



W.P.No.7303 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 05.03.2025

CORAM

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

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.7303 of 2025

&

W.M.P.No.8131 of 2025

in W.P.No.7303 of 2025

S.Thangaraj

S/o.Late Santhosam

... Petitioner

vs.

1. The Tahsildar

Madhavaram Taluk

Thiruvallur District

2. The Section Officer

Redhills Irrigation Zone

Redhills, Chennai – 600 052

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records in Notice No.997/செ.கு/2025 dated 07.01.2025 on the file of the second respondent and quash the same as null and void, ultra vires without jurisdiction and without authority.

For Petitioner : Mr.P.R.Krishnaraj

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For Respondents : Mr.V.Ravi
Special Government Pleader

ORDER

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

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed with a certiorari prayer assailing 'a notice dated 07.01.2025 issued by R2' [hereinafter 'impugned notice' for the sake of brevity and convenience].

2. Impugned notice has been issued under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity).

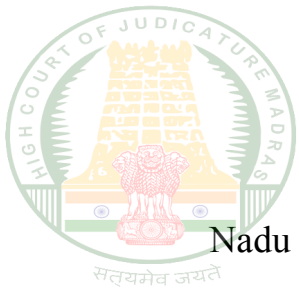
3. Mr.P.R.Krishnarj, learned counsel for writ petitioner submits that writ petitioner has not been show-caused or given an opportunity.

4. Issue notice.

5. Mr.V.Ravi, learned Special Government Pleader, accepts notice for both the respondents and submits that the impugned notice may now be treated as a show-cause notice.

6. Before we proceed further, we make it clear that the Tanks Act received the assent of Governor on 22.05.2007 and was published in Tamil

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Nadu Gazette on 23.05.2007. It kicked in on 01.10.2007 vide a notification made by the Government under sub-section (3) of Section 1 of Tanks Act and a scanned reproduction of the notification is as follows:



**TAMIL NADU
GOVERNMENT GAZETTE
EXTRAORDINARY**

No.274]

CHENNAI, MONDAY, OCTOBER 1, 2007
Purattasi 14, Sarvajith, Thiruvalluvar Aandu-2038

Part II --- Section 2

**Notification or Orders of interest to a section of the public
issued by Secretariat Departments.**

NOTIFICATIONS BY GOVERNMENT

PUBLIC WORKS DEPARTMENT

DATE OF COMING INTO FORCE OF THE TAMIL NADU PROTECTION OF
TANKS AND EVICTION OF ENCROACHMENT ACT, 2007,

[G.O.Ms.No.320, Public Works (W2), 28th September 2007,]

No.II (2) 1 PW/586(b)/2007.

In exercise of the powers conferred by sub-section (3) of Section 1 of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 (Tamil Nadu Act 8 of 2007), the Governor of Tamil Nadu hereby appoints the 1st day of October 2007 as the date on which the said Act shall come into force.

S.AUDISESHIAH,
Secretary to Government.

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ON BEHALF OF THE GOVERNMENT OF TAMIL NADU

DTP-II.2 Ex (274)



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WEB COPY 7. Validity of the Tanks Act was assailed in ***T.S.Senthil Kumar***

{T.S.Senthil Kumar Vs. Government of Tamil Nadu and others reported in 2010 SCC OnLine Mad 1347}. In ***T.S.Senthil Kumar*** the validity of the Tanks Act was upheld but with certain directions as the Act does not specifically indicate that the encroachers do not have a right to be heard.

This is vide sub-paragraph (f) of paragraph 42 which 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 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)

(b)

(c)

(d)

(e)

(f) We uphold the Act, while we provide for observance of



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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.'*

8. Subsequently vide ***T.K.Shanmugam (Full Bench)*** principle *i.e.,*

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

aforereferred ***T.S.Senthil Kumar*** procedure was reiterated and relevant

paragraph is sub-paragraph (f) of paragraph 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 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



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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.'

9. In the light of the obtaining position of law, the impugned notice shall now be treated as show-cause notice and **T.S.Senthil Kumar/ T.K.Shanmugam** principles shall be followed as regards the procedure / opportunity being given to the writ petitioner.

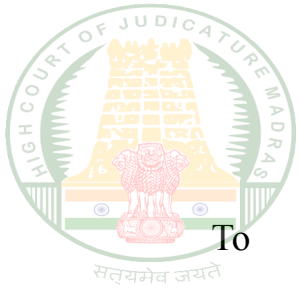
10. As the sole point raised by the writ petitioner stands addressed, captioned WP disposed of in the aforesaid manner. Consequently, captioned WMP thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

05.03.2025

Index : Yes/No
Neutral Citation : Yes/No
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To

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1. The Tahsildar
Madhavaram Taluk
Thiruvallur District
2. The Section Officer
Redhills Irrigation Zone
Redhills, Chennai – 600 052



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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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