



W.P.No.16662 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.16662 of 2025

Annalakshmi

... Petitioner

Vs.

- 1.The District Collector,
Kallakurichi District.
- 2.The District Revenue Officer,
Kallakurichi District.
- 3.The Tahsildhar,
Chinna Salem Taluk,
Kallkurichi District.
- 4.Assistant Executive Engineer,
Public Works Department,
Kallakurichi District.
- 5.The Assistant Engineer,
Public Works Department,
Chinna Salem.
- 6.Nadarajam
- 7.Sountharajan
- 8.Kuppusamy
- 9.Illaiyapillai
- 10.Kanagaraj
- 11.Bharath
- 12.Subramani

... Respondents

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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the respondents 1 to 5 herein to remove the encroachment of water body (odai), comprised in Survey No.70/1 at Paithanthurai Village made by the respondents 6 to 12 in consonance with the proceedings of the third respondent in Na.Ka.No.A4/21/2025 dated 28.01.2025.

For Petitioner : Mr.T.Balachandran

For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1 to R5

ORDER

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

Subject matter of captioned main 'Writ Petition' [hereinafter 'WP' for the sake of brevity] is alleged encroachment in a water body, i.e., 'Survey No.70/1 at Paithanthurai Village, Chinna Salem Taluk, Kallakurichi District which is odai' {hereinafter 'said water body' for the sake of convenience and brevity}.



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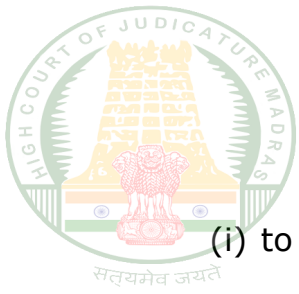
2. Request for removal of aforesaid alleged encroachment has not yielded results and that has necessitated captioned main WP is the submission of learned counsel for writ petitioner.

3. Issue notice to official respondents. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 to R5.

4. Learned State counsel submits that survey has already been conducted and action for removal of encroachment will be commenced 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), within four weeks from today i.e., on or before 01.07.2025.

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

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(i) to (iii) of subparagraph (f) of paragraph 15 and the same reads 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.Sathyannarayanan,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)



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(e)

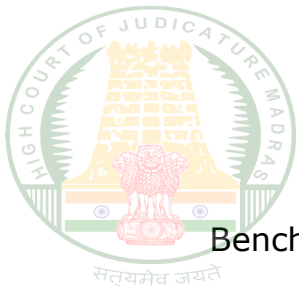
(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(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.'

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 coequal Division



Bench.



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6. The above means that the private respondents who are alleged encroachers and/or any other encroachers 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 main WP is taken up with the consent of learned counsel for writ petitioner and learned State counsel, dispensing with notice to private respondents. 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 private respondents and/or any other noticee/s stand preserved for responding suitably when show caused / visited with notices. Though obvious, for the sake of specificity, 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 main WP is disposed of in the aforesaid manner, recording the stated position of learned State counsel that survey has already been done and action under the Tanks Act will be commenced as expeditiously as the

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business of official respondents would permit but in any event within a period of four weeks today, i.e., on or before 01.07.2025. There shall be no order as to costs.

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

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

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Kallakurichi District.
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**M.SUNDAR, J.,
and
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