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W.P.No.31397 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.31397 of 2025

R.Sivasamy

Petitioner

vs.

1. The District Collector
Coimbatore District
Coimbatore
2. The Revenue Divisional Officer
Pollachi
3. The Tahsildar
Pollachi Taluk
Coimbatore District
4. Gopal
5. Jayaprakash

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 to 3 to remove the encroachments made in the water body situated in Survey No.207B of Thippampatti Village, Pollachi Taluk, Coimbatore District and consequently, direct the respondents 1 to 3 to restore the



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said water stream to its original natural form based on the petitioner's representation dated 15.05.2025.

For petitioner Mr. P. Vetrivel
For RR 1 to 3 Mr. M.S. Arasakumar
 Government Advocate
For RR 4 & 5 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 water body in 'Survey No.207B of Thippampatti Village, Pollachi Taluk, Coimbatore District' [hereinafter 'said water body' for the sake of convenience and clarity).

2. Request for removal of aforereferred alleged encroachment by writ petitioner by way of a representation dated 15.05.2025 to official respondents has not yielded results and that has necessitated captioned WP, is the submission of Mr. P. Vetrivel, learned counsel on record for writ petitioner.



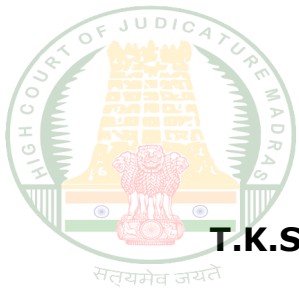
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3. Issue notice to official respondents (RR 1 to 3).

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4. Mr. M.S. Arasakumar, learned Government Advocate, accepts notice for official respondents (respondents 1 to 3). Learned State counsel 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.

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



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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)

(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.



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(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 4 and 5) who are alleged encroachers and / or any other 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, dispensing with notice to private respondents (respondents 4 and 5). Though obvious, it is made clear that this order does not touch upon the rights of private respondents and / or any other noticee/s under the Tanks Act. This means that all the rights and contentions of private respondents (respondents 4 and 5) and/or any other noticee/s stand preserved for



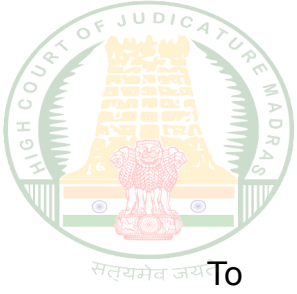
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responding suitably when show caused / visited with notices. Though obvious, for the sake of specificity, it is clarified that this Court, in instant order, has not expressed any view or opinion, one way or the other, regarding alleged encroachment *qua* said water body.

7. 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 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

cad



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