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W.P.No.18492 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

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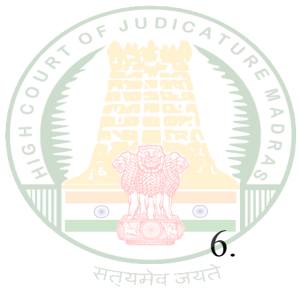
P.Murugavel

... Petitioner

vs.

1. The District Collector
Salem
Salem District
2. The Revenue Divisional Officer
Aathur
Salem District
3. The Tahsildar
Peddanaaickenpalayam
Salem
Salem District
4. The Executive Engineer
Public Works Department
Water Resources Department
Sarabanga Basin Circle
Salem
5. R.Ganesan

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6. S.Pazhanivel

7. S.Perumal

8. Rajamani

9. Periammal

10. Chandran

11. Annakodi ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the respondents 1 to 4 to remove the illegal encroachment made by the Respondents 5 to 11 in the water body land admeasuring 41.5 ares comprised in S.No.36 and land admeasuring 47 ares comprised in S.No.48, Gopalapuram Village, Peddanaickenpalayam Taluk, Salem District.

For Petitioner : Mr.M.Manohar

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R4

O R D E R

[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 encroachment in 'odai poramboke in Survey Nos.36 and



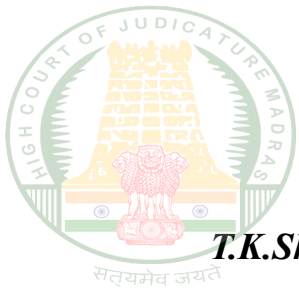
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48 admeasuring 41.5 ares and 47 ares respectively in Gopalapuram Village, Peddanaickenpalayam Taluk, Salem District' {'said water body' for the sake of convenience and brevity} made by R5 to R11 (private respondents).

2. Request for removal of afore-referred alleged encroachment has not yielded results and that has necessitated captioned main WP is the submission of learned counsel for writ petitioner.

3. Issue notice to official respondents [R1 to R4]. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for official respondents. 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).

4. 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



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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.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)



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(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.'*

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.



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5. The above means that the private respondents (R5 to R11) who are alleged encroachers and / or any other encroacher/s 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 State counsel, dispensing with notice to private respondents. Though obvious, it is made clear that this order does not touch upon the rights of private respondents and / or any other noticee/s under the Tanks Act. This means that all the rights and contentions of private respondents 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 body.

6. 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 six weeks from today, i.e., on or before 29.07.2025 and action if any, under the Tanks Act will be



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commenced as expeditiously as the business of official respondents would permit but in any event within a period of six weeks therefrom i.e., on or before 09.09.2025. There shall be no order as to costs.

(M.S.,J.)

(H.C.,J.)

17.06.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking

gpa

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HEMANT CHANDANGOUDAR, J.,**

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