ petitioners will respond to the SCNs within a fortnight from 29.08.2025 *i.e.*, on or before 12.09.2025;
- v. Whether writ petitioners respond/do not respond, **T.K. Shanmugam** principle will govern and the same shall be followed and the impugned notices shall be taken to their logical end;
- vi. Though obvious, for the sake of specificity, we make it clear that we have not expressed any view or opinion on the merits of the matter.
- vii. We also make it clear, though obvious, that coercive action, if any and if at all that be so, will be subject to and depending on the logical conclusion of the impugned notices.



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11. Captioned main WP stands disposed of in the aforesaid manner. As we have made it clear that coercive action, if any and if at all that be so, will be subject to and depending on the logical conclusion of the impugned notices, anxiety of the writ petitioners *qua* imminent dispossession/demolition stands doused. Consequently, captioned writ miscellaneous petition becomes otiose. Hence, the same stands disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
20.06.2025

cad
Index : Yes/No
NC : Yes/No



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