



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

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. Nos. 21384, 21392, 21395 and 21400 of 2025
and

W.M.P. Nos.24133, 24134, 24142, 24144, 24146, 24148, 24154 and
24155 of 2025

Arul	Petitioner in WP No.21384 of 2025
Therasammal	Petitioner in WP No.21392 of 2025
Mary Stella	Petitioner in WP No.21395 of 2025
Ponnammal	Petitioner in WP No.21395 of 2025
vs.	

1. The Executive Officer
Varadharajanpettai Town Panchayat
Ariyalur District
 2. The Tahsildar
Andimadam Taluk
Ariyalur District
- Respondents in all WPs

W.P.No.21384 of 2025:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the eviction notice under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998, issued by the first respondent dated 08.01.2025 and notice under Form III Rule 6(1) dated 23.04.2025 and quash the same.



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

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W.P.No.21392 of 2025:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records relating to the eviction notice issued by the first respondent under Form III [Rule 6(1)] dated 20.03.2025 of the Tamil Nadu Urban Local Bodies Act, 1998 and quash the same.

W.P.No.21395 of 2025:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the eviction notice issued by the first respondent under Form III Rule 6(1) dated 23.04.2025 of the Tamil Nadu Urban Local Bodies Act, 1998 and quash the same and consequently, direct the first respondent to consider the legal notice dated 02.06.2025 which is sent by the petitioner's counsel.

W.P.No.21400 of 2025:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the eviction notice under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998, issued by the first respondent dated 08.01.2025 and notice under Form III Rule 6(1) dated 23.04.2025 and quash the same and consequently, direct the first respondent to consider the legal notice dated 02.06.2025 which is sent by the petitioner's counsel.



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

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For petitioner
in all WPs

Mr. S. Josephraj

For R1
in all WPs

Mr. S. Arumugam
Government Advocate

For R2
in all WPs

Mr. M.S. Arasakumar
Government Advocate

COMMON ORDER

[made by M.SUNDAR, J.]

This common order will govern the captioned four 'writ petitions' [hereinafter 'WPs' in plural and 'WP' in singular for the sake of brevity].

2. While W.P. Nos.21384 and 21400 of 2025 have been filed challenging two eviction notices dated 08.01.2025 and 23.04.2025 in each of the WPs, W.P. Nos.21392 and 21395 of 2025 have been filed challenging eviction notice dated 20.03.2025 and 23.04.2025 respectively. To be noted, all the impugned notices have been issued by R1 (Executive Officer, Varadarajanpettai Town Panchayat, Ariyalur District).

Page Nos.3/14



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

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3. While the first eviction notices dated 08.01.2025 impugned in W.P.Nos.21384 and 21400 of 2025 have been issued under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' [hereinafter 'the TNULB Act' for the sake of brevity], the second eviction notices impugned in W.P.Nos.21384 of 21400 of 2025 have been issued under Form III under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 [hereinafter 'Tanks Rules' for the sake of brevity]. Likewise, eviction notices dated 20.03.2025 and 23.04.2025 impugned in W.P.Nos.21392 and 21395 of 2025 respectively have been issued under Form III of the Tanks Rules.

4. Subject matter of captioned WPs is alleged encroachment in 'S.No.160/8 in Varadarajanpettai Village, Varadarajanpettai Town Panchayat, Andimadam Taluk, Ariyalur District' [hereinafter 'said land' for the sake of convenience and clarity]. To be noted, said land is classified as 'vari poramboke' in revenue records.



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

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5. *Vide* impugned notices, the petitioners have been *inter alia* directed to remove the alleged encroachments made by them in the said land.

6. A careful perusal of clause (b) of sub-section (7) of Section 2 of the TNULB Act makes it clear that 'Executive Officer of a Town Panchayat' is the 'Commissioner' within the meaning of the TNULB Act. Therefore, the power of R1 to issue a notice under Section 128 of the TNULB Act is clear.

7. Mr. S. Josephraj, learned counsel on record for writ petitioners, is before us.

8. Issue notice to respondents.

9. Mr. S. Arumugam, learned Government Advocate, accepts notice for R1 and Mr. M.S. Arasakumar, learned Government Advocate,



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

accepts notice for R2.

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10. Before we proceed further, we deem it appropriate to extract and reproduce Section 128 (in its entirety) of the TNULB Act as it stands today and the same reads as under:

'128. Power to remove encroachment from public place. - (1) The Commissioner may, -

(a) remove without any notice any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching street, public place, water body, tank, other water resources or any land belonging to or vested with the municipality with the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching street, public place, water body, tank, other water resources or any land belonging to municipality or vested with the municipality within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of fifteen days from the date of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.

(2) Whoever makes any encroachment in any land or space (not being private property) in any public street, water body, tank, other water resources or any land belonging to or vested with the municipality within the municipal limit, shall, on conviction, be punished with imprisonment which shall not be less than one year but which may extend to three years and with fine which may extend to fifty thousand rupees:

Provided that the Court may, for any adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year.'



