



W.P.No.35137



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2025

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CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

AND

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No. 35137 of 2023

M. Asaithambi

Petitioner

vs.

1. The District Collector
Collectorate
Kallakurichi
Kallakurichi District
2. The Revenue Divisional Officer
Kallakurichi
Kallakurichi District
3. The Revenue Tahsildar
Kallakurichi
Kallakurichi District
4. S. Ashokan
5. K. Manivel
6. Jaisankar
7. Azhagammal
8. Malarkodi
9. Jayakodi
10. Manikandan
11. Rathinam

Respondents

(RR4 to 11 impleaded *vide* order dated
02.07.2025 in WMP.No.1159 of 2024)



Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to remove the encroachments in the Government Poramboke Odai in S.F.Nos.32, 37, 38 and 45/1, which end with Eri in S.F.No.51, Melur Village, Kallakurichi Taluk and District, and restore the water body to its original position by considering the petitioner's representation dated 29.09.2023.

For petitioner

Ms. M. Adhishree
for Mr. N. Manokaran

For RR 1 to 3

Mr. T.K. Saravanan
Addl. Govt. Pleader

For RR 4, 9 & 11

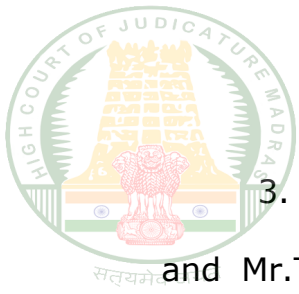
Notice dispensed with/not issued

ORDER

(made by M. SUNDAR, J.)

Subject matter of captioned main 'writ petition' ['WP' for the sake of brevity] is alleged encroachments in 'Government Odai Poramboke in S.F.Nos.32, 37, 38 and 45/1 which end with Eri in S.F.No.51, Melur Village, Kallakurichi Taluk and District' [hereinafter 'said property' for the sake of convenience and clarity].

2. Request for removal of aforereferred alleged encroachments has not yielded results and that has necessitated captioned WP is the submission of learned counsel for writ petitioner.



3. Ms. M. Adhishree, learned counsel on record for writ petitioner and Mr.T.K.Saravanan, learned Additional Government Pleader for official respondents (RR 1 to 3) are before us.

4. Learned State counsel for RR 1 to 3 submits that survey is in the anvil and depending on the survey outcome, action for removal of encroachment (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] or any other appropriate/applicable statute.

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 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.



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The said Writ petition was heard by a Division Bench to which one of us (M.Sathyannarayanan,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)

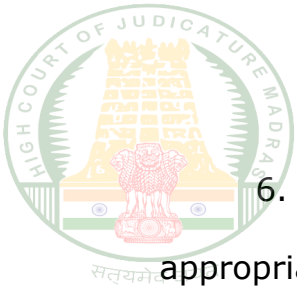
(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(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 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. If removal of encroachment is *vide* any other appropriate/applicable statute also, private respondents/alleged encroachers shall be show caused as per the statutory mechanism thereat.

7. The above means that private respondents (RR 4 to 11) 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 RR 4 to 11. Though obvious, it is made clear that this order does not touch upon the rights of RR 4 to 11 and / or any other noticee/s under the Tanks Act or any other appropriate/applicable statute. This means that all the rights and contentions of RR 4 to 11 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 property.

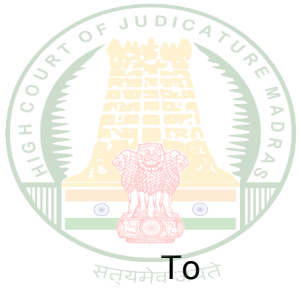
8. In the light of the narrative thus far, captioned WP is disposed of in the aforesaid manner, recording the stated position of learned State



counsel for RR 1 to 3 that survey will be done within a period of six weeks from today, *i.e.*, on or before 13.08.2025 and action if any, under the Tanks Act or any other appropriate/applicable statute, will be commenced as expeditiously as the business of official respondents would permit but in any event within a period of six weeks therefrom *i.e.*, on or before 24.09.2025. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
02.07.2025

cad
Index : Yes/No
NC : Yes/No



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HEMANT CHANDANGOUDAR, J.

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