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W.P.No. 21978 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2025

CORAM :

THE HON'BLE MR. JUSTICE M. SUNDAR
and
THE HON'BLE MR. JUSTICE R. SAKTHIVEL

W.P. No.21978 of 2025

R. Rupavathy

Petitioner

vs.

- 1 The District Collector
Namakkal District
Namakkal 637 001
- 2 The Sub Collector
P.Vellur Road
Tiruchengode 637 211
- 3 The Superintending Engineer
Tamil Nadu Electricity Board
Tiruchengode Road
Namakkal
- 4 The Executive Engineer
Public Works Department (WRD)
Collector Office Buildings
Namakkal
- 5 The Tahsildar
Kuthampoondi
Tiruchengode Taluk
Namakkal District 637 202
- 6 The Block Development Officer
Elacipalayam Block
Tiruchengode taluk
Namakkal District 637 202
- 7 G. Ramaraj
- 8 K. Ashok Kumar

Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to direct the respondents 1 to 6 to remove encroachments made by 7th and 8th respondents on Government water body lands/canal in Survey No.35/67, situated at Annamar Nagar, Kuthampoondi Village, Tiruchengode Taluk, Namakkal District by drilling Elachipalayam Village Road and deracinating the Tirumani Mutharu Water Sub-Canal through large suction pumps through solar panels for commercial activities by blocking the natural water flow based on the petitioner's representation dated 27.01.2025 and also based on the proceedings of the 1st respondent in Na.Ka.752/2025/O4 Pakirmana No.4179/2025/O4 dated 21.02.2025 within a stipulated period.

For petitioner Mr. M. Loganathan

For RR 1,2,4 & 5 Mr. T.K. Saravanan
Addl. Govt. Pleader

For R3 Mr. S. Kalaiselvan
Standing Counsel

For R6 Mr. V. Prashanth Kiran
Government Advocate

ORDER

(made by M. SUNDAR, J.)

Subject matter of captioned 'writ petition' ['WP' for the sake of brevity] is alleged encroachments in 'Government water body i.e. lands/canal in Survey No.35/67 situate at Annamar Nagar, Kuthampoondi Village, Tiruchengode Taluk, Namakkal District'



[hereinafter 'said water body' for the sake of convenience and clarity].

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2. Request for removal of aforereferred alleged encroachments 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 R6]. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for RR 1,2,4 and 5, Mr. S. Kalaiselvan, learned Standing Counsel, accepts notice for R3 and Mr. V. Prashanth Kiran, learned Government Advocate, accepts notice for R6.

4. Learned State counsel for RR 1,2,4 and 5 submits that joint survey *qua* said water body 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].

5. Though obvious, this Court deems it appropriate to make it clear that due process of law *vide* Tanks Act necessarily means



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adherence to procedure put in place by 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**. As regards **T.K.Shanmugam** principle, relevant paragraphs are sub sub-paragraphs (i) to (iii) of subparagraph (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 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



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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 co-equal Division Bench.

6. The above means that private respondents (RR 7 and 8) 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 WP is taken up with the consent of learned counsel for writ petitioner and learned State counsel, dispensing with notice to RR 7 and 8. 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 RR 7 and 8 and/or any other noticee/s stand

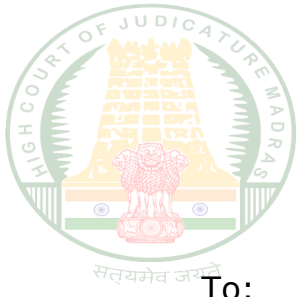


preserved for responding suitably when show caused / visited with notices. For the sake of specificity, though obvious, it is clarified that this Court, in instant order, has not expressed any view or opinion one way or the other regarding alleged encroachment *qua* said water body.

7. In the light of the narrative thus far, captioned WP is disposed of in the aforesaid manner, recording the stated position of learned State counsel for RR 1,2 4 and 5 that a joint survey will be conducted within a period of six weeks from today, *i.e.*, on or before 01.08.2025 and action if any, under the Tanks Act will be 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 12.09.2025. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
20.06.2025

cad
Index : Yes/No
NC : Yes/No



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