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W.P.Nos.11602 and 11613 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2025

CORAM:

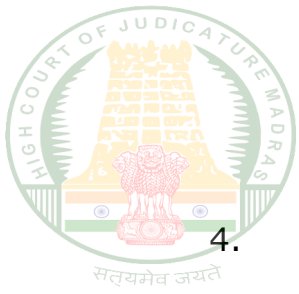
THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P.Nos.11602 and 11613 of 2025
and
W.M.P.Nos.13122, 13123, 13125 and 13126 of 2025

1. K. Kesavan
 2. K. Subramani
- Petitioners in WP No.11602/2025
- E. Karthik
- Petitioner in WP No.11613/2025

vs.

1. The Principal Secretary
Public Works Department
Secretariat
Fort St. George
Chennai 600 009
2. The District Collector
Office of the District Collector
Rajaji Salai IV Floor
No.62 Beach Road
Chennai 600 001
3. The Revenue Divisional Officer
Chennai North Office
Madhavaram Taluk, Puzhal
Balaji Nagar, Gandhi Main Street,
Chennai 600 066



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4. The Tahsildar
Madhavaram Taluk
Puzhal, Balaji Nagar
Gandhi Main Street
Chennai 600 066
5. The Section Officer
Redhills Irrigation Wing
Water Resources Organisation
Redhills
Chennai 600 052

Respondents

Prayer in W.P.No.11602 of 2025:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the entire records of the show cause notice dated 07.01.2025 bearing notice no.997/Ch.Ku/2025 issued by the fifth respondent under Form II Rule 5(3) of the Tamil Nadu Protection of Tanks and Removal of Encroachment Act, 2007 to the petitioner and quash the same and further direct the respondents not to interfere with the peaceful enjoyment of the land admeasuring 0.52 cents in Survey No.1420/2 bearing joint patta no.864 dated 1975 and further forbearing the respondents from proceeding further with the process of demolition, encroaching by construction of bund and eviction and consequently, direct them to follow the due process of law in future for the petitioners in respect of their properties situated in Survey No.1420/2



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bearing patta no.864, Madhavaram Village, Madhavaram Taluk,
Chennai District.

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Prayer in W.P.No.11613 of 2025:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the entire records of the show cause notice dated 07.01.2025 bearing notice no.997/Ch.Ku/2025 issued by the fifth respondent to the petitioner and quash the same and further direct the respondents not to interfere in the peaceful enjoyment of the land admeasuring 0.52 cents in Survey No.1420/2 bearing joint patta no.864 dated 1975 and further forbearing the respondents from proceeding further with the process of demolition, encroaching by construction of bund and eviction and consequently, direct them to follow the due process of law in future for the petitioners in respect of their properties situated in Survey No.1420/2 bearing patta no.864, Madhavaram Village, Madhavaram Taluk, Chennai District.

For petitioners
in both WPs

Mr. M. Vijay Anand

For respondents
in both WPs

Mr. V. Ravi
Special Government Pleader



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COMMON ORDER

[made by M. SUNDAR, J.)

Subject matter of captioned 'writ petitions' (hereinafter 'WPs' for the sake of brevity) is 'land measuring 52 cents or thereabouts in Survey No.1420/2 in Madhavaram Village, Madhavaram Taluk, Chennai District' (hereinafter 'said land' for the sake of convenience and clarity).

2. Mr. M. Vijay Anand, learned counsel on record for the writ petitioners, submits that the writ petitioners in W.P.No.11602 of 2025 viz., Kesavan and Subramani, and the writ petitioner in W.P.No.11613 of 2025, viz., Karthik, have joint patta being joint patta no.864/1975 *qua* said land but they have been visited with 'notices dated 07.01.2025 issued by R5' (hereinafter 'impugned notices' for the sake of convenience and clarity) alleging that they are encroachers *qua* '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) and the impugned notices call upon the writ petitioners to



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remove the structures put up by them in the said land and report to R4 (Tahsildar) within 14 days. Under pain of impugned notices from R5, captioned WPs have been filed is learned counsel's say.

