



W.P.No.35040 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.07.2025

CORAM

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

W.P.No.35040 of 2022
and
W.M.P.No.34484 of 2022

M.Balaguru
S/o.Muthian

... Petitioner

VS.

1. The District Collector
Office of the District Collector
Cuddalore District.
2. The Tashildar
Office of Tashildar
Cuddalore District.
3. The Junior Engineer
Department of Water Resources
Irrigation Section
Kumaratchi, Cuddalore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus, to call for the records relating to the impugned notice dated 08.12.2022 issued by the 3rd respondent under

Page Nos.1/10



W.P.No.35040 of 2022

Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and quash the same as illegal and consequently, forbearing the respondents from evicting or dispossessing the petitioner from the land measuring an extent of cents comprised in S.No.154, situate at Sirakizhanthanallur, Kattumannarkudi Taluk, Cuddalore District.

For Petitioner : Ms.G.Soundari

For Respondents : Mr.K.Suresh
Government Advocate

ORDER

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

Subject matter of captioned 'writ petition' [hereinafter 'WP' for the sake of brevity] is alleged encroachment in 'S.No.154, situate at Sirakizhanthanallur, Kattumannarkudi Taluk, Cuddalore District' [hereinafter 'said land' for the sake of convenience and clarity].

2. Captioned WP *inter alia* impugns 'a notice dated 08.12.2022 issued by the third respondent {the Junior Engineer, Department of Water Resources, Irrigation Section, Kumaratchi, Cuddalore District}' [hereinafter 'impugned notice' for the sake of convenience and clarity] under Section 6(1) 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

Page Nos.2/10



W.P.No.35040 of 2022

brevity, convenience and clarity}. By the impugned notice, the petitioner has been *inter alia* directed to remove the alleged encroachment made by him in the said land.

3. Ms.G.Soundari, learned counsel on record for writ petitioner and Mr.K.Suresh, learned Government Advocate for respondents are before us.

4. Though the impugned notice refers to ***T.K.Shanmugam*** case [***T.K.Shanmugam Vs. State of Tamil Nadu***] reported in ***2015 (5) LW 397***, it directly calls upon the writ petitioner / noticee to remove the encroachment without giving an opportunity. Therefore, we are of the considered view that it would serve the ends of justice, if the impugned notice is directed to be treated as a 'Show Cause Notice' {'SCN'} and if the writ petitioner is given an opportunity to send a representation (if so advised and if so desired) so that the authority or officer concerned can pass final orders considering the cause shown.

5. The alleged encroachment being in water body, the eviction proceedings will obviously be under Tanks Act and 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' {hereinafter 'Tank Rules' for the sake of brevity, convenience and clarity}. Though obvious,



W.P.No.35040 of 2022

this Court deems it appropriate to make it clear that eviction proceedings 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. As regards **T.K. Shanmugam** principle, relevant paragraphs are sub sub-paragraphs (i) to (iii) of subparagraph (f) of paragraph 15 and the same reads 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)



WEB COPY



W.P.No.35040 of 2022

(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.'*

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



W.P.No.35040 of 2022

MLJ 771] rendered by Hon'ble Coordinate coequal Division Bench.

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6. In the light of the narrative thus far, following order is passed:

(i) Impugned notice dated 08.12.2022 shall now be treated as SCN;

(ii) It is open to writ petitioner to send objection / response to SCN (if so advised and if so desired) within a period of two weeks from today i.e., on or before 01.08.2025;

(iii) If the writ petitioner sends objection / response as above, R3 shall pass final orders after considering the objection / response, on its own merits and in accordance with law within a period of two weeks therefrom i.e. on or before 15.08.2025;

(iv) If the writ petitioner does not send any objection / response by 01.08.2025, it is open to



WEB COPY



W.P.No.35040 of 2022

respondents to proceed further in accordance in law;

(v) Further, the final order so passed shall be served on the writ petitioner within a period of five working days from the date of the final order;

(vi) If the final order to be passed by the third respondent is going to be adverse to the writ petitioner, the same shall be kept in abeyance for a fortnight from the date of service of the final order on the writ petitioner so as to provide a window to the writ petitioner to assail the said order if permissible in law or to seek judicial review of the said order.

(vii) If the writ petitioner does not do so within a fortnight from the date of service of the said order, the final order so passed by the third respondent will be resuscitated and put into motion;

(viii) If the final order to be passed by the third respondent ends up in favour of the writ petitioner, that



W.P.No.35040 of 2022

would be curtains on the matter.

and

(ix) Though obvious, it is made clear that any further action will be subject to and depending on final orders to be made by concerned authorities, if objection / response is sent.

9. Captioned WP stands disposed of in the aforesaid manner. Consequently, captioned Writ Miscellaneous Petition stands disposed of as closed. There shall be no order as to costs.

(M.S.J.,)

(H.C.J.,)

18.07.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking

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To

Page Nos.8/10



W.P.No.35040 of 2022

1.
WEB COPY

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W.P.No.35040 of 2022

**M.SUNDAR, J.,
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W.P.No.35040 of 2022

18.07.2025

Page Nos.10/10