



W.P.No.23822 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.23822 of 2025

D.G. Prabhakaran

Petitioner

vs.

1. The Principal Secretary to Government
Public Works Department (PWD)
Fort St. George
Chennai 600 009
2. The Chief Engineer
Water Resources Department
Chennai Region
Chennai 600 005
3. The Additional Divisional Engineer
Irrigation Department
Public Works Department
Gudiyatham Taluk
Vellore District 632 602
4. The Tahsildar
Gudiyatham Taluk
Vellore District 632 602
5. M. Sengottuvan

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the fourth respondent to implement orders of the third respondent in Ka.No.271/Ko34/U-Po-

Page Nos.1/8



W.P.No.23822 of 2025

Ku/2024 dated 14.08.2024 thereby removing the encroachment in Survey Nos.82/1B, 82/2B, 83/2A2, 83/2B2, 83/2C2, 85/2B, 85/4B and 85/5B of Sempalli Village, Gudiyatham Taluk, Vellore District and maintain 40 feet jeep track on the eastern side and 40 ft. bund on the western and southern side of the 40 feet width canal, as claimed by the petitioner in his representation dated 07.08.2024 to the third respondent.

For petitioner	Mr. K. Mohanamurali
For RR 1 to 4	Mr. T.K. Saravanan
	Addl. Govt. Pleader

ORDER

[made by M.SUNDAR, J.]

Subject matter of captioned 'writ petition' ['WP' for the sake of brevity] are alleged encroachments in 'Survey Nos.82/1B, 82/2B, 83/2A2, 83/2B2, 83/2C2, 85/2B, 85/4B and 85/5B of Sempalli Village, Gudiyatham Taluk, Vellore District' [hereinafter 'said property' for the sake of convenience and clarity].

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



W.P.No.23822 of 2025

3. Issue notice to official respondents [R1 to R4].

Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for RR 1 to 4.

4. Learned State counsel for RR 1 to 4 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] or any other appropriate/applicable statute.

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



WEB COPY



W.P.No.23822 of 2025

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)

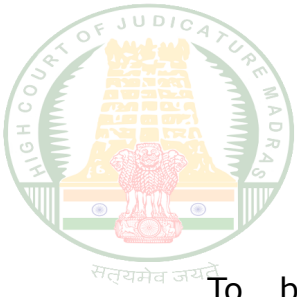
(e)

(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



W.P.No.23822 of 2025

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 an Hon'ble Coordinate co-equal Division Bench.

6. The above means that private respondent (R5) 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 R5. 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 or any other appropriate/applicable statute. This means that all the rights and contentions of R5 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 property.



W.P.No.23822 of 2025

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 for RR 1 to 4 that survey will be done within a period of six weeks from today, *i.e.*, on or before 13.08.2025 and action if any, under the Tanks Act or any other appropriate/applicable statute, 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 24.09.2025. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
02.07.2025

cad
N.C. : Yes/No
Index : Yes/No



W.P.No.23822 of 2025

WEB COPY

To

1. The Principal Secretary to Government
Public Works Department (PWD)
Fort St. George
Chennai 600 009
2. The Chief Engineer
Water Resources Department
Chennai Region
Chennai 600 005
3. The Additional Divisional Engineer
Irrigation Department
Public Works Department
Gudiyatham Taluk
Vellore District 632 602
4. The Tahsildar
Gudiyatham Taluk
Vellore District 632 602



WEB COPY



W.P.No.23822 of 2025

M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

cad

W.P.No.23822 of 2025

02.07.2025

Page Nos.8/8