



W.P.No.32408 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No. 32408 of 2024 and W.M.P.No. 35188 of 2024

A.B.Sai Divya

Petitioner

vs.

1. The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai 600 003
2. The Executive Engineer
Zone-9, Greater Chennai Corporation
Lake Area
Nungambakkam
Chennai 600 034
3. The Tahsildar
Egmore Nungambakkam Taluk
Spur Tank Road
Chetpet
Chennai
4. P.M.Rajkumar
5. The Secretary to Government
Water Resources Department (WRD)
Government of Tamil Nadu
Fort St. George
Chennai 600 009



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W.P.No.32408 of 2024

The Executive Engineer
Water Resources Organisation (WRO)
PWD Estate
Kamarajar Salai
Chepauk
Chennai 600 005

Respondents

(RR 5 & 6 impleaded *suo motu* by Court on
20.01.2025)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 to 3 to remove the land encroachment done by the 4th respondent in the land in survey No.135 in Block No.15, Puliur Town, Egmore Taluk, within a time frame.

For petitioner	Mr. P. Raja
For RR 1 and 2	Mr. D.B.R. Prabhu Standing Counsel
For RR3, 5 and 6	Mr. V. Ravi Special Government Pleader assisted by Mr. M.S. Arasakumar Government Advocate
For R4	Mr. V. Sivaraman along with Mr. M.G. Martin Manivannan



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W.P.No.32408 of 2024

ORDER

[made by M.SUNDAR, J.]

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) is the third writ petition as between the writ petitioner and R4 (private respondent – P.M. Rajkumar). The first writ petition is W.P.No.1152 of 2022 and the same came to be disposed of by another Hon'ble Division Bench *vide* order dated 31.01.2022. The second writ petition is W.P.No.5850 of 2021 and the same came to be disposed of by yet another Hon'ble Division Bench *vide* order dated 16.03.2022.

2. For better appreciation of the issue and for ease of reference, the aforesaid two orders dated 31.01.2022 and 16.03.2022 are extracted and reproduced as follows:

Order dated 31.01.2022 in W.P.No.1152 of 2022:

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 31.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P. No.1152 of 2022 and WMP.No.1219 of 2022

Sai Divya

.. Petitioner

Page Nos.3/14



W.P.No.32408 of 2024

VS.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.

2. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai 600 003.

3. The Executive Engineer,
Zone-IX, Greater Chennai Corporation,
No.8, Lake Area 4th Cross Street,
Nungambakkam,
Chennai 600034.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, forbearing the respondents 2 and 3 from in any way interfering with the petitioner's premises at Old No.52, New No.66, Basha Sahib Street, Choolaimedu, Chennai 600 094 more particularly by way of locking, sealing and demolition of the same, pending final determination of petitioner's Special Revision and Stay petition dated 06.01.2022 filed under Section 80(A) and 80-A(3) of the Tamil Nadu Town and Country Planning Act with the first respondent.

For petitioner	: Mr.P.Ramanathan
For R1	: Mr.V.P.R.Elamparithi
For RR2 & 3	: Mr.K.Raja Shrinivas

ORDER

(The Order of the Court was made by K.KALYANASUNDARAM, J)

The Writ Petition is heard through video conferencing.

2. Heard Mr.P.Ramanathan, learned counsel for the petitioner, Mr.V.P.R.Elamparithi, learned Additional Government Pleader appearing for the first respondent and Mr.K.Raja Shrinivas, learned Senior Standing Counsel appearing for the respondents 2 and 3.

3. The petitioner has come up with this Writ Petition for issuance of Writ of Mandamus, forbearing the respondents 2 and 3 from in any way interfering with the petitioner's premises at Old No.52, New No.66, Basha Sahib Street, Choolaimedu, Chennai 600 094.



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W.P.No.32408 of 2024

4. It is the case of the petitioner that he is the absolute owner of the subject property. He would further claim that he had obtained planning permit and building permission in the year 2013 for construction of stilt plus 2 floors of residential building, but he constructed 3 floors for requirement of the family members.

5. The learned counsel appearing for the petitioner would state that the second respondent issued a Locking & Sealing and Demolition Notice under Section 56 of the Tamil Nadu Town and Country Planning Act. Aggrieved over the same, the petitioner preferred a special revision before the first respondent under Section 80-A of the Act. Though the appeal is pending, the respondents 2 and 3 are attempting to interfere with the enjoyment of the petitioner. It is also stated that in similar circumstances, this Court has granted interim relief to the petitioner in W.P.No.23716 & 23721 of 2021.