3. Issue notice to the respondents.

4. Mr. V. Ravi, learned Special Government Pleader, accepts notice for all five respondents in both captioned WPs and submits that impugned notices have been issued under the Tanks Act as part of removal of encroachment exercise.

5. This Court finds that the scope of the captioned WPs is limited and therefore, with the consent of learned counsel on both sides, main WPs are taken up in the Admission Board, *i.e.*, Motion List.

6. At the outset, it is deemed appropriate to set out a short chronology of events and trajectory the earlier matters have taken in this Court and an adumbration of the same is as follows:

(i) An association which goes by the name 'MGR



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Nagar Annexe Welfare Association' filed W.P.No.4658 of 2019 with a prayer to remove alleged encroachments in Survey Nos.647/1420/1, 601, 602, etc. To be noted, this writ petition does not mention the said land with specificity. In other words *i.e.*, to put it differently, this writ petition does not mention T.S. No.1420/2. This writ petition was disposed of by another Hon'ble Division Bench in and by order dated 15.04.2021 stating *inter alia* that representation can be made, the same should be acted upon and ongoing eviction proceedings can be continued;

(ii) Learned State counsel informed this Court that a contempt petition being Cont. Petn. No.2487 of 2022 was filed alleging noncompliance with the aforementioned 15.04.2021 order in W.P.No.4658 of 2019 and in and *vide* order dated 26.02.2024, yet another Hon'ble Division Bench granted four months time to the respondents to evict encroachments;

(iii) When things stood as above, writ petitioners in



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the captioned WPs (Kesavan and Subramani, sons of Kali @ Kaliappan and Karthik, son of late Ezhumalai) filed writ petitions in W.P. Nos.17080 and 17083 of 2024 in this Court seeking to mandamus official respondents not to interfere with their peaceful enjoyment *qua* said land. These two writ petitions came to be disposed of by this very Bench in and by order dated 28.06.2024 *inter alia* recording the stated position of the learned State counsel that eviction proceedings that have been kickstarted pertain to survey numbers other than said land. This Court deems it appropriate to extract and reproduce this order dated 28.06.2024 for the sake of clarity. The same reads as follows:

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.06.2024
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

W.P.Nos.17080 & 17083 of 2024
and
W.M.P.Nos.18827 & 18835 of 2024
in
W.P.Nos.17080 & 17083 of 2024

1. K.Kesavan
S/o.Late Kali @ Kalliappan



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2. K.Subramani
S/o.Late Kali @ Kalliappan

.. Petitioners
in W.P.No.17080/2024

E.Karthick
S/o.Late Elumalai

.. Petitioner
in W.P.No.17083/2024

Vs.

1. The Principal Secretary
Public Works Department
Secretariat, Fort St.George
Chennai-600 009.
2. The District Collector
Office of the District Collector
Rajaji Salai 4th Floor
No.62, Beach Road
Chennai-600 001.
3. The Revenue Divisional Officer
Chennai North Office
Madhavaram Taluk, Puzhal
Balaji Nagar, Gandhi Main Street
Chennai-600 066.
4. The Tahsildar
Madhavaram Taluk
Puzhal, Balaji Nagar
Gandhi Main Street
Chennai-600 066.
5. The Section Officer
Redhills Irrigation Wing
Water Resources Organization
Redhills, Chennai-600 052.

.. Respondents in both WPs

Writ petitions filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, directing the respondents not to interfere in the peaceful enjoyment of the land admeasuring 0.52 cents in Survey No.1420/2 bearing Joint Patta No.864 dated 1975 and further forbearing the respondents from proceeding further the process of



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demolition, encroaching by construction of bund and eviction and consequently, direct them to follow the due process of law in future for the petitioners in respect of their properties situated in Survey No.1420/2, bearing Patta No.864, Madhavaram Village, Madhavaram Taluk, Chennai District.

