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W.P. No.6568 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P.No.6568 of 2025 and W.M.P. No.7230 of 2025

J. Udhayakumar

Petitioner

vs.

The Assistant Engineer
Department of Water Resources
Keelpenathur Irrigation Division
Tiruvannamalai

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the respondent dated 24.01.2025 made in Form – III issued under Section 6(1) of the Tamil Nadu Land Encroachment Act, 1905 and quash the same.

For petitioner Mr. K. Venkatasubban
for M/s. Sarvabhauman Associates

For respondent Mr. V. Ravi
Special Government Pleader



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ORDER

[made by M.SUNDAR, J.]

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed assailing a 'notice dated 24.01.2025 issued by the sole respondent' (hereinafter 'impugned notice' for the sake of convenience and clarity).

2. Mr. K. Venkatasubban, learned counsel of M/s.Sarvabhauman Associates (Law Firm), adverting to the impugned notice issued by the sole respondent, submits that it calls upon the writ petitioner to remove alleged encroachment in Survey No.55 admeasuring 00.89.5 hectare or thereabouts (encroachment to an extent of 0.04.0 hectare) on the ground that the alleged encroachment is in a water body (ஏரியின் நீர் பிடிப்புப் பகுதி).

3. Learned counsel for writ petitioner submits that writ petitioner has not been show caused.

4. Issue notice to sole respondent.



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5. Mr. V. Ravi, learned Special Government Pleader, accepts notice for sole respondent and submits that there is encroachment in the water body and therefore, '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) has been resorted to.

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

7. We carefully considered the submissions of both sides.

8. As regards alleged encroachment and resort to Tanks Act, procedure to be followed has been laid down by a Hon'ble Division Bench in **T.S. Senthil Kumar vide T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in **(2010) 3 MLJ 771: 2010 Writ LR 113:MANU/TN/0281/2010**. Paragraph 42 is of relevance and the same reads as follows:

'42. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases in **Mysore v. J.V. Bhat** (supra) and (ii) **Scheduled Caste & Weaker Section Welfare Association v. State of**



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Karnataka (supra), where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(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 “public interest” shall be implicitly borne in mind.

(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.

(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.

(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



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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.'

9. The aforementioned procedure to be followed has been reiterated/affirmed by a Hon'ble Full Bench of this Court *vide* **T.K.Shanmugam's case [T.K.Shanmugam Vs. State of Tamil Nadu]** reported in **2015 (5) LW 397**. Sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph 15 are of relevance 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



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and issued the following directions *vide* judgment dated 10.02.2010, reported in 2010 3 MLJ 771.

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(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 encroachment.'

10. The above means that the writ petitioner ought to have been show caused and given an opportunity as per what we would refer to as **T.K. Shanmugam** principle.



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11. Faced with the above situation, learned State counsel submitted that the impugned notice shall now be treated as a 'show cause notice' (hereinafter 'SCN' for the sake of brevity) and **T.K.Shanmugam** principle will follow. This submission is recorded.

12. As regards the certiorari prayer, we are not dislodging the impugned notice but we hold that the impugned notice will now be treated as SCN *vide* **T.K. Shanmugam** principle and the rest of the procedure laid down in **T.S. Senthil Kumar** affirmed in **T.K.Shanmugam** will follow. Any coercive action will be subject to and depending on the outcome *qua* aforereferred procedure to be followed.

13. Captioned main WP stands disposed of in the aforesaid manner. Consequently, captioned writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
26.02.2025

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M.SUNDAR, J.

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To:

The Assistant Engineer
Department of Water Resources
Keelpenathur Irrigation Division
Tiruvannamalai

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