



W.P.Nos.11767 and 11777 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.04.2025

CORAM

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

and

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

W.P.Nos.11767 and 11777 of 2025

&

W.M.P Nos.13326 and 13339 of 2025

Ganesan

... Petitioner

W.P.No.11767 of 2025

Mohammed Saleem Thekku

... Petitioner

W.P. No.11777 of 2025

vs.

1. The Commissioner
The Office of Commissionarate
Tambaram Municipal Corporation

2. The District Collector
Tambaram
Chengalpattu District

3. The Tahsildar
Tambaram

4. The Village Administrative Officer
Jameen Pallavaram
Tambaram

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5. The Executive Engineer
Water Resources Department
Tambaram

... Respondents
in both WPs

(*R5 suo motu impleaded vide this order)

W.P.No. 11767 of 2025: Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus forbearing the respondents particularly 2nd to 4th respondents from evicting the petitioner from the property bearing Shop No.59 situated at Railway Station Road, Jameen Pallavaram Village, Tambaram Taluk, Chengalpattu District comprised in Survey No.372/1, T.S.No.2 without passing any appropriate orders under Section 7 of the Protection of Tanks and Eviction of Encroachment Act,2007.

W.P.No. 11777 of 2025: Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus forbearing the respondents particularly 2nd to 4th respondents from evicting the petitioner from the property bearing Shop No.58 situated at Railway Station Road, Jameen Pallavaram Village, Tambaram Taluk, Chengalpattu District comprised in Survey No.372/1, T.S.No.2 without passing any appropriate orders under Section 7 of the Protection of Tanks and Eviction of Encroachment Act,2007.

For Petitioners : Mr.G.Mohammed Aseef
in both writ petitions

For Respondents : Mr.T.K.Saravanan
in both writ petitions Additional Government Pleader
for R1 to R5



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COMMON ORDER

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

In captioned 'Writ Petitions' ['WPs' in plural and 'WP' in singular for the sake of brevity], two notices, both signed by R1 (Commissioner, Tambaram Municipal Corporation) on 12.08.2024 and captioned 'Show-cause Notice' ['SCN' in singular and 'SCNs' in plural for the sake of brevity] have been assailed. These two notices shall be collectively referred to as 'impugned notices' for the sake of brevity, convenience and clarity.

2. Mr.G.Mohammed Aseef, learned counsel on record for the writ petitioners is before us. Adverting to the impugned notices, learned counsel submits that the subject matter of impugned notices is 'land comprised in Survey No.372/1, Town Survey No.2, Ward G, Block 5 in Jameen Pallavaram Village, Tambaram Corporation, Zone – 2, Chengalpattu District and the brick and mortar superstructure standing on the same' [hereinafter 'said property' for the sake of convenience and clarity].

3. Learned counsel for writ petitioners submits that R1 does not have the authority to issue SCNs as the same are under the 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu



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Act 8 of 2007)' {hereinafter 'Tanks Act' for the sake of convenience, clarity

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and brevity}. Notwithstanding this position, writ petitioners have responded to the impugned notices in and vide objections dated 27.03.2025 but without considering the objections or passing appropriate orders, hectic efforts are underway to remove writ petitioners from said property branding them as 'encroachers' under Tanks Act is learned counsel's further say.

4. Issue notice to respondents.

5. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for all four respondents and submits that one Mr.S.P.Gandhi {President of Pallavaram 13th Ward Kudiiruppor Podhu Nala Sangam} filed a writ petition in W.P.No.10863 of 2024 with a plea for removal of encroachment/s, the same came to be disposed of by a Hon'ble Division Bench on 22.04.2024 and the impugned notices have been issued pursuant to such orders.

6. This Court carefully considered the case file and the submissions.

7. This Court finds that the scope of the captioned WPs is very limited and therefore, with the consent of learned counsel on both sides, main WPs were taken up in the Admission Board.

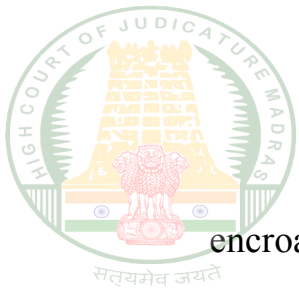


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8. The first point urged by learned counsel for writ petitioners is a jurisdiction point. A perusal of the impugned notices styled 'SCNs' makes it clear that the same have been issued by R1 purportedly under Section 6(3) of Tanks Act. Section 6(3) talks about publication of a notice in the prescribed manner pointing out the boundaries of the Tank. Therefore, this provision does not enure to the benefit of the respondents insofar as impugned notices i.e., SCNs are concerned.

