



W.P.No.27315 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 07.07.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.27315 of 2022

N.Sivasankaran

... Petitioner

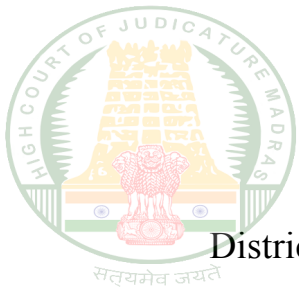
VS.

1. The District Collector
District Colletorate
Ariyalur District
2. The Tahsildhar
Ariyalur Taluk
Ariyalur District
3. The Block Development Officer
Ariyalur Panchayat Union
Ariyalur
Ariyalur District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to take appropriate action for removal of all the encroachments of water body in S.No.98/1 viz., Pullayarkulam Lake situated in Vilangudi Village, Ariyalur Taluk, Ariyalur

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District in terms of the “Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007”.

**(prayer amended vide order dated 07.07.2025 made in
W.M.P.No.32835 of 2022)**

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader

ORDER

[Order of the Court was made by M. SUNDAR, J.]

Subject matter of captioned main 'Writ Petition' ['WP' for the sake of brevity] is alleged encroachment in 'S.No.98/1, Pullayarkulam Lake, Vilankudi Village, Ariyalur Taluk, Ariyalur District' {'said water body' for the sake of convenience and brevity}.

2. Paragraph 4 of the proceedings dated 25.11.2022 made by another Hon'ble Division Bench reads as follows:

'4. The "A" register produced by learned Special Government Pleader before this Court also pertains to S.Nos.98/1 to 98/3. On a perusal of the "A" register, we find that the lands in S.Nos.98/1 to 98/3 are classified as Pillaiyar



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Kuttai; vandi pathai and natham respectively'

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3. Therefore, 'Removal of Encroachment' ['RoE'] will be qua 'three survey numbers i.e., S.Nos.98/1, 98/2 and 98/3' ['said property' for the sake of brevity].

4. Request for removal of afore-referred alleged encroachment has not yielded results and that has necessitated captioned main WP is the submission of learned counsel for writ petitioner.

5. Learned State counsel for respondents 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.

6. 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,

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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)

(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



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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.

7. If removal of encroachment is *vide* any other appropriate/applicable statute also, alleged encroachers shall be show caused as per the statutory mechanism thereat.

8. The above means that alleged 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. Though obvious, it is made clear that this order does not touch upon the rights of noticee/s under the Tanks Act or any other



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appropriate/applicable statute. This means that all the rights and contentions of 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.

9. 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 that survey will be done within a period of six weeks from today, *i.e.*, on or before 18.08.2025 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 29.09.2025. There shall be no order as to costs.

(M.S.,J.)

(H.C.,J.)

07.07.2025

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Index : Yes / No

Neutral Citation : Yes / No

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**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

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