6. The learned Additional Government Pleader appearing for the first respondent would state that the special revision preferred by the petitioner is pending for consideration before the first respondent and he is ready to pass orders in accordance with law.

7. Considering the submissions of the learned counsels appearing on either side, this Court, without going into the merits of the matter, directs the first respondent to dispose of the special revision filed by the petitioner dated 06.01.2022, within a period of six months, after providing an opportunity of personal hearing to the petitioner, on merits and in accordance with law. Till then, no coercive steps shall be taken by the respondents.

8. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[M.K.K.S, J] [V.S.G., J]
31.01.2022'

Order dated 16.03.2022 in W.P.No.5850 of 2021:

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.5850 of 2021



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W.P.No.32408 of 2024

P.M.Rajkumar

... Petitioner

vs.

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai-600 003.
2. The Assistant Executive Engineer,
Division-109, Gill Nagar,
Choolaimedu,
Greater Chennai Corporation,
Chennai-600 094.
3. The Executive Engineer,
Zone-9, Greater Chennai Corporation,
Lake Area, Nungambakkam,
Chennai-600 034.
4. A.B.Sai Divya

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to take appropriate action on the complaints of the petitioner dated 02.12.2020, 19.12.2020, 04.01.2021 and 07.01.2021 within a time frame fixed by this Court.

For Petitioner	Mr.K.M.Ramesh
For RR 1-3	Mr.K.Raja Shrinivas Standing Counsel
For R4	Mr.P.Raja

ORDER
(Order of the Court was made by T.RAJA, J.)

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to take appropriate action on the complaints of the petitioner dated 02.12.2020, 19.12.2020, 04.01.2021 and 07.01.2021 within a time frame fixed by this Court.

2. When the matter was called, learned Standing Counsel appearing for the respondents 1 to 3 would state that based on the complaints of the petitioner dated 02.12.2020, 19.12.2020, 04.01.2021 and 07.01.2021, action has already been taken against the 4th respondent herein and aggrieved over the same, the 4th respondent has also filed W.P.No.1152/2022 before this Court and the



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W.P.No.32408 of 2024

same was disposed of by an order dated 31.01.2022, directing the 1st respondent therein, namely, The Secretary, State of Tamil Nadu, Housing and Urban Development Department, Fort St. George, Chennai, to dispose of the special revision of the petitioner dated 06.01.2022, preferred under Section 80-A of the Town and Country Planning Act, within a period of six months. Therefore, nothing survives for further adjudication in this Writ Petition.

3. Recording the same, the Writ Petition is dismissed as infructuous. No costs.

(T.R.J.,) (S.S.K.J.,)
16.03.2022'

3. As would be evident from the aforementioned orders, earlier writ petitions, same pertain to constructions (superstructure) said to have been put up by writ petitioner and R4. We are also informed that the earlier writ petitions pertain to Survey Nos.126 and 127 in Block No.15, Puliur Village, Egmore Taluk, Chennai District but we refrain from writing anything on the same as the same stand governed by two separate judicial orders which have been reproduced *supra*.

4. Reverting to the captioned main WP, the same pertains to alleged encroachment in S.No.135 in Block No.15, Puliur Village, Egmore Taluk, Chennai District (hereinafter 'said land' for the sake convenience and clarity).



W.P.No.32408 of 2024

5. As regards RR 1 to 3, Mr. V. Ravi, learned Special Government Pleader assisted by Mr. M.S. Arasakumar, learned Government Advocate, is before us. As regards R4 (private respondent – P.M. Rajkumar), Mr. V. Sivaraman, along with Mr.M.G.Martin Manivannan, is before us.

6. We heard all the aforementioned counsel and we also had the benefit of perusing a status report dated 07.01.2025, *i.e.*, status report from R3 (jurisdictional Tahsildar) which has been placed before us by learned State counsel. Paragraphs 8 and 9 of the aforereferred status report are of relevance and the same read as follows:

'8. I respectfully submit that on 07.07.2021 the 3rd respondent in this writ petition and the 6th respondent in the aforesaid suit had measured the said property of the 4th respondent comprised in S.Nos.127/1 and 127/2 of Block No.15 of Puliur Village and the Government poramboke land in S.No.135 of Block No.15 of Puliur Village and submitted a report already showing that the "Government Poramboke" land, meant for canal (a water course poramboke) is encroached by the owners in Survey Numbers 126 and 127 of Block No.15 of Puliur Village and that the entire S.No.135 of Block No.14 meant for a canal is encroached.

