



W.P.No.22556 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.22556 of 2025

1.Manikandan

2.Mahadevan

... Petitioners

Vs.

1.The District Collector,
Villupuram District.

2.The Tahsildar,
Villupuram District.

3.The Revenue Divisional Officer,
Villupuram District.

4.The Block Development Officer,
Villupuram District.

5.The Executive Engineer,
Water Resource Department,
Villupuram – 605 602.

6.Mahalakshmi

7.Thangarasu

8.Santhakumari

9.Uma

10.Sudhagar

11.Mayakrishnan

... Respondents

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Writ Petition filed under Article 226 of The Constitution of India

praying to issue a Writ of Mandamus directing the respondents to identify and remove all the encroachments over the Odai running through S.Nos.91 and 100 in Ariyalur Thirukkai Village, Villupuram District, by considering the petitioners' representations dated 17.02.2025, 23.02.2025 and 25.02.2025.

For Petitioners : Mr.Guru Dhananjay

For Respondents : Mr.M.S.Arasakumar,
Government Advocate
for R1 to R5

ORDER

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

Captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed with RoE (Removal of Encroachment) prayer qua Survey Nos.91 and 100 in Ariyalur Thirukkai Village, Villupuram Taluk, Villupuram District. As regards 'Survey No.91', it will be referred to as 'said land' and as regards 'Survey No.100', it will be referred to as 'said waterbody'.



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2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the listing on 24.06.2025, which reads as follows:

'W.P.No.22556 of 2025

M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

*(Order of the Court was made by
M.SUNDAR, J.)*

Re-notified.

2. List on 26.06.2025 (Thursday) in the Admission Board i.e., Motion List, under the cause list caption 'ADJOURNED ADMISSION' for production of communication said to have been sent to writ petitioner regarding patta being granted qua Survey No.91 in Ariyalur Thirukkai Village, Villupuram District, by learned State counsel.'

3. Pursuant to the aforementioned proceedings, today, learned State counsel has favoured the learned counsel for the writ petitioners with copies of pattas issued qua said land to third parties. It is curtains



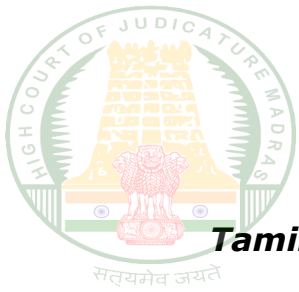
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as regards said land. Rights (if any) and contentions (including the contentions raised in the captioned WP) of writ petitioners to seek cancellation of pattas stand preserved.

4. This takes this order to said waterbody. Request for removal of afore-referred alleged encroachment in said waterbody has not yielded results and that has necessitated captioned main WP is the submission of learned counsel for writ petitioners.

5. Issue notice to official respondents [R1 to R5]. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for official respondents. Learned State counsel submits that survey 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).

6. 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**



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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 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.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)



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(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.'*

To be noted, **T.K.Shanmugam** reiterates **T.S.Senthil Kumar** principle
[**T.S.Senthil Kumar Vs. Government of Tamil Nadu** reported in



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(2010) 3 MLJ 771] rendered by Hon'ble Coordinate coequal Division

Bench.

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7. The above means that the private respondents/R6 to R11 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 main WP is taken up with the consent of learned counsel for writ petitioners 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 waterbody.

8. 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 will be done within a period of six

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weeks from today, i.e., on or before 14.08.2025 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 25.09.2025. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
03.07.2025

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

- 1.The District Collector,
Villupuram District.
- 2.The Tahsildar,
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