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

(underlining made by us for ease of reference)

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11. Though the impugned notices dated 08.01.2025 in W.P. Nos.21384 and 21400 of 2025 read that the impugned notices have been issued under Section 128 of the TNULB Act, as matter on hand pertains to immovable structure, writ petitioners should be given 15 days time to respond to impugned notices and thereafter, R1 should pass final orders considering such response. However, this requirement has been given a go by.

12. Coming to impugned notices dated 20.03.2025 and 23.04.2025 (which are in Form III of the Tanks Rules), learned State counsel for R1 fairly submitted that **T.K.Shanmugam** principle will be followed, *i.e.*, procedure/mechanism put in place by Hon'ble Full Bench of this Court in **T.K.Shanmugam case [T.K.Shanmugam Vs. State of Tamil Nadu]** reported in **2015 (5) LW 397**. This submission is recorded.

13. 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:

Page Nos.7/14



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W.P. Nos.21384, 21392, 21395 and 21400 of 2025

'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)

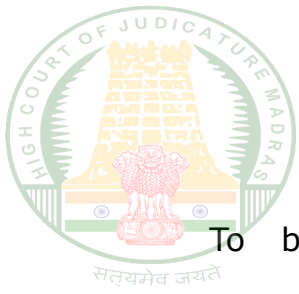
(e)

(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 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.'



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

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.

14. The following order is made:

- i. Since, concededly, the proviso to Section 128(1)(b) of the TNULB Act, has not been complied with, the two impugned notices dated 08.01.2025 are now directed to be treated as show cause notices (SCNs) served on the writ petitioners today (17.06.2025);
- ii. Noticee/writ petitioners (if so advised and if so desired) shall send representations within 15 days from today, *i.e.*, on or before 02.07.2025;
- iii. As regards notices dated 20.03.2025 and 23.04.2025 issued in Form III of the Tanks Rules, the same also shall be treated as SCNs *vide* **T.K. Shanmugam** principle and the writ petitioners will have 15 days time to respond to the same. In other words, the writ petitioners shall send their response on or before 02.07.2025, if so advised and so desired;



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W.P. Nos.21384, 21392, 21395 and 21400 of 2025

- iv. If the writ petitioners/noticees do not send representations within aforesaid timeline, it is open to the respondents/appropriate authority to proceed (post 02.07.2025) *qua* removal of immovable structures which are subject matter of impugned notices;
- v. If the writ petitioners/noticees send representations within aforesaid timeline, the same shall be considered and final orders shall be made by R1 (Executive Officer) as per proviso to Section 128(1)(b) of the TNULB Act/appropriate authority *vide* **T.K. Shanmugam** principle, as the case may be;
- vi. The final orders so passed shall be served on the writ petitioners/noticees within five working days from the date of the final orders;
- vii. If the final orders so passed by R1/appropriate authority end up in favour of the writ petitioners, that would be curtains on the matter;



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W.P. Nos.21384, 21392, 21395 and 21400 of 2025

- viii.If it happens to the contrary, in other words, if the final orders so passed by R1/appropriate authority, are going to be adverse to the writ petitioners, the same shall be kept in abeyance for a fortnight from the date of service of the final orders on the writ petitioners so as to provide a window to the writ petitioners to assail the said orders if permissible in law or to seek judicial review of the said order;
- ix. If the writ petitioners do not take recourse to either of the aforesaid two options within a fortnight from the date of service of the final orders, the final orders so passed by R1/appropriate authority, will be resuscitated and put into motion; and
- x. Though obvious, we make it clear that any coercive action will be subject to / depending on final orders to be made by R1 *vide* proviso to Section 128(1)(b) of the TNULB Act/appropriate authority *vide* **T.K.Shanmugam** principle. We also make it clear that we have not expressed any view or opinion on the merits of the matter and therefore, R1/appropriate authority, while passing final orders, shall do so untrammelled by the observations made in this order.



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

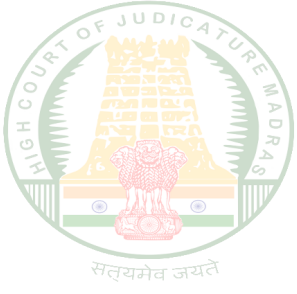
WEB COPY 15. Captioned WPs stand disposed of in the aforesaid manner.

As we have held that coercive action (if any) shall be subject to/depending on final orders to be made by R1 *vide* proviso to 128(1)(b)/appropriate authority *vide* **T.K.Shanmugam** principle, captioned writ miscellaneous petitions thereat have become otiose and therefore, the same are disposed of as closed. There shall be no order as to costs.

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

17.06.2025

cad



W.P. Nos.21384, 21392, 21395 and 21400 of 2025

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To

1. The Executive Officer
Varadharajanpettai Town Panchayat
Ariyalur District
2. The Tahsildar
Andimadam Taluk
Ariyalur District



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W.P. Nos.21384, 21392, 21395 and 21400 of 2025

M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

cad

Common order in
W.P. Nos. 21384, 21392, 21395 and 21400 of 2025

17.06.2025

Page Nos.14/14