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W.P. No.33359 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2025

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR

AND

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P. No.33359 of 2025

R. Palani

Petitioner

vs.

1. The District Collector
Tiruvannamalai District
Tiruvannamalai

2. The Tahsildar
Kalasapakkam Taluk
Kalasapakkam
Tiruvannamalai District

3. The Executive Engineer
Public Works Department (Water Sources)
Central Pennai River Drainage Division
Tiruvannamalai
Tiruvannamalai District

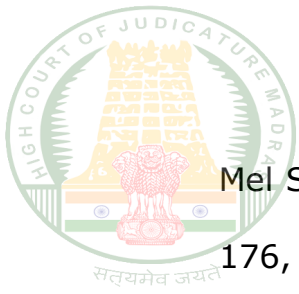
4. The Assistant Engineer
Department of Water Sources (PWD)
Central Pennai River Drainage Wing
Polur
Tiruvannamalai District

5. M. Govindasamy

6. K. Kumarasamy (Teacher-Retired)

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 to 4 to forthwith take appropriate action to remove the encroachments of



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Mel Solankuppam Lake Canals in S.Nos. 25, 31, 32, 33, 36, 40, 175, 176, 177, 184, 188, 191, 192, 193, 195, 199, 200, 202, 203, 206, 207, 208, 210, 211, 212, 215, 216, 217, 222, 223, 225, 254, 268, 269, 271, 272, 275, 280, 283, 284, 285, 286, 287, 288, 289, 290, 292, 293, 294, 295, 304, 305, 308, 313, 316, 320, 321, 370, etc. of Mel Solankuppam Village, Kalasapakkam Taluk, Tiruvannamalai District and dredging the same by considering the petitioner's representation dated 05.06.2024.

For petitioner Mr. A. Bharathi

For RR 1-4 Mr. T.K. Saravanan
Addl. Govt. Pleader

For RR 5 & 6 Notice dispensed with

ORDER

(made by M. SUNDAR, J.)

Captioned 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed with 'Removal of Encroachment' (RoE) prayer *qua* Mel Solankuppam Lake Canals in S.Nos.25, 31, 32, 33, 36, 40, 175, 176, 177, 184, 188, 191, 192, 193, 195, 199, 200, 202, 203, 206, 207, 208, 210, 211, 212, 215, 216, 217, 222, 223, 225, 254, 268, 269, 271, 272, 275, 280, 283, 284, 285, 286, 287, 288, 289, 290, 292, 293, 294, 295, 304, 305, 308, 313, 316, 320, 321, 370, etc. of Mel Solankuppam Village, Kalasapakkam Taluk, Tiruvannamalai District [hereinafter 'said water bodies' for the sake of convenience and clarity]. Inaction on the part of official



respondents has necessitated the captioned WP is learned counsel's say.

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2. Issue notice to official respondents.

3. Mr. T.K. Saravanan, learned Additional Government Pleader, accepts notice for official respondents and submits, on instructions, that encroachments have since been removed but writ petitioner enters upon disputation on the same and submits that encroachments have not been removed. Owing to this disputation, writ petitioner undertook to make good the entire cost of survey of said water bodies in advance.

4. In such perspective of the matter, second respondent (Tahsildar) shall send tentative cost to writ petitioner within a fortnight from today *i.e.*, on or before 17.09.2025. Writ petitioner shall deposit the same within a fortnight therefrom, *i.e.*, on or before 01.10.2025.

5. Learned State counsel submits that if cost is deposited, as directed above, survey of said water bodies will be conducted after putting all concerned on notice and in their presence, within eight weeks therefrom *i.e.*, on or before 26.11.2025 and if encroachments are found, action for removal of encroachments (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] within eight weeks therefrom *i.e.*, on or before 21.01.2026.

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, 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)



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(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.'

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. The above means that private respondents (respondents 5 and 6) 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



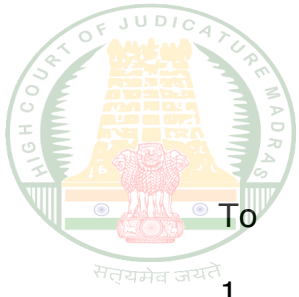
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(respondents 5 and 6). Though obvious, it is made clear that this order does not touch upon the rights of private respondents (respondents 5 and 6) and / or any other noticee/s under the Tanks Act. This means that all the rights and contentions of private respondents (respondents 5 and 6) 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 bodies.

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 of RR 1 to 4 at paragraph 5, *supra*. There shall be no order as to costs.

(M.S., J.) (M.S.K., J.)
03.09.2025

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