



W.P.No.1935 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.1935 of 2025

and

W.M.P.No.2222 of 2025

M.Mayilsamy
S/o.Muthusamy

... Petitioner

Vs.

1. The Executive Engineer
Parambikulam - Aliyar Project Scheme
Water Resources Organization
Makkinampatti
Pollachi - 642 003
Coimbatore District.

2. The Assistant Engineer
Parambikulam - Aliyar Project Scheme
Water Resources Organization
Palladam, Palladam Taluk
Tiruppur District.

3. The Assistant Engineer
Parambikulam - Aliyar Project Scheme
Water Resources Organization
Senjeripudur, Sulur Taluk
Coimbatore District.

... Respondents



W.P.No.1935 of 2025

Prayer :

WEB COPY

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records relating to impugned notice issued by the 3rd respondent in Form-III dated 10.12.2024 and quash the same.

For Petitioner : Ms.R.Hemalatha
For Respondents : Mr.V.Ravi
Special Government Pleader

ORDER

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

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed with a certiorari prayer assailing a notice dated 10.12.2024. This notice has been issued by R3 (Assistant Divisional Engineer - Water Resources Organization) and the same shall be referred to as 'impugned notice' for the sake of convenience and clarity.

2. Learned counsel for writ petitioner submits that the impugned notice directly calls upon the writ petitioner to remove the alleged encroachment within 15 days without even show causing the writ petitioner.



W.P.No.1935 of 2025

WEB COPY

3. Issue notice.

4. Mr.V.Ravi, learned Special Government Pleader, accepts notice for R1 to R3.

5. Learned State counsel, on instructions, submits that survey has been done, encroachment has been noticed and steps are underway.

6. Owing to the limited scope of the captioned main WP, captioned main WP was taken up in the Admission Board with the consent of learned counsel on both sides.

7. In the case on hand, the impugned notice issued by R3 directly calls upon the alleged encroacher to remove the encroachment within 15 days without 'show cause notice' (hereinafter 'SCN' for the sake of brevity). Therefore, we are of the considered view that it would serve the ends of justice, if the impugned notice is directed to be treated as SCN and if the writ petitioner is given an opportunity to send a representation (if so advised



W.P.No.1935 of 2025

and if so desired) so that the authority or officer concerned can pass final orders considering the cause shown.

8. The alleged encroachment being in water body, the eviction proceedings will obviously be 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} and 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' {hereinafter 'Tanks Rules' for the sake of convenience, clarity and brevity}. As regards Tanks Act and Rules thereunder, a Hon'ble Full bench in ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} has made it clear that alleged encroachers should be put on notice and relevant paragraph in ***T.K.Shanmugam*** case is paragraph No.15 which 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



W.P.No.1935 of 2025

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)The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b)The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c)As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words



W.P.No.1935 of 2025

"public interest" shall be implicitly borne in mind.(emphasis laid)

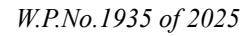
(d)The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands. (emphasis laid)

(e)The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. (emphasis laid)

(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



(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.'

(i) Impugned notice dated 10.12.2024 shall now be treated as SCN;

(iii) If the writ petitioner sends objection / response as above, R3 shall pass final orders after considering the objection / response;

(iv) If the writ petitioner does not send any objection / response by 06.02.2025, it is open to respondents to proceed further in accordance in law;



W.P.No.1935 of 2025

(v) Though obvious, it is made clear that any

further action will be subject to and depending on final orders to be made by concerned authorities, if objection / response is sent.

Captioned main WP disposed of in the aforesaid manner.

Consequently, Writ Miscellaneous Petition thereat disposed of as closed.

There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

23.01.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk



W.P.No.1935 of 2025

To

WEB COPY

1. The Executive Engineer
Parambikulam - Aliyar Project Scheme
Water Resources Organization
Makkinampatti
Pollachi - 642 003
Coimbatore District.
2. The Assistant Engineer
Parambikulam - Aliyar Project Scheme
Water Resources Organization
Palladam, Palladam Taluk
Tiruppur District.
3. The Assistant Engineer
Parambikulam - Aliyar Project Scheme
Water Resources Organization
Senjeripudur, Sular Taluk
Coimbatore District.



WEB COPY



W.P.No.1935 of 2025

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

mk

W.P.No.1935 of 2025

23.01.2025
(2/2)

Page Nos.10/10