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W.P.No.16829 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

W.P.No.16829 of 2025

N.Hariharan

Petitioner

Vs.

1.The Executive Engineer
Water Resources Management
Executive Engineer Office
Bhavani Sagar
Sathyamangalam
Erode District – 638 451

2.The Tahsildar
Tahsildar Office
Sathyamangalam Taluk
Erode District 638 402

3.Gopalsamy

4.Ganasekar

5.Anath

6.Dhinesh Kumar.P

7.Palanisamy

Respondents

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Writ Petition filed under Article 226 of the Constitution of India

praying to issue a writ of mandamus directing the 1st and 2nd respondents to evict the encroachment made by the respondents 3 to 7 on the water bodies in S.F.Nos.233/1, 235, 236, 238, 239, Madhampalayam Village and S.F.Nos.70, 224, 225, 226 of Nallur Village in Sathyamangalam Taluk, Erode District, based on the complaint of the petitioner dated 30.09.2024.

For petitioner	:	Mr. R. Rajarajan for Mr. S. Keran
For RR1 & 2	:	Mr. T.K. Saravanan Additional Government Pleader

ORDER

[made by M.SUNDAR, J.]

Mr. R. Rajarajan, learned counsel representing Mr. S. Keran, learned counsel on record for writ petitioner, is before us.

2. Learned counsel submits that captioned 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed with a prayer seeking removal of encroachment as according to learned counsel, repeated representations made to the authorities concerned have not yielded any result.

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3. To be noted, subject matter of captioned WP is S.F.Nos.233/1, 235, 236, 238 and 239 in Madhampalayam Village in Erode District and S.F.Nos.70, 224, 225, 226 of Nallur Village in Sathyamangalam Taluk, Erode District.

4. Issue notice to official respondents (RR 1 and 2) for the present.

5. Mr. T.K. Saravanan, learned Additional Government Pleader, accepts notice for official respondents and submits, on instructions, that a survey has already been conducted, encroachment has been noticed in S.F. Nos.235, 236 and 238. Learned State counsel further submits that a notice under Section 7 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' (for brevity 'said 1905 Act') has been issued to alleged encroachers.

6. We express no view on the rights and contentions of the noticees and we make it clear that all rights and contentions of noticees are left open. It is further to be noted that according to

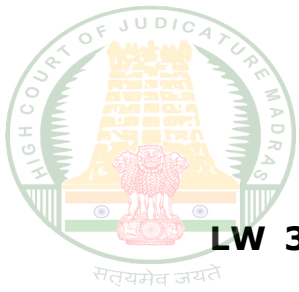


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learned State counsel, noticees are not private respondents (RR 3 to 7) before us.

7. Be that as it may, learned counsel for writ petitioner further submits that there is a water body which goes by the name 'Nallur Lake' (hereinafter 'said lake' for the sake of convenience and clarity) which is now dry and there is encroachment *qua* said lake.

8. In response to the aforesaid submission of learned counsel for writ petitioner, learned State counsel submits, on instructions, that a survey of said lake would also be conducted and if any encroachment is found, action would be commenced as expeditiously as the business of official respondents would permit but in any event within eight weeks from today, *i.e.*, on or before 28.07.2025. Commencement of action *qua* said lake necessarily means action under '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), which further means that **T.K. Shanmugam** principle laid down by an Hon'ble Full Bench of this Court in **T.K. Shanmugam case [T.K. Shanmugam Vs. State of Tamil Nadu]** reported in **2015 (5)**



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LW 397 has to be followed. Sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph 15 of Full Bench order in **T.K.Shanmugam** case which are apposite, 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)
- (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



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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.'

9. Though obvious, we make it clear that this order does not touch upon the rights and contentions of noticees and/or private respondents before us. Therefore, with the consent of learned counsel on both sides, main WP is taken up in the Admission Board and disposed of by recording the stated position of the learned State counsel and writing that the proceedings commenced under the said 1905 Act *qua* S.F.Nos.235, 236 and 238 of Madhampalayam Village, Erode District, will proceed on its own merits and in accordance with law and a survey *qua* said lake would be conducted and proceedings under the Tanks Act, if that be so, shall proceed in the manner alluded to *supra*.



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WEB COPY 10. Captioned WP stands disposed of in the aforesaid manner.

There shall be no order as to costs.

(M.S., J.) (H.C., J.)
02.06.2025

cad

To

1.The Executive Engineer
Water Resources Management
Executive Engineer Office
Bhavani Sagar, Sathyamangalam
Erode District – 638 451

2.The Tahsildar
Tahsildar Office
Sathyamangalam Taluk
Erode District 638 402



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M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

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