For Petitioner in both WPs : Mr.M.Vijay Anand
For Respondents in both WPs: Mr.T.K.Saravanan
Government Advocate

COMMON ORDER

(Order of the Court was made by **M.Sundar, J.**)

This terse common order will govern the captioned two main 'Writ Petitions' {hereinafter 'WPs' for the sake of convenience, clarity and brevity} and 'Writ Miscellaneous Petitions' {hereinafter 'WMPs' for the sake of convenience, clarity and brevity} thereat.

2. Writ petitioners are concerned with 'land comprised in S.No.1420/2, admeasuring 0.52 cents or thereabouts in No.34, Madhavaram Village, Saidapet Taluk, Chengalpet District (to be noted, this description is of the year 1975)' {hereinafter 'said land' for the sake of convenience, clarity and brevity}.

3. Mr.M.Vijay Anand, learned counsel on record for writ petitioners, advertent to support writ affidavit submitted that said land is covered by joint patta No.864 but we refrain from expressing any view or opinion on this submission. We also refrain from expressing any view or opinion on writ petitioners' claim qua said land. The reason is the stated position of learned State Counsel which will be set out infra.

4. We issue notice to respondents in the captioned WPs and Mr.T.K.Saravanan, learned Government Advocate accepted notice for all five respondents in both WPs. Learned State counsel, on written instructions, submitted that at present, action has been kick started i.e., removal of encroachment action has been commenced with regard to S.Nos.1420/1 and 647, admeasuring 103.69.00 Hectares in Madhavaram Village, Saidapet Taluk, Chengalpet District. Learned State counsel adds that commencement of such removal of encroachment action is 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



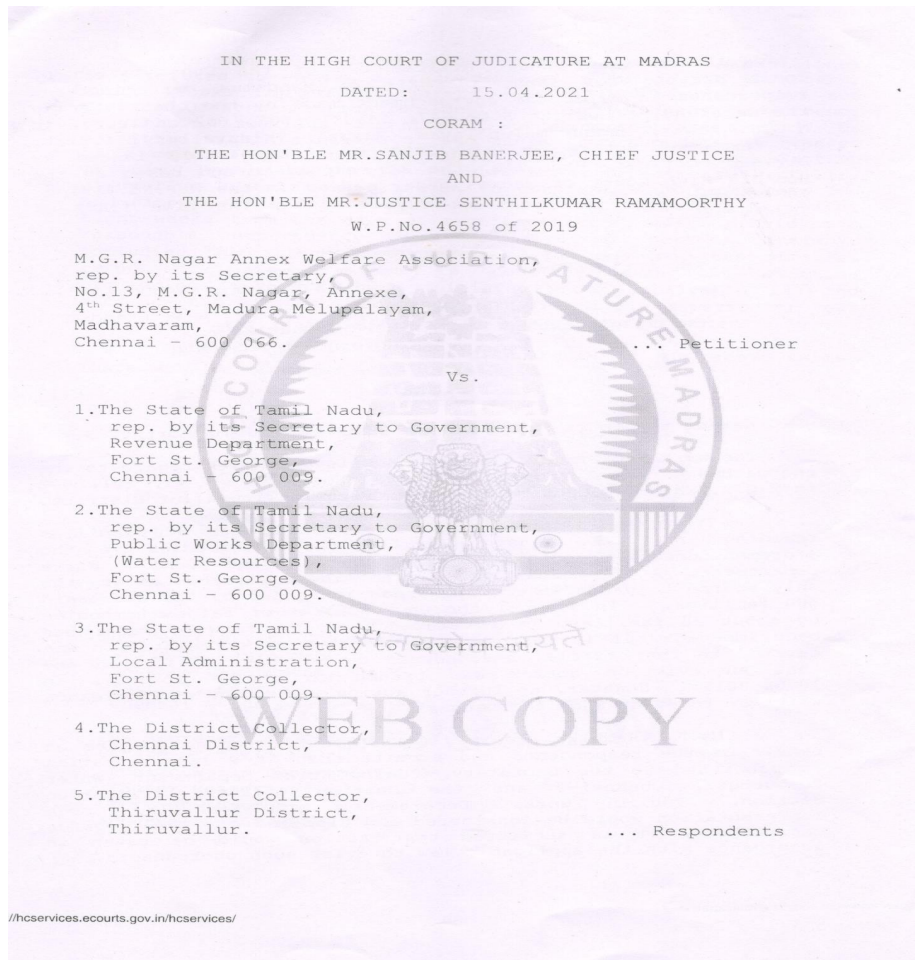
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Eviction of Encroachment Rules, 2007' {hereinafter 'Tanks Rules' for the sake of convenience, clarity and brevity}.

