



W.P.No.25971 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 18.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.25971 of 2024

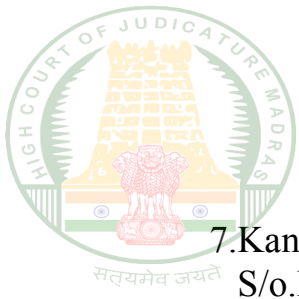
Tmt.R.Rajeswari

... Petitioner

vs.

1. The District Collector
Office of the District Collector
Salem District
2. The Thasildar
Office of the Thasildar
Kadayampatti
3. The Block Development Officer
Kadayampatti
4. Perumal
S/o.Muruga Gounder
5. Jaganathan
S/o.Dharmalingam
6. Kannan
S/o.Perumal

Page Nos.1/10



W.P.No.25971 of 2024

7.Kandasamy
S/o.Dharmalingam

WEB COPY

8. The Executive Engineer
Water Resources Department
Sarabanga Basin
Salem

... Respondents

(R8 suo motu impleaded vide this order)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 herein to survey the Velayudam Pillai Lake comprised in Survey No.294, 295/4 and 295/5, Kanchanayakkan Patti Village, Kadayampatti Taluk, Salem District.

For Petitioner : Mr.M.Balasubramanian

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R3 & R8

ORDER

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

The captioned writ petition is filed with a mandamus prayer seeking a direction to Respondents 1 to 3 to survey Velayudam Pillai Lake in Survey Nos.294, 295/4 and 295/5, Kanchanayakkan Patti Village, Kadayampatti Taluk, Salem District and regularize the lake by removing the illegal encroachment over the same so that the lake can be used by the general public.

Page Nos.2/10



W.P.No.25971 of 2024

2. Mr.M.Balasubramanian, learned counsel for the writ petitioner

submits that a lake by name 'Velayudam Pillai Lake' to an extent of 3.66 ares is situate in Survey Nos. 294, 295/4 and 295/5, Kanchanayakkan Patti Village, Kadayampatti Taluk, Salem District and a resolution was passed by the Kadayampati Panchayat on 22.12.2023 for removal of alleged encroachment and the same was communicated to Respondents 1 to 3 for initiating suitable action. The learned counsel for writ petitioner submits that though a survey was conducted by the Block Development Officer, the alleged encroachment in the said lake is yet to be removed. The learned counsel for writ petitioner further submits that the writ petitioner has also sent a representation dated 11.05.2024 to the official respondents for taking suitable action but no action has been taken till date. Hence, the petitioner has preferred the present writ petition.

3. Issue notice to official respondents i.e., R1 to R3.

4. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 to R3.

5. Mr.T.K.Saravanan, learned Additional Government Pleader submits, on instructions, that the survey has been conducted in the said land

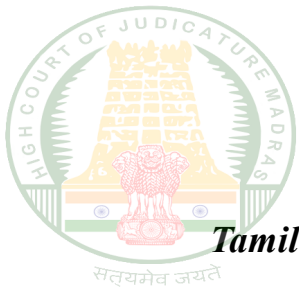


W.P.No.25971 of 2024

and during the survey, encroachments were found and authorities are taking necessary action under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) to remove the said encroachment and principles in ***T.S.Senthil Kumar*** case {***T.S.Senthil Kumar Vs. Government of Tamil Nadu and others*** reported in (2010) 3 MLJ 771: 2010 Writ LR 113:MANU/TN/0281/2010} and ***T.K.Shanmugam (Full Bench)*** case i.e., ***T.K.Shanmugam Vs. The State of Tamil Nadu and others*** reported in 2015 SCC OnLine Mad 9343 will be followed.

6. The learned State counsel further submits that 'Water Resource Department' ['WRD'] is the competent authority to remove the alleged encroachment. Therefore, Executive Engineer, Water Resource Department, Sarabanga Basin, Salem is *suo motu* impleaded as R8 in the captioned writ petition. Issue notice to R8. Learned State counsel accepts notice for R8 also.

7. Be that as it may, the procedure qua action under Tanks Act is governed by ***T.S.Senthil Kumar*** {***T.S.Senthil Kumar Vs. Government of***



W.P.No.25971 of 2024

Tamil Nadu and others reported in **2010 SCC OnLine Mad 1347**} and **T.K.Shanmugam (Full Bench)** {**T.K.Shanmugam Vs. State of Tamil Nadu**

reported in **2015 (5) LW 397**} principles. Relevant paragraph in **T.S.Senthil Kumar** case is sub-paragraph (f) of paragraph 42 and relevant paragraph in **T.K.Shanmugam (Full Bench)** case is sub-paragraph (f) of paragraph 15 which read as follows:

Sub-paragraph (f) of paragraph 42 of **T.S.Senthil Kumar** case

'42. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases in Mysore v. J.V. Bhat (supra) and (ii) Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka (supra), where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a)

(b)

(c)

(d)

(e)

(f) *We uphold the Act, while we provide for observance of*



WEB COPY



W.P.No.25971 of 2024

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.'

Sub-paragraph (f) of paragraph 15 of ***T.K.Shanmugam (Full Bench)*** case

'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



WEB COPY



W.P.No.25971 of 2024

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.No.25971 of 2024

WEB COPY

8. Considering the above stated position of the learned State counsel, the following order is passed:

(i) R8 shall initiate action for removal of alleged encroachment as per Tanks Act by following the procedure laid down in ***T.S.Senthil Kumar*** and ***T.K.Shanmugam (Full Bench)*** case laws, within a period of two weeks from today i.e., by 01.04.2025;

(ii) R8 shall complete the said course of action within a period of twelve weeks from 01.04.2025 i.e., on or before 24.06.2025;

(iii) We make it clear that the private respondents and/or any other alleged encroacher/s should be given opportunity/show-caused. This is clearly a safety valve as regards private respondents and/or encroacher/s.



W.P.No.25971 of 2024

Captioned writ petition is disposed of with the above directions.

There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

18.03.2025

Index : Yes/No

Neutral Citation : Yes/No

gpa

To

1. The District Collector
Office of the District Collector
Salem District
2. The Thasildar
Office of the Thasildar
Kadayampatti
3. The Block Development Officer
Kadayampatti



WEB COPY



W.P.No.25971 of 2024

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

gpa

W.P.No.25971 of 2024

18.03.2025

Page Nos.10/10