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W.P.No.20928 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR
and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.20928 of 2025

B.Surya

Petitioner

vs.

1. The District Collector
O/o.The Collector
Salem District
2. The Revenue Divisional Officer
O/o.The Revenue Divisional Officer
Attur Taluk, Salem District
3. The Tahsildar
O/o.The Tahsildar
Attur Taluk, Salem District
4. P.Ramasamy

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the 2nd and 3rd respondent authority to remove the encroachment made by the 4th respondent in the light of G.O.Ms.No.540 of 2014 dated 04.12.2014 after conducting proper enquiry on the representation dated 04.12.2024 made by the petitioner.

For petitioner Mr. A. Rajakumar

For RR1 to 3 Mr. T.K. Saravanan
Addl. Govt. Pleader

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ORDER

[made by M.SUNDAR, J.]

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Subject matter of captioned 'writ petition' ['WP' for the sake of brevity] are alleged encroachments in 'the stream (odai) in S.Nos.79 and 81 in Akkichettipalayam Village, Attur Taluk, Salem District' [hereinafter 'said water body' for the sake of convenience and clarity].

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 R3]. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for RR 1 to 3.

4. 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].



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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 (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)



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(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 co-equal Division Bench.

6. The above means that private respondent (R4) who is the alleged encroacher 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 R4.

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Though obvious, it is made clear that this order does not touch upon the rights of R4 and / or any other noticee/s under the Tanks Act. This means that all the rights and contentions of R4 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 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 four weeks from today, *i.e.*, on or before 14.07.2025 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 four weeks therefrom *i.e.*, on or before 11.08.2025. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
16.06.2025

cad



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M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

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To

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