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5. Pursuant to an order of another Hon'ble Division Bench dated 15.04.2021 in W.P.No.4658 of 2019, the respondents are in contempt being Cont P.No.2487 of 2022 and Sub Application No.571 of 2023 which is pending before yet another Hon'ble Division Bench. We deem it appropriate to extract and reproduce the order dated 15.04.2021 made in W.P.No.4658 of 2019 and order dated 26.02.2024 made in Cont P.No.2487 of 2022 (to be noted, we are informed that contempt petition is pending) and the same are as follows:

Order dated 15.04.2021 in W.P.No.4658 of 2019:





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Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents to evict the encroachment made by the obstructor in the waterbodies bearing S.No.647, 1420/1, 601, 602 and etc., in M.G.R. Nagar, Madhuramelupalayam, Puzhal, Thiruvallur District, in terms of Notice No.79/BA/2018 dated 10.04.2018 issued by Division Officer, Redhills, the 2nd respondent and based on the Hon'ble High Court of Madras order passed in the W.P.No.1294 of 2009 dated 30.10.2015 and 02.03.2016 within the time frame of four weeks.

For Petitioner : Mrs.A.V.Bharathi
for M/s.E.Martin Jayakumar

For Respondents : Ms.R.J.Radhika
Government Advocate

ORDER

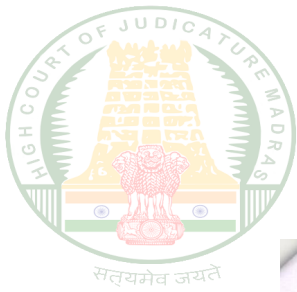
(Order of the Court was made by Senthilkumar Ramamoorthy, J.)

The writ petitioner canvasses a grievance with regard to the encroachment of waterbodies in Survey Nos.647, 1420/1, 601, 602 in M.G.R. Nagar, Madhuramelupalayam, Puzhal, Tiruvallur District.

2. It is asserted that there are more than 500 families residing in M.G.R. Nagar and that the waterbodies in the aforementioned survey numbers belong to the Public Works Department. It is further stated that these waterbodies are the only source to drain water from areas inhabited by the aforesaid 500 families. In view of the encroachment of said waterbodies by about 20 families, it is stated that the flow of water has been impeded. It is further asserted that a representation was carried to the official respondents on or about 21.11.2017 and that an eviction notice was issued to the encroachers on 10.04.2018. However, no further action was taken in accordance with law to evict such encroachers.

3. Ms.R.J.Radhika, learned Government Advocate, appears on behalf of the respondents and submits that if a representation is submitted to the Secretary, Public Works Department (Water Resources), Chennai-9 and the Section Officer, Irrigation Section, Public Works Department at Redhills, such representation would be considered and disposed of. As regards encroachers, it is submitted that action would be taken in accordance with the applicable law to evict such encroachers.

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4. In view of the aforesaid submissions, the writ petitioner is permitted to submit a fresh representation to the Secretary, Public Works Department (Water Resources), Chennai-9 and the Section Officer, Irrigation Section, Public Works Department, Redhills, Tiruvallur District. Such representation shall be submitted within a period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the Section Officer, Irrigation Section, Public Works Department, Redhills, Tiruvallur District is directed to consider such representation and dispose of the same by a reasoned order within a period of eight weeks from the date of receipt thereof, after providing a reasonable opportunity to all affected parties thereby, including the alleged encroachers. In addition, the official respondents are directed to continue with the eviction proceedings that had been initiated under applicable law and conclude the same in accordance with law within a period of four months from the date of receipt of a copy of this order.

