



W.P.No.27639 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 12.06.2025

CORAM

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

W.P.No.27639 of 2024

Chennan
S/o.Thirthagiri

... Petitioner

VS.

1. The District Collector
Office of District Collector
Thirupathur Taluk
Thirupathur District.
2. The District Revenue Officer
Thirupathur Taluk
Thirupathur District.
3. The Revenue Divisional Officer
Thirupathur Taluk
Thirupathur District.
4. The Tahsildar
Thirupathur Taluk
Thirupathur District.
5. Kuppan
S/o.Kannan

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondents 3 and 4 herein to consider the representation of the petitioner dated 25.07.2023 and consequently, direct to conduct the enquiry in order to remove the encroachment of lake / pond situated at S.No.348, Sinamuthur Village, Thirupathur Taluk, Thirupathur District.

For Petitioner : Mr.R.Ramesh
For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R4
Mr.P.A.Sudesh Kumar, for R5

ORDER

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

Subject matter of the captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity, convenience and clarity} is 'S.No.348 in Sinamuthur Village, Tirupathur Taluk, Tirupathur District' {hereinafter 'said property' for the sake of brevity, convenience and clarity}.

2. Mr.R.Ramesh, learned counsel for writ petitioner submits that said property is a water body, the same has been encroached by private respondent - R5 [Kuppan, Son of Kannan] *inter alia* by constructing a temple. Learned counsel for writ petitioner further submits that writ



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petitioner has approached official respondents *inter alia* vide a 'representation dated 25.07.2023' {hereinafter 'said representation' for the sake of brevity, convenience and clarity} but there is inaction and that has necessitated the captioned WP.

3. Hon'ble predecessor Bench has issued notice to respondents on 23.09.2024.

4. Today, Mr.T.K.Saravanan, learned Additional Government Pleader for official respondents - R1 to R4 and Mr.P.A.Sudesh Kumar, learned counsel for private respondent (R5) are before us.

5. This Court with the consent of all aforementioned learned counsel took up the main WP. In the course of hearing, it comes to light that R5 - private respondent has filed a suit in O.S.No.84 of 2003 on the file of the District Munsif Court, Tirupathur, Vellore District qua said property arraying some individuals as D1 to D5 (private defendants) and jurisdictional Tahsildar, Sub-Collector and District Collector as D6, D7 and D8 respectively. After full contest, the Civil Court decreed the suit in and by judgment and decree dated 22.02.2013. To be noted, the suit has been filed on 26.03.2003 and it is a suit for Bare Injunction qua said property.



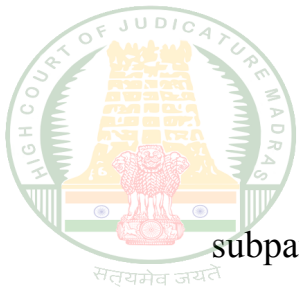
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6. We had the benefit of perusing the judgement and decree in the aforesaid suit.

7. A careful perusal of the suit scheduled property makes it clear that the decree itself describes said property as public land (poromboke land) and it also talks about construction of a temple (Sivakali Amman Temple) therein.

8. We find that the Civil Court decree which is bare injunction qua possession as regards said property only means that there shall be no eviction *de hors* due process of law.

9. Learned State Counsel submits that action under '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) is in the anvil. Action under Tanks Act necessarily means that R5 or any other similarly placed person or any other person concerned with the matter should be put on notice, given an opportunity and orders shall be passed. This is vide ***T.K.Shanmugam*** principle laid down by Full Bench of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu*** reported in **2015 (5) LW 397**. Relevant paragraphs are sub sub-paragraphs (i) to (iii) of



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subparagraph (f) of paragraph 15 and the same reads as follows:

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'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.

(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



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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.'

10. Learned State Counsel submits that action under Tanks Act will be initiated within six weeks from today i.e., on or before 24.07.2025. It is submitted by learned State Counsel that ***T.K.Shanmugam*** principle will be strictly followed. This submission is recorded.

Captioned WP disposed of recording the stated position of parties and in the aforesaid manner. There shall be no order as to costs

(M.S.J.,)

(H.C.J.,)

12.06.2025

Index : Yes / No

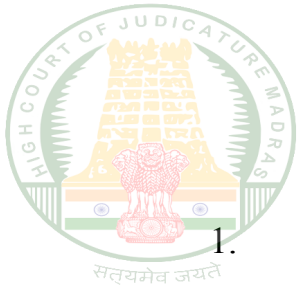
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