



W.P.No.16571 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.16571 of 2021

and W.M.P. Nos.17547 and 17548 of 2021

Indhu

Petitioner

vs.

The Junior Engineer
Public Works Department (WRD)
Azerkana Street
(Near GMM CO)
Chennai 600 016

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records on the file of the respondent in proceedings no.190 Adyar/E11 dated 26.07.2021 and quash the same as illegal, incompetent and without jurisdiction.

For petitioner Mr. Avinash Wadhwani
for Ms. V. Srimathi

For respondent Mr. T.K. Saravanan
Addl. Govt. Pleader

- - - - -



WEB COPY



W.P.No.16571 of 2021

ORDER

[made by HEMANT CHANDANGOUDAR, J.]

This Writ Petition has been filed challenging the order dated 26.07.2021 issued by the respondent, directing the petitioner to remove the alleged encroachment in Survey No.668, Ayanambakkam Village, Poonamallee Taluk, Tiruvallur District, measuring an extent of 0.145 acres, which is classified as channel poramboke in the revenue records.

2. Prior to the issuance of the impugned order, the respondent issued a show cause notice dated 16.07.2021, calling upon the petitioner to explain why the alleged encroachment in the aforesaid survey number should not be removed. The petitioner submitted a reply dated 24.07.2021 in response to the said notice.

3. Upon consideration of the petitioner's reply, the respondent proceeded to issue the impugned order, holding that the petitioner had encroached upon the land in Survey No.668, which is classified as a water body.



W.P.No.16571 of 2021

WEB COPY

4. Heard Mr. Avinash Wadhwani, learned counsel appearing for Ms. V. Srimathi, learned counsel on record for the writ petitioner, and Mr. T.K. Saravanan, learned Additional Government Pleader appearing for the respondent.

5. A Full Bench of this Court, in the case of **T.K.Shanmugam Vs. State of Tamil Nadu** reported in **2015 (5) LW 397**, at paragraph 15, has issued the following directions:

'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)



WEB COPY



W.P.No.16571 of 2021

(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.'

6. Therefore, in light of the directions issued by the Full Bench of this Court in the aforesaid case, the respondent was under a legal obligation to consider the petitioner's reply and thereafter pass appropriate orders in accordance with law. However, in the present case, the respondent has issued the impugned order without duly considering the reply submitted by the petitioner. As such, the impugned order is in violation of the principles of natural justice and contrary to the directions issued by the Full Bench of this Court.



W.P.No.16571 of 2021

WEB COPY

7. In view of the above discussion, the impugned order dated 26.07.2021 is hereby quashed. Consequently, the writ petition is allowed. However, liberty is reserved to the respondent to initiate appropriate proceedings strictly in accordance with the directions issued by the Full Bench of this Court in the aforesaid case and in conformity with the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007). Connected Writ Miscellaneous Petitions stand closed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
17.06.2025

cad

To

The Junior Engineer
Public Works Department (WRD)
Azerkana Street
(Near GMM CO)
Chennai 600 016

Page Nos.5/6



WEB COPY



W.P.No.16571 of 2021

M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

cad

W.P.No.16571 of 2021

17.06.2025