5. W.P.No.4658 of 2019 is disposed of on the above terms. There will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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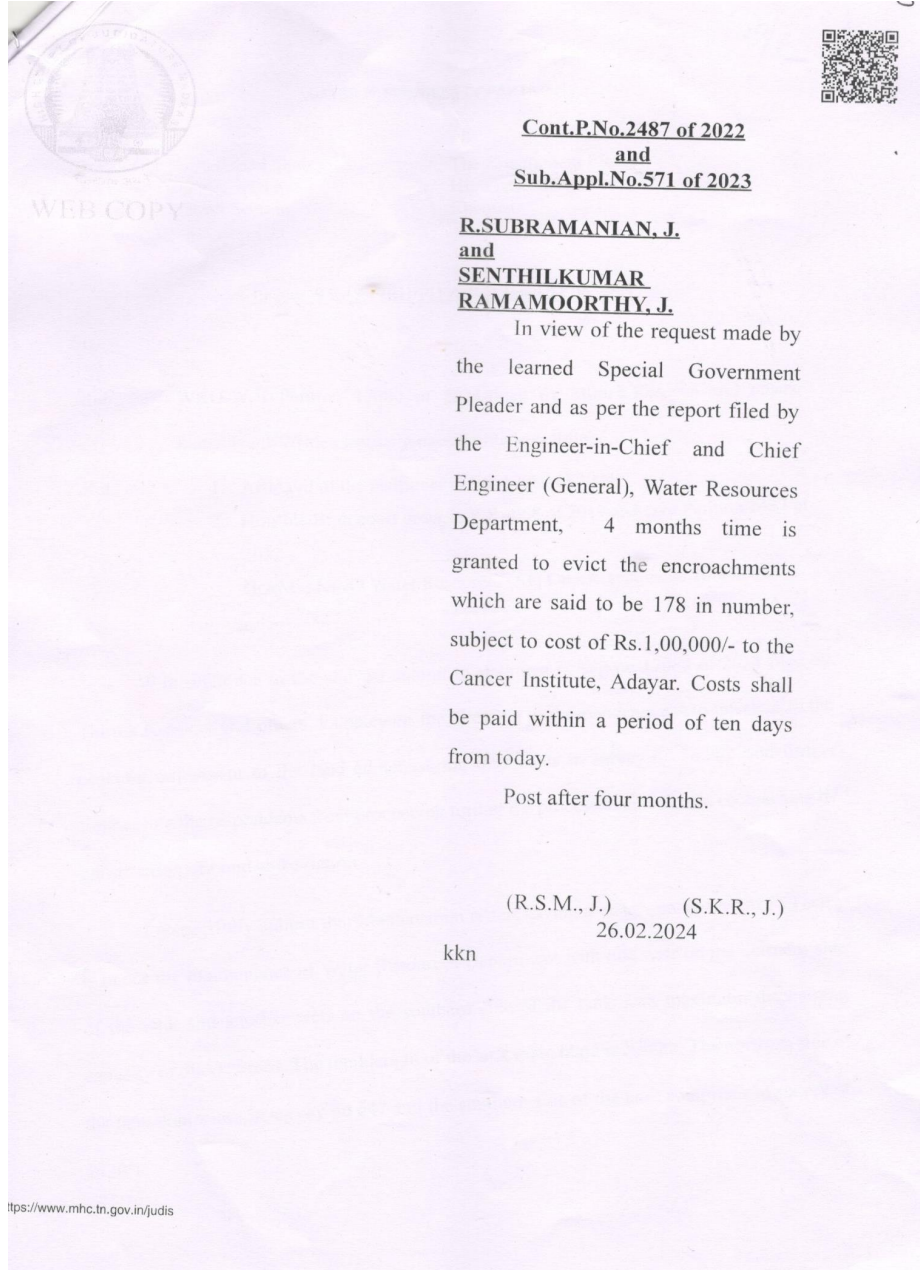
- 1.The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.
- 2.The Secretary to Government,
State of Tamil Nadu,
Public Works Department,
(Water Resources),
Fort St. George,
Chennai - 600 009.

