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W.P.No.39009 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

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

W.P.No.39009 of 2024
and
W.M.P. No.42251 of 2024 in W.P. No.39009 of 2024

1.N.K.Mohammed Abdullah
2.M/s.Jannathul Ferdhouse Pallivasal
rep. By Secretary P.M.Ammanullah
3.S.A.Jahabar Ali
4.K.S.Raj Mohamed
5.K.P.A.Nasurudeen
6.P.M.Z.Hutharathullah
7.K.M.Salaudeen
8.Mohammed Khan
9.H.Mohamed Arif
10.K.M.Mohamed Moulana

... Petitioners

Vs.

1.The District Collector,
Tiruvarur, Tiruvarur District.
2.The Tahsildar,
Koothanallur Taluk,
Tiruvarur District.
3.The Block Development Officer,
Needamangalam Panchayat Union,
Koothanallur Taluk, Thiruvarur District.

... Respondents



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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in Na.Ka.No.1688/2023/A2 dated 15.10.2024 and Na.Ka.No.334/2024/A2 dated 25.11.2024 quash the same and direct the respondents to conduct the enquiry and pass orders in accordance with law and guidelines issued by this Court.

For Petitioners : Mr.G.Surya Narayanan
For Respondents : Mr.M.S.Arasakumar,
Government Advocate for R1 & R2
Mr.M.Muthusamy,
Government Advocate for R3

ORDER

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

Captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed assailing two orders one dated 15.10.2024 bearing reference Na.Ka.No.1688/2023/A2 and another dated 25.11.2024 bearing reference Na.Ka.No.334/2024/A2 both made by R2. These two orders shall be collectively referred to as 'impugned orders'.

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2. Mr.G.Surya Narayanan, learned counsel for writ petitioners submits that notices under Section 7 of 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} being notices signed on 02.11.2024 and 26.11.2024 were issued.

3. The noticees/writ petitioners sent responses dated 15.11.2024, 16.11.2024, 03.12.2024 and 05.12.2024 to the notices. It is the case of the writ petitioners that without considering the responses, impugned orders have been made. Notwithstanding very many averments in the support affidavit, campaign against impugned orders was predicated on the point that the impugned orders are in the nature of notices whereas orders considering the writ petitioners' responses to notices under Section 7 of said 1905 Act should have been made. Learned counsel pressed into service an order made by another Hon'ble Division Bench 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** and **2010 WritLR 113** and **MANU/TN/0281/2010**. To be noted, Manupatra citation (MANU/TN/0281/2010) has been placed before us.



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4. Issue notice to respondents.

5. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1 and R2 and Mr.M.Muthusamy, learned Government Advocate accepts notice for R3.

6. Learned State counsel submitted that as regards two responses to the two Section 7 notices, no acknowledgment has been placed before this Court. We find that this position is correct. However, with regard to one of the two responses viz., response dated 03.12.2024, a postal receipt showing despatch on 05.12.2024 has been annexed to the response. Therefore, whether the responses were received by the authority concerned itself is a factual issue.

7. As regards **T.S.Senthil Kumar's case**, we find that it is an order which was rendered by another Hon'ble Division Bench under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) wherein the vires of Tanks Act was upheld.



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8. This Court also notices that this **T.S.Senthil Kumar's** case was subsequently affirmed by a Full Bench in **T.K.Shanmugam {T.K.Shanmugam Vs. State of Tamil Nadu}** reported in **2015 (5) LW 397** and while affirming **T.S.Senthil Kumar's** case, the Full Bench laid down a procedure to be followed as regards the Tanks Act and this procedure has been adumbrated in sub sub-paragraphs (i), (ii) and (iii) of sub-paragraph (f) of paragraph 15 of **T.K.Shanmugam (FB)**.

9. Be that as it may, a judgment rendered in a case assailing the vires of Tanks Act cannot come to the aid of the writ petitioners in a proceedings under said 1905 Act. In this regard, we deem it appropriate to remind ourselves of the declaration of law made in **Padma Sundara Rao** case [**Padma Sundara Rao Vs. State of Tamil Nadu** reported in **(2002) 3 SCC 533**] rendered by a Hon'ble Constitution Bench and the relevant paragraph is paragraph 9, which reads as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative



enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

10. To be noted, ***Padma Sundara Rao's case*** is referred to as regards the manner in which precedents have to be cited and relied on. Suffice to say that ***T.S.Senthil Kumar's case*** relied on by learned counsel