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W.P.No.31422 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR
and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

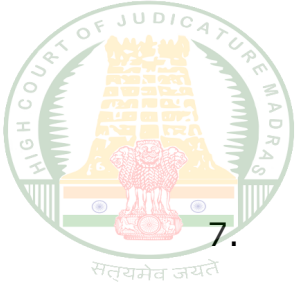
W.P. No.31422 of 2025

Muthuvel

Petitioner

vs.

1. The District Collector
Salem District
2. The Revenue Divisional Officer
Salem District
3. The Tahsildar
Pethanaickenpalayam Taluk
Salem District
4. The Superintending Engineer
Public Works Department & Water Resource Department
Sarabanga Zone
Kumarasampatti
Salem District
5. The Executive Engineer
Public Works Department (Water Resource Department)
Athur
Salem District
6. The Block Development Officer
Pethanaickenpalayam Panchayat Union
Salem District



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7. The Superintendent of Police
Salem District
8. The Deputy Superintendent of Police
Vazhapadi
Salem District
9. The Inspector of Police
Aaethapur Police Station
Pethanaickenpalayam
Salem District
10. Loganathan
11. Tamil
12. Thirunavukkarasu @ Settu
13. Mohan

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 to 6 to remove the encroachments in S.F. No.124, Idiyapatti Village with the assistance of respondents 7 to 9, which is classified as Government river poramboke land, by considering the petitioner's representations dated 12.05.2025, 13.05.2025, 17.05.2025, 22.05.2025 and 16.06.2025 within a time frame and ensure restoration of public common cart track situated in S.F. No.124, Idayapatti Village, Pethanaickenpalayam Taluk, Salem District.



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For petitioner	Mr. R. Prabakar
For RR 1 to 5	Mr. K. Suresh Govt. Advocate
For R6	Mr. V. Nanmaran Addl. Govt. Pleader
For RR 7 to 9	Mr. Babu Muthu Meeran Addl. Public Prosecutor
For RR 10 to 13	Notice dispensed with

ORDER

[made by M.SUNDAR, J.]

Subject matter of captioned 'writ petition' [hereinafter 'WP' for the sake of brevity] is alleged encroachment made in Government river poramboke land in 'S.F. No.124, Idayapatti Village, Pethanaickenpalayam Taluk, Salem District' [hereinafter 'said water body' for the sake of convenience and clarity).

2. Request for removal of aforesaid alleged encroachment by writ petitioner by way of as many as five representations, the last being one dated 16.06.2025, to official respondents has not yielded results and that has necessitated captioned WP, is the submission of Mr. R. Prabakar, learned counsel on record for writ petitioner.



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3. Issue notice to official respondents (RR 1 to 9).

4. Mr. K. Suresh, learned Government Advocate, accepts notice for respondents 1 to 5. Mr. V. Nanmaran, learned Additional Government Pleader, accepts notice for sixth respondent. Mr. Babu Muthu Meeran, learned Additional Public Prosecutor, accepts notice for respondents 7 to 9. Learned State counsel for respondents 1 to 5 submits that survey of said water body will be done after putting all concerned on notice and in their presence, within a period of eight weeks from today, *i.e.*, on or before 16.10.2025, and depending on the outcome of the survey, action for removal of encroachment (if found) will be commenced *vide* the provisions of '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], as expeditiously as the business of official respondents would permit but in any event within a period of eight weeks therefrom, *i.e.*, on or before 11.12.2025. This submission is recorded.



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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 an 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 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)



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(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

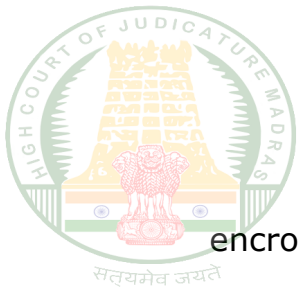
(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey 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.'

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 respondents (respondents 10 to 13) who are alleged encroachers and / or any other



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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 for all official respondents, dispensing with notice to private respondents (respondents 10 to 13). Though obvious, it is made clear that this order does not touch upon the rights of private respondents (respondents 10 to 13) and / or any other noticee/s under the Tanks Act. This means that all the rights and contentions of private respondents (respondents 10 to 13) 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 water body.

7. As regards respondents 7 to 9, Mr. Babu Muthu Meeran, learned Additional Public Prosecutor, submits that complaints and counter complaints were lodged, the same were closed but we make it clear that the role of respondents 7 to 9 would be with regard to maintenance of law and order.



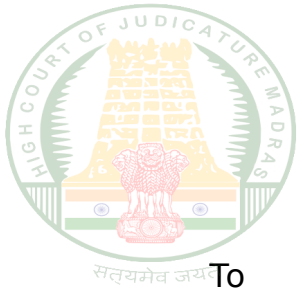
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8. In the light of the narrative thus far, captioned WP is disposed of in the aforesaid manner, recording the stated position of learned State counsel for respondents 1 to 5 that survey will be done within a period of eight weeks from today, *i.e.*, on or before 16.10.2025 and action if any, under the Tanks Act, will be commenced as expeditiously as the business of official respondents would permit but in any event within a period of eight weeks therefrom *i.e.*, on or before 11.12.2025. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
21.08.2025

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