



W.P.No.14078 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2025

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THE HONOURABLE Mr. JUSTICE M.SUNDAR

AND

THE HONOURABLE Mr. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.14078 of 2024

AND

W.M.P.No.15259 of 2024

P.Balasubramanian

.. Petitioner

Vs.

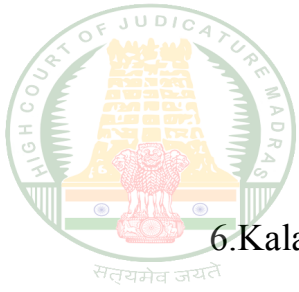
1.The District Collector
O/o.The District Collector
Tirupur, Tirupur District

2.The South Tahsildar
O/o.The South Tahsildar
Sevanthampalayam
Tirupur District

3.The Zonal Deputy Tahsildar
O/o.The South Tahsildar
Sevanthampalayam
Tirupur District

4.The Revenue Inspector
O/o.The Revenue Inspector
Koduvai, Tirupur District

5.Senthilkumar



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6.Kalamani

WEB COPY 7.Sarathamani

.. Respondents

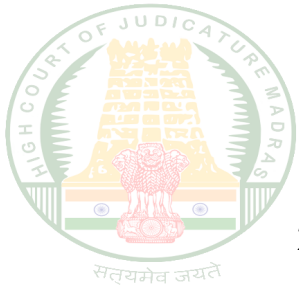
Writ Petition filed under Article 226 of the Constitution of India praying for issue of a writ of mandamus directing the 3rd and 4th respondents to remove the encroachment as per the order of the 2nd respondent *vide* order in Na.Ka.290/2024/Aa5 dated 21.02.2024 made by Senthil Kumar, Kalamani, Sarathamani by way of fencing in survey No.516/2 at Ugayanur Village, Tirupur South Taluk, Tirupur.

For Petitioner : Mr.N.Stalin
For RR 1 to 4 : Mr.T.K.Saravanan
Additional Government Pleader
For RR 5 to 7 : Mr.N.Ponraj

ORDER

(made by M.SUNDAR, J.)

Subject matter of captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] is 'Survey No.516/2 situate in Ugayanur Village, Tirupur South Taluk, Tirupur District' [hereinafter 'said property' for the sake of convenience and clarity].



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2. Mr.N.Stalin, learned counsel for writ petitioner, submits that the

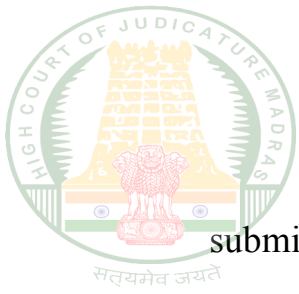
said property has been classified in the revenue records as odai (stream).

It is further submitted that private respondents (R5 to R7) have encroached upon said property. Proceedings have been commenced under 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of brevity], there is no action and that has necessitated the captioned WP, is learned counsel's further say.

3. Notice of motion was issued on 23.05.2024 by Vacation Bench.

Today, Mr.T.K.Saravanan, learned Additional Government Pleader for R1 to R4 and Mr.N.Ponraj, learned counsel for R5 to R7 (private respondents) are before us. This Court, with the consent of all three counsel, took up the main WP and heard out the same.

4. Adverting to proceedings of R2 dated 21.02.2024 bearing Na.Ka.290/2024/Aa5, learned counsel for R5 to R7 (private respondents), submits that the writ petitioner is an encroacher *qua* said property. Learned counsel for writ petitioner submits to the contrary and advertent to Section 6 order (Section 6 of said 1905 Act) made by R2,



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submits that R5 to R7 (private respondents) are encroachers. We express no view or opinion on the rival submissions, in the light of the order which we propose to make.

5. As the said property is a water body, '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] will come into play. As regards the procedure to be followed *qua* Tanks Act, ***T.K.Shanmugam*** case [***T.K.Shanmugam Vs. State of Tamil Nadu***] reported in **2015 (5) LW 397** has laid down a mechanism and the same is articulated at sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph 15 and the same 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



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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 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.'



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6. In the light of the narrative and discussion thus far, we make the following order :

- i. R2 and R3 along with R4 shall now make a joint survey of the said property *i.e.*, survey No.516/2 situate in Ugayanur Village, Tirupur South Taluk, Tirupur District, after putting on notice, the writ petitioner as well as R5 to R7 and draw up a report;
- ii. The above joint survey shall be done by R2 to R4 within six weeks from today *i.e.*, on or before 31.07.2025;
- iii. Based on the report drawn up by R2 and R3 jointly, action shall be commenced under the Tanks Act *qua* alleged encroachers.
- iv. When alleged encroachers are visited with notice under the Tanks Act, all their rights and contentions will stand preserved for the noticees to respond;
- v. The proceedings thus far made under the said 1905 Act *qua* said property stand effaced.



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WEB COPY 7. Captioned main WP stands disposed of in the aforesaid manner.

Consequently, captioned WMP stands disposed of as closed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
19.06.2025

Index : Yes/No
Neutral Citation : Yes/No
gya

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