9. I respectfully submit that the 3rd respondent had already submitted a report to the 2nd respondent vide Na.Ka.No.A4/1121/2021 dated 08.12.2021 herein with a request to remove the encroachment made by the encroachers in the water course poramboke lands as the 2nd respondent herein is the competent authority to remove the encroachment in watercourse poramboke lands.'



W.P.No.32408 of 2024

7. Owing to the aforementioned averment *i.e.*, averment that said land is meant for a 'canal', we deem it appropriate to *suo motu* implead Secretary to Government of Tamil Nadu, Water Resources Department, Fort St. George, Chennai – 600 009 (hereinafter 'WRD' for the sake of brevity) as R5 and Executive Engineer, Water Resources Organisation, PWD Estate, Kamarajar Salai, Chepauk, Chennai 600 005 (hereinafter 'WRO' for the sake of brevity) as R6. Mr. V. Ravi, learned State counsel, accepts notice for newly impleaded RR 5 and 6.

8. Considering the limited scope *i.e.*, limited legal perimeter within which the captioned main WP should perambulate, main WP is taken up with the consent of all the aforementioned learned counsel.

9. In the light of the narrative thus far and in the light of relevant portion of status report of jurisdictional Revenue Tahsildar (R3) which has been captured and reproduced in paragraph 5, *supra*, it comes to light that WRD and WRO will be the Department and Organisation respectively which have to initiate action *qua* alleged encroachment. This means that 'the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)'



W.P.No.32408 of 2024

(hereinafter 'the Tanks Act' for the sake of brevity) and the Rules made thereunder come into play.

10. As regards the Tanks Act, the vires of the same was challenged in **T.S.Senthil Kumar's** case [**T.S.Senthil Kumar vs. Government of Tamil Nadu**] being order dated 10.02.2010. This order is reported in **(2010) 3 MLJ 771, 2010 Writ LR 113** and **MANU/TN/0281/2010**] and a Hon'ble Division Bench upheld the vires. Thereafter, in **T.K.Shanmugam's** case [**T.K.Shanmugam Vs. State of Tamil Nadu**] reported in **2015 (5) LW 397**, a Full Bench of this Court, while reiterating **T.S.Senthil Kumar**, laid down the procedure to be followed for proceeding under the Tanks Act and this is *vide* sub sub-paragraphs (i) to (iii) of sub-paragraph (f) of paragraph 15 which 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,



W.P.No.32408 of 2024

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 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.'

11. The above means that R4 who is the alleged encroacher and any other alleged encroacher should be put on notice when proceedings under the Tanks Act is initiated.



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W.P.No.32408 of 2024

12. The following order is made:

(i) Appropriate authorities *qua* R5/R6, *i.e.*, authorities in the hierarchy under R5 and R6, shall initiate action under the Tanks Act *qua* alleged encroachment in said land *i.e.*, S.No.135 in Block No.15 of Puliur Village, Egmore Taluk, Chennai District;

(ii) When the aforementioned proceedings under the Tanks Act is commenced, R4 and any other alleged encroacher shall be put on notice *vide* **T.K. Shanmugam** principle set out *supra*. This means that all the rights and contentions of R4 and any other alleged encroacher are left open for being canvassed when they are show caused;

(iii) Though obvious, we make it clear that when R4 and any other alleged encroacher are show caused and when they show cause (if so advised and if so desired), the same shall be considered on its own merits and in accordance with law untrammelled by this order as this order does not express any view or opinion on the allegation of encroachment; and

(iv) The aforereferred proceedings under the Tanks Act shall be commenced and concluded as expeditiously as the business of R5/R6 and the officers in the hierarchy under R5/R6 would permit but in any event within 12 weeks from today *i.e.*, by 21.04.2025.



W.P.No.32408 of 2024

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Captioned main WP stands disposed of in the aforesaid manner.

Consequently, captioned WMP thereat is disposed of as closed. There shall be no order as to costs.

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

20.01.2025

cad

Index : Yes/No

Internet : Yes/No

P.S.

Though this WP is disposed of, list under the cause list caption 'FOR REPORTING COMPLIANCE' on 28.04.2025.



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W.P.No.32408 of 2024

M.SUNDAR, J.
and
K.RAJASEKAR, J.
cad

To

1. The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai 600 003
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Lake Area
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W.P.No.32408 of 2024

20.01.2025