



W.P.No.8601 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.03.2025

CORAM

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

and

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

W.P.No.8601 of 2025

S.Arul

S/o.Subramanian,

... Petitioner

VS.

1. The District Collector
Kallakurichi District
Kallakurichi

2. The Tahsildhar
Ulundurpet Taluk
Ulundurpet, Kallakurichi District

3. Sankar
S/o.Janakiraman

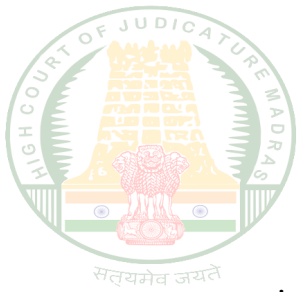
4. Mahalakshmi
W/o.Saravanan

5. The Assistant Engineer
Water Resource Department
Irrigation Department
Ulundurpet
Kallakurichi District

... Respondents

(R5 suo moto impleaded vide this order)

Page Nos.1/9



W.P.No.8601 of 2025

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing Respondents 1 and 2 herein to remove the encroachments in the Canal which flows from Survey N.357/18 situated at Adhanur Village, Ulundurpet Taluk, Kallakurichi District by considering the petitioner's representation dated 03.02.2025 within a time frame.

For Petitioner : Mr.C.Munusamy

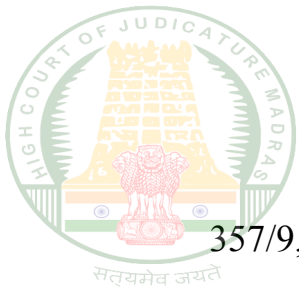
For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1, R2 and R5

ORDER

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

Subject matter of captioned main 'Writ Petition' ['WP' for the sake of brevity] is alleged encroachments in a canal which flows from S.No.357/18 in Adhanur Village, Ulundurpet Taluk, Kallakurichi District' [hereinafter 'said canal' for the sake of brevity, convenience and clarity].

2. Mr.C.Munusamy, learned counsel for writ petitioner submits that there are encroachments in said canal and this is affecting writ petitioner's agricultural activity in 'agricultural land belonging to writ petitioner ad-measuring 3 acres or thereabouts in Survey Nos.357/14, 357/15, 357/16,



W.P.No.8601 of 2025

357/9, 386/1A, 389/2A, 471/2A2 and 7/8B situate in Adhanur Village, Ulundurpet Taluk, Kallakurichi District' [hereinafter 'writ petitioner's agricultural land' for the sake of convenience].

3. Learned counsel submits that a representation dated 03.02.2025 made to R1 has not evoked any response. This has necessitated the captioned WP with a mandamus prayer is learned counsel's further say.

4. Issue notice to official respondents i.e., R1 to R2.

5. Mr. T.K. Saravanan, learned Additional Government Pleader accepts notice for official respondents (R1 & R2) and learned State counsel submits, on instructions, that survey of said canal was done on 28.02.2025, encroachments were found and Water Resource Department (WRD) has been addressed. In this view of the matter, we *suo motu* implead Assistant Engineer, Water Resource Department, Ulundurpet, Kallakurichi District as R5. Mr. T.K. Saravanan, learned Additional Government Pleader accepts notice for R5 also.

6. Learned State counsel submits that Mr. Saravanan, son of Mr. Subramanian, Mr. Vadivelu, Son of Annasami and Mr. Sanmugam, son of Annasami are alleged encroachers and that proceedings for removal of encroachment will be initiated under the 'The Tamil Nadu Protection of



W.P.No.8601 of 2025

WEB COPY

Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity). Proceedings under Tanks Act for removal of encroachment necessarily means that the alleged encroachers, be it R3 and R4 and/or any other person/entity has to be show-caused. This Court makes it clear that all the rights and contentions of R3 and R4 (private respondents) and/or any other person/s and entity/entities, who are show-caused are preserved when show-caused. This means that we are neither passing any orders touching upon the rights of R3 and R4 nor passing orders adverse to R3 and R4. Therefore, there is no impediment in taking up the captioned main WP in the Admission Board with the consent of learned counsel for writ petitioner and learned State counsel. We do so.

7. We deem it appropriate to write that procedure qua action under Tanks Act is governed by ***T.S.Senthil Kumar {T.S.Senthil Kumar Vs. Government of Tamil Nadu and others}*** reported in ***2010 SCC OnLine Mad 1347*** { ***1.K.Shanmugam (Full Bench)*** { ***T.K.Shanmugam Vs. State of Tamil Nadu*** reported in ***2015 (5) LW 397***} principles. Relevant paragraph in ***T.S.Senthil Kumar*** case is sub-paragraph (f) of paragraph 42 and relevant paragraph in ***1.K.Shanmugam (Full Bench)*** case is sub-paragraph (f) of paragraph 15 which read as follows:

Page Nos.4/9



Sub-paragraph (f) of paragraph 42 of ***T.S.Senthil Kumar*** case

WEB COPY

'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 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.



WEB COPY



W.P.No.8601 of 2025

(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.*

Sub-paragraph (f) of paragraph 15 of ***1.K.Shanmugam (Full Bench)*** case

'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*



WEB COPY



W.P.No.8601 of 2025

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(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. The above means that the private respondents and/or other alleged encroacher/s will be given opportunity/show-caused. This is clearly a safety valve qua private respondents and/or encroacher/s. Learned State counsel submits that action under Tanks Act will be initiated as expeditiously as the business of R5 permits but in any event within three weeks from today i.e., on or before 03.04.2025. We record this submission as an undertaking given to the Court.

Captioned WP disposed of recording the stated position/undertaking



W.P.No.8601 of 2025

of learned State counsel. There shall be no order as to costs.

WEB COPY

(M.S.,J.)

(K.G.T.,J.)

13.03.2025

Index : Yes/No

Neutral Citation : Yes/No

gpa

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W.P.No.8601 of 2025

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

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W.P.No.8601 of 2025

13.03.2025

Page Nos.9/9