



W.P.No.17538 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.17538 of 2025

M.Murali

... Petitioner

Vs.

- 1.The District Collector,
Office of the District Collector,
Tiruvallur, Tiruvallur District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Tiruvallur, Tiruvallur District.
- 3.The District Deputy Director,
Office of the District Land Survey Department,
Tiruvallur, Tiruvallur District.
- 4.The Tahsildar,
Office of the Tahsildar,
Gummidipoondi, Tiruvallur District.
- 5.The Assistant Executive Engineer,
Public Works Department,
Water Resource Department,
Tiruvallur, Tiruvallur District.
- 6.M/s.Aqua Terra Coke & Energy Limited
rep. By its General Manager,
No.45, Getnamalli Village,

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Gummidipoondi – 601 201.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider and dispose of the petitioner's representation dated 03.01.2022 by restoring the public small pond inter-link canals of big lake, small pond and other Government land in Getnamallee village.

For Petitioner : Mr.X.Selvam Sounder

For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1 to R5

ORDER

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

Subject matter of captioned main 'Writ Petition' [hereinafter 'WP' for the sake of brevity] is 'waterbodies comprised in Survey Nos.342, 343, 345 and 369/1 all in 45, Getnamallee Village, Gummidipoondi Taluk, Thiruvallur District' (hereinafter 'said waterbodies' for the sake of brevity, convenience and clarity).

2. Writ petitioner has sent a 'representation dated 03.01.2022 to R4 [Tahsildar, Gummidipoondi, Thiruvallur District]' {hereinafter 'said representation' for the sake of convenience and clarity) seeking removal of alleged encroachment in said waterbodies.



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3. Mr.X.Selvam Sounder, learned counsel on record for writ petitioner, advertng to said representation submits that the captioned WP is predicated on said representation and said representation in turn seeks removal of encroachments in said waterbodies. Inaction on the part of official respondents has necessitated captioned WP is his further say.

4. Issue notice to official respondents.

5. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 to R5 and submits that as regards the four waterbodies, with regard to waterbody comprised in Survey No.342, action has already been initiated under 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} and an order under Section 6 of said 1905 Act has been made by R4. Let these proceedings go on, on its own merits and in accordance with law and let the same be carried to its logical end.

6. As regards remaining three waterbodies comprised in Survey



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Nos. 343, 345 and 369/1, learned State counsel submits that survey is in the anvil and depending on the survey outcome, action for removal of encroachment (if found) will be initiated vide 'the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' (hereinafter 'Tanks Act' for the sake of brevity).

7. Though obvious, this Court deems it appropriate to make it clear that due process of law vide Tanks Act necessarily means adherence to procedure put in place by a Hon'ble Full Bench of this Court vide **T.K.Shanmugam** case [**T.K.Shanmugam Vs. State of Tamil Nadu**] reported in **2015 (5) LW 397**. As regards **T.K. Shanmugam** principle, relevant paragraphs are sub sub-paragraphs (i) to (iii) of subparagraph (f) of paragraph 15 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.Sathyarayanan,J.) was a party. The Division Bench took note of the various decisions



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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.

(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



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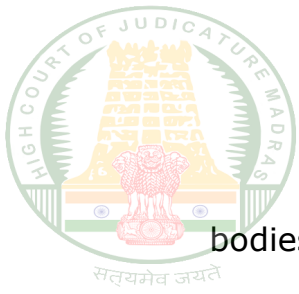
encroachment.'

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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 coequal Division Bench.

8. The above means that the private respondent (R6), who is an alleged encroacher and/or any other encroachers will be put on notice/show caused, given an opportunity and action will be subject to and depending on cause shown / response of noticee/s. Therefore, captioned main WP is taken up with the consent of learned counsel for writ petitioner and learned State counsel, dispensing with notice to private respondent. Though obvious, it is made clear that this order does not touch upon the rights of private respondent and / or any other noticee/s under the Tanks Act. This means that all the rights and contentions of private respondent and/or any other noticee/s stand preserved for responding suitably when show caused / visited with notices. Though obvious, for the sake of specificity, it is clarified that this Court, in instant order, has not expressed any view or opinion one way or the other regarding alleged encroachment qua said water

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bodies.

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9. In the light of the narrative thus far, captioned main WP is disposed of in the aforesaid manner, recording the stated position of learned State counsel that survey will be done within a period of eight weeks from today, i.e., on or before 30.07.2025 and action if any, under the Tanks Act will be commenced as expeditiously as the business of official respondents would permit but in any event within a period of eight weeks therefrom i.e., on or before 24.09.2025. There shall be no order as to costs.

(M.S.,J.)

(H.C.,J.)

04.06.2025

Index : Yes / No

Neutral Citation : Yes / No

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Office of the District Collector,
Tiruvallur, Tiruvallur District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Tiruvallur, Tiruvallur District.

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3.The District Deputy Director,
Office of the District Land Survey Department,
Tiruvallur, Tiruvallur District.

**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

mmi

4.The Tahsildar,
Office of the Tahsildar,
Gummidipoondi, Tiruvallur District.

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