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WEB COPY **Order dated 26.02.2024 in Cont P.No.2487 of 2022:**





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6. We revert to allusion supra i.e., allusion as regards stated position of learned State counsel. As the proceedings which have now been kick started pertain to survey numbers other than said land, without expressing any view or opinion on the claim of writ petitioners qua said land, we dispose of captioned WPs and captioned WMPs thereat as closed recording the stated position of learned State counsel. We make it clear that proceedings that have already been commenced will neither be impeded nor will get any impetus qua this order.

Captioned WPs and captioned WMPs disposed of as closed in the aforesaid manner. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
28.06.2024'

(iv) Thereafter, writ petitioners have been visited with impugned notices and writ petitioners have come to this Court assailing the impugned notices.

7. This Court, having captured the factual matrix in a nutshell and having set out trajectory the collateral matters have taken thus far, proceeds to examine the impugned notices. Impugned notices have not show caused the writ petitioners. They do not mention survey numbers. The impugned notices directly call upon writ petitioners to remove the alleged encroachments and they also say that they have been issued by R5 under the Tanks Act. To be noted, impugned notices refer to Rule 5(3) of 'the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' (hereinafter 'Tanks Rules' for the sake of convenience, clarity and brevity).



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8. 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**, reiterated the principle in **T.S. Senthil Kumar vs. Government of Tamil Nadu** reported in **(2010) 3 MLJ 771: 2010 Writ LR 113:MANU/TN/0281/2010** rendered by another Hon'ble Division Bench and held that encroachers who are being proceeded against under the Tanks Act and Tanks Rules should be show caused, opportunity should be given, their representation should be considered and orders should be made. Attention of learned State counsel was drawn (by this Court) to **T.K. Shanmugam and T.S. Senthil Kumar—**principles.

9. Faced with the above situation, learned State counsel very fairly submitted, on instructions, that the impugned notices issued to the writ petitioners will stand withdrawn. This submission is recorded.

10. In the light of the narrative thus far, the following order is made:

- (i) Impugned notices in captioned WPs stand withdrawn;



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(ii) It is open to the respondents to issue notices afresh *qua* said land (if it becomes necessary) by adhering to **T.K. Shanmugam** principle;

(iii) By **T.K. Shanmugam** principle, we refer to sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph 15 of Full Bench order in **T.K. Shanmugam** case which reiterates paragraph 42 of **T.S. Senthil Kumar** case. Sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph 15 of Full Bench order in **T.K. Shanmugam** case 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 and issued the following directions *vide* judgment dated 10.02.2010, reported in 2010 3 MLJ 771.

- (a)
- (b)
- (c)
- (d)



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(e)

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

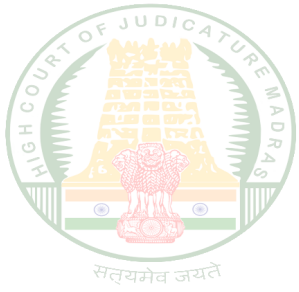
(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey 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.'

(iv) Axiomatically, we preserve all the rights and contentions of the writ petitioners to respond if show caused. All questions are left open.

(v) For the sake of specificity, we clarify that 'all questions are left open' means that the authorities under the Tanks Act and Tanks Rules shall consider the writ petitioners' responses on their own merits and in accordance with law and make orders untrammelled by withdrawal of the impugned notices or any observation in this common order.



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Captioned WPs stand disposed of in the aforesaid manner. As

the impugned notices stand withdrawn, WMPs thereat have become

otiose and the same are closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
02.04.2025

cad
Index : Yes/No
NC : Yes/No



W.P.Nos.11602 and 11613 of 2025

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To:

1. The Principal Secretary
Public Works Department
Secretariat, Fort St. George
Chennai 600 009
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Office of the District Collector
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Redhills Irrigation Wing
Water Resources Organisation
Redhills, Chennai 600 052



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W.P.Nos.11602 and 11613 of 2025

M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

cad

W.P.Nos.11602 and 11613 of 2025

02.04.2025

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