



W.P.No.23391 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.03.2025

CORAM

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

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.23391 of 2021

&

W.M.P.No.24671 of 2021

S.Shanthi

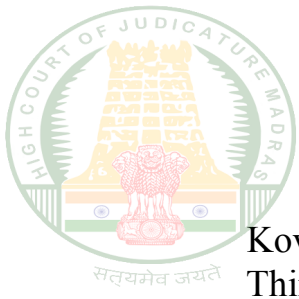
W/o.R.Subbarayalu

... Petitioner

VS.

1. The State of Tamil Nadu
Rep. By its Secretary to Government
Public Works Department, Secretariat
Chennai – 600 009
2. The District Collector
Collectorate Vengikkal
Thiruvannamalai – 606 604
3. The District Revenue Officer
Revenue Divisional Office
Thiruvannamalai
4. The District Forest Officer
Thiruvannamalai
5. The Assistant Engineer
Water Resources Department

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Kovilur

Thiruvannamalai – 604 404

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6. Mr.Ramajayam

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in Form III notice dated 13.09.2021 issued by the fifth respondent and quash the same as incompetent, taint and without jurisdiction and directing Respondents 1 to 5 to consider the representation dated 22.09.2021.

For Petitioner : Mr.P.Vidhya Shree
for Ms.P.T.Ramadevi

For Respondents : Mr.V.Ravi
Special Govt. Pleader for R1 to R5

R6- No appearance

ORDER

[Order of the Court was made by **K.GOVINDARAJAN THILAKAVADI, J.,**]

Captioned writ petition has been filed to set aside the impugned notice dated 13.09.2021 and direct the official respondents 1 to 5 to consider the representation dated 22.09.2021 given by the writ petitioner.

2. The case of the writ petitioner is that she owns lands in Survey No.265/1B and 266/2 adjacent to the lands in Survey No.272/1 admeasuring 0.16.0 Hectares, which is a lake belonging to the Public Works Department. While so, the sixth respondent herein made allegations that the writ

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petitioner has encroached the said land in S.No.272/1 pursuant to which the fifth respondent (Assistant Engineer, Water Resources Department, Kovilur) issued Form III notice dated 13.09.2021 under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) calling upon the writ petitioner to remove the encroachment in Survey No.272/1 to an extent of 40 cents (0.16.0 Hectares) and that if the writ petitioner fails to do so, necessary action will be taken in accordance with law. After the receipt of said notice, the writ petitioner herein submitted a detailed explanation on 22.09.2021, but the said explanation was not considered by the fifth respondent. Hence, the writ petitioner is before this Court.

3. Mr.T.K.Saravanan, learned Additional Government Pleader for the respondents submitted that the impugned notice has been issued as encroachment in a water body has been noticed and action will be initiated under Tanks Act by following ***T.K.Shanmugam (Full Bench)*** principle i.e., ***T.K.Shanmugam Vs. The State of Tamil Nadu and others*** reported in ***2015 SCC OnLine Mad 9343***.



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4. It is to be noted that if action under Tanks Act is to be initiated, the procedure laid down by Hon'ble Full Bench in ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. The State of Tamil Nadu and others*** reported in ***2015 SCC OnLine Mad 9343***} more particularly sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph No.15 has to be followed. To be noted, paragraph 15(f)(i)(ii) and (iii) of ***T.K.Shanmugam*** case 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



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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



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provisions of the Act, giving time to the encroachers to remove the encroachment.'

5. In the light of the fair stand taken by learned State counsel, the following order is made:

i) Form III notice dated 13.09.2021 issued by the fifth respondent shall now be treated as show-cause notice;

ii) The representation sent by the writ petitioner on 22.09.2021 shall now be treated as response to the show cause notice and the authorities shall consider the representation/objections and pass appropriate orders, in accordance with the provisions of the Tanks Act and by following ***T.K.Shanmugam (Full Bench)*** principle;

iii) Though obvious, we make it clear that coercive action, if any, shall be subject to and depending on the orders to be passed by R5.



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Captioned main WP stands disposed of in the aforesaid manner with

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the aforesaid observations. As we have made it clear that coercive action, if any, shall be subject to and depending on orders to be passed by R5, WMP becomes otiose and the same is closed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

25.03.2025

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Index : Yes/No

Neutral Citation : Yes/No

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To

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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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