9. Before we proceed further, it is necessary to respectfully advert to order dated 22.04.2024 made by another Hon'ble Division Bench in W.P.No.10863 of 2024 about which there is allusion supra. Paragraph 2 of this 22.04.2024 order makes it clear that Survey No.372 has been subdivided into Survey Nos.372/1, 372/2 and 372/3 which are pond, patta and temple respectively. To be noted, as regards impugned notices, we are concerned only with Survey No.372/1, which is a pond. This means that the ratio laid down by a Hon'ble Full Bench of this Court in ***T.K.Shanmugam*** case i.e., ***T.K.Shanmugam Vs. The State of Tamil Nadu and others*** reported in ***2015 SCC OnLine Mad 9343*** comes into play. In ***T.K.Shanmugam***, the procedure to be followed as regards removal of



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encroachment under Tanks Act as laid down in **T.S.Senthil Kumar** case {**T.S.Sentil Kumar Vs. Government of Tamil Nadu and others** reported in **2010 SCC OnLine Mad 1347**} has been reiterated. Relevant paragraphs in **T.K.Shanmugam** case are sub-sub-paragraphs (i), (ii) and (iii) of sub-paragraph (f) of paragraph No.15, which 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.



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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.'

We respectfully follow the aforesaid principle put in place by a

Hon'ble Full Bench.

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10. As regards the aforementioned procedure, Form II under 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' [hereinafter 'Tanks Rules' for the sake of brevity] is qua sub-rule (2) of Rule 5 which talks about handing over a chart and register to 'Officer' referred to in sub-rule (3) of Rule 4. Sub-rule (3) of Rule 4 talks about 'Officer of Public Works Department', survey and demarcation of the limits of the Tanks. Therefore, notice to alleged encroacher which is simultaneous qua Form II vide **T.K.Shanmugam** principle has to be issued by 'Officer', to be noted, 'Officer' is a term of Art i.e., a defined term having been defined under Rule 2(1)(d) of Tanks Rules, which reads as follows:

Rule 2(1)(d) - “Officer” means the Assistant Engineer or Junior Engineer or Overseer of the Water Resources Organization of Public Works Department, in charge of the tanks lying in his jurisdiction for the purpose of enforcing the provisions of the Acts and the Rules'

11. It is clear as daylight that R1 does not qualify as an 'Officer' vide Rule 2(1)(d) of Tanks Rules. In this view of the matter, we *suo motu* implead Executive Engineer, Water Resources Department, Tambaram as R5 and Mr.T.K.Saravanan, learned Additional Government Pleader accepts



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notice for R5 also.

WEB COPY 12. Before we proceed further, we make it clear that as regards Survey No.372/2, as the same is pattai, if any removal of encroachment proceedings are to be embarked upon, the same shall be under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of convenience] by Officers specified thereat. Likewise, as regards Survey No.372/3, it has to be either under 'The Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (Act 22 of 1959)' [hereinafter 'TN HR & CE Act' for the sake of brevity], more particularly Section 78 thereat and / or under said 1905 Act. Either way, the alleged encroachers have to be put on notice/show-caused and opportunity has to be given.

13. As we sustain the jurisdiction point urged by learned counsel for writ petitioners, we deem it unnecessary to embark upon a legal drill qua the second point which turns on the responses not being considered.



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14. In the light of the narrative, discussion and dispositive reasoning

thus far, the following order is made:

i) Impugned notices being notices dated 12.08.2024 are set aside;

ii) Impugned notices are set aside on jurisdictional point and therefore, though obvious we make it clear that we have not expressed any view or opinion on the merits of the matter much less about alleged encroachments one way or the other;

iii) It is made clear that if the above exercise is undertaken along with Form II, Form III shall also be issued as made clear in ***1.K.Shanmugam*** principle;

iv) We preserve all the rights and contentions of State to issue notice afresh by a competent officer i.e., competent qua Tanks Rules keeping in mind allusion and elucidation supra, more particularly the principle put in place by a Hon'ble Full Bench i.e., ***1.K.Shanmugam*** principle;

v) If the above exercise is undertaken, axiomatically we preserve all the rights and contentions of the writ petitioners to



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respond to the same, to be noted, this would be vide sub-sub-

paragraph (ii) of sub-paragraph (f) of paragraph 15 of

1.K.Shanmugam;

vi) If the above scenario unfurls, the authorities shall consider the objections and pass appropriate orders vide sub-sub-paragraph (iii) of sub-paragraph (f) of paragraph 15.

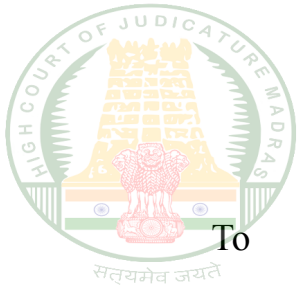
Captioned main WPs disposed of in the aforesaid manner. As the impugned notices have been set aside, captioned WMPs thereat have become otiose and therefore, the same are disposed of as closed. There shall be no order as to costs.

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

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

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

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Dated : 02.04.2025

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