



W.P.No.22860 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

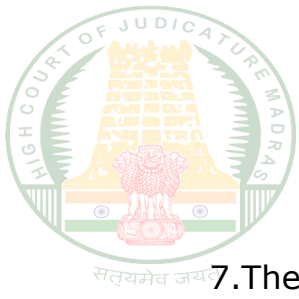
W.P.No.22860 of 2025

L.Selvaraju

... Petitioner

Vs.

- 1.The District Collector,
Collectorate Building,
Salem District – 636 001.
- 2.The District Revenue Officer,
Collectorate Building,
Salem District – 636 001.
- 3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Attur Sub Division, Salem District.
- 4.The Tahsildar,
Attur Taluk, Salem District.
- 5.The Village Administrative Officer,
Ammampalayam,
Attur Taluk, Salem District.
- 6.The Assistant Executive Engineer,
Public Works Department,
Water Irrigation Department,
Attur, Salem District.



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7.The Assistant Engineer,
Public Works Department,
Water Irrigation Department,
Attur, Salem District.

8.A.Dharmalingam

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 7 to consider the petitioner's representation dated 20.03.2025 delivered to the Respondents 1 to 7 and take appropriate action by conducting an enquiry and field inspection and remove the encroachments made by the respondent No. 8 in the water channel in Survey Nos. 18/2 and 19 in Ammampalayam Village, Attur Taluk and Salem District within a time frame stipulated by this Court.

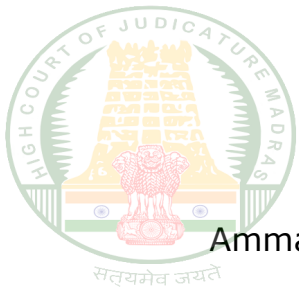
For Petitioner : Mr.K.R.Samratt

For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1 to R7

ORDER

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

Subject matter of captioned 'Writ Petition' ['WP' for the sake of brevity] is alleged encroachment in 'water course passing through Survey Nos.18/2 and 19 classified as 'Government Poramboke Odai' in



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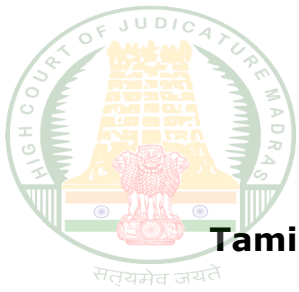
Ammampalayam Village, Attur Taluk, Salem District' [hereinafter 'said water body' for the sake of convenience and clarity].

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 [R1 to R7]. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for R1 to R7.

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].

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**



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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 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)

(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



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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/R8 who is an 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 R8. Though obvious, it is made clear that this order does not touch upon the rights of private respondent and / or any other noticee/s under the Tanks Act. This means that all the rights and contentions of R8 and/or



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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, the following order is made:

7.1 R4 shall conduct a survey after putting on notice /in the presence of writ petitioner, private respondent/R8. Learned State counsel submits that such survey shall be conducted within six weeks from today ie., on or before 06.08.2025 and this submission is recorded as an undertaking given to the Court;

7.2 Post survey in the aforesaid manner, a report shall be drawn up by R4;

7.3 In the aforesaid report, if any encroachments are found, action will be commenced under the Tanks Act 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 17.09.2025.



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7.4 Commencement of action under Tanks Act

necessarily means putting on notice and giving an opportunity to alleged encroachers be it R8 or any other noticeee who may be show caused. In this regard, all the rights and contentions of the private respondent/R8 and/or any other person who may be made a noticee and who may be show caused stand preserved .

8. Learned counsel for writ petitioner brought to our notice a suit being O.S.No.267 of 2023 on the file of Principal District Munsif, Attur filed by one Palanimuthu who has not been made a party to the captioned WP. We are of the considered view that the suit will not come in the way of the implementation of this order for three reasons and they are as follows:

(i) Palanimuthu is not added as a respondent herein;

(ii) A careful perusal of suit schedule property brings to light that it pertains to Survey No.18/5 whereas prayer in the captioned WP pertains to Survey Nos.18/2 and 19 only;



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(iii). *The suit is one for bare injunction. A suit for bare injunction qua immovable property has to necessarily be construed as injunction against dispossession de hors due process of law. In the case on hand, commencement of proceedings under Tanks Act is due process of law and Tanks Act in any event is a special statute to protect waterbodies.*

9. Captioned WP is disposed of in the aforesaid manner with the aforementioned directives. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
25.06.2025

Index : Yes / No
Neutral Citation : Yes / No
mmi

To

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Collectorate Building,
Salem District – 636 001.
- 2.The District Revenue Officer,
Collectorate Building,
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Attur Sub Division, Salem District.

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