



W.P.No.14185 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22.04.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

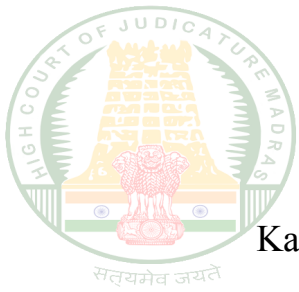
W.P.No.14185 of 2025
&
W.M.P Nos.15938 and 15940 of 2025

D.Gajalakshmi
W/o.S.Dheenadhayalan

... Petitioner

VS.

1. The District Collector
Kallakurichi District
Kallakurichi
2. The Revenue Divisional Officer, Kallakurichi
/The Chairperson/Convener
Divisional Monitoring Committee (Encroachment)
Kallakurichi
Kallakurichi District
3. The Tahsildar
Kallakurichi Taluk
Kallkurichi District
4. The Assistant Engineer
Water Resources Department (Irrigation Division)
P.W.D Kallkurichi



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Kallakurichi District

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5. The Assistant Electrical Engineer (Town)

TANGEDCO

Kallkurichi

Kallkurichi District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records related to the “Eviction Order No.Nil dated 09.04.2025 passed by the fourth respondent and quash the same.

For Petitioner : Mr.S.R.Rajagopal
for Mr.R.M.Makesh Kumarvel

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

Mr.Swami Subramanian
Standing counsel for R5

ORDER

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

Captioned main 'Writ Petition' ['WP' for the sake of brevity] has been filed with a prayer for issuance of a writ of certiorari qua an order dated 09.04.2025 made by R4.

2. Short facts are that one Ms.K.Manimegalai filed W.P 14239 of 2024 on 21.05.2024 assailing an eviction order dated 17.05.2024 made by R5 in



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the captioned matter; that pending writ petition, Ms. K.Manimegalai died; that the date of demise is 03.11.2024; that W.P.No.14239 of 2024 was taken up for final disposal on 18.03.2025 but the counsel on record Mr.R.M.Makesh Kumarvel did not bring to the notice of this Court the factum of demise of Ms.K.Manimegalai; that it is now contended that this is owing to lapse in communication; that writ petition (W.P.No.14239 of 2024 along with WMP thereat) came to be disposed of by this Court on 18.03.2025 *inter alia* holding that ***T.K.Shanmugam*** principle has to be followed by construing the impugned notice thereat as a 'show-cause notice' ['SCN']; that writ petitioner in the captioned matter (D.Gajalakshmi, daughter of Manimegalai) sent objections (dated 28.03.2025) to SCN; that considering the objections, R5 made the impugned order.

3. Today, Mr. S.R.Rajagopal, learned Senior counsel appearing on behalf of Mr.R.M.Makesh Kumarvel, counsel on record for writ petitioner who is before us, submits that factum of demise of Ms.K.Manimegalai on 03.11.2024 was not brought to the notice of this Court by his instructing counsel solely owing to lapse in communication between client's family (writ petitioner in captioned matter) and the lawyer. We refrain from delving



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into this question further and we deem it appropriate to plough into the main matter as it can otherwise result in a case of 'missing the woods for the trees'

4. One of the main contentions in writ petitioner's campaign against the impugned order is that the SCN was issued to a dead person.

5. Issue notice to respondents.

6. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for all five respondents and learned State counsel submits that when the SCN was issued, Ms.K.Manimegalai was alive and the writ petitioner has chosen to respond.

7. Considering the limited landscape of the captioned main WP, with the consent of learned counsel on both sides, main WP was taken up and heard out in the Admission Board.

8. We find that the point that SCN was issued to a dead person has been urged in the aforesaid response dated 28.03.2025. Learned Senior counsel, on instructions, submits that this point would continue to be pressed into service though counsel on record has failed to bring to the notice of this Court demise of Manimegalai. Therefore, we deem it appropriate to give a quietus to the matter by interfering with the impugned order i.e., setting



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aside the same on the short dead person point and preserving the rights of the State to issue notice to legal heirs of Manimegalai and follow ***T.K.Shanmugam*** principle.

9. Before we proceed further, we make it clear that by referring to ***T.K.Shanmugam*** principle, we refer to the principle laid down by Hon'ble Full Bench in ***T.K.Shanmugam Vs. The State of Tamil Nadu and others*** reported in ***2015 SCC OnLine Mad 9343***. Relevant paragraphs are sub-sub-paragraphs (i), (ii) and (iii) of sub-paragraph (f) of paragraph No.15 which in turn reiterates paragraph 42 of ***T.S.Senthil Kumar {T.S.Sentil Kumar Vs. Government of Tamil Nadu and others reported in 2010 SCC OnLine Mad 1347}***. For convenience, we deem it appropriate to set out this sub-sub-paragraphs (i), (ii) and (iii) of sub-paragraph (f) of paragraph No.15, we do so 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



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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 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*



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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.'

10. In the light the narrative, discussion and dispositive reasoning set out supra, the following order is made:

i) The impugned order being order dated 09.04.2025 made by R4 is set aside on the short and sole point that Ms.K.Manimegalai is no more but the impugned order has been made on the basis of Ms.K.Manimegalai being show-caused;

ii) Though obvious we make it clear that all other questions are left open with regard to both sides;

iii) R4 is now at liberty to issue notice under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) afresh to the legal heirs of Ms.K.Manimegalai as per the Legal Heir Certificate dated 19.12.2024 being Certificate No. TN-7202412051242, which has been enclosed qua typed-set of



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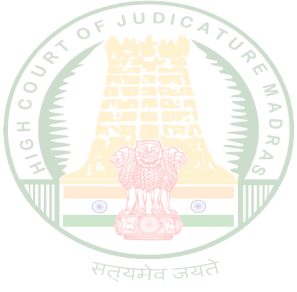
the writ petition;

iv) The legal heirs of Ms.K.Manimegalai can send their response as per ***T.K.Shanmugam*** principle and as all questions are left open, it is open to the legal heirs to raise the objections which have been raised by writ petitioner in 28.03.2025 objections also;

v) As per sub-sub-paragraph (iii) of paragraph (f) of paragraph 15, orders shall be made after considering the objections;

vi) Though obvious we make it clear that aforementioned drill shall be done *denovo* untrammelled by intervening proceedings;

vii) Any further coercive action shall be subject to and depending on the orders to be made in aforesaid manner by R4 by following ***T.K.Shanmugam*** principle.



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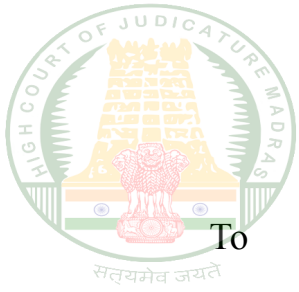
Captioned WP disposed of in the aforesaid manner. As we have made

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it clear that further coercive action (if any and if that be so) is subject to orders to be made *denovo*, captioned WMPs have become otiose and the same are disposed as closed. We refrain from imposing costs.

(M.S.,J.) (K.G.T.,J.)
22.04.2025

Index : Yes/No
Speaking order/Non speaking order
Neutral Citation: Yes/No
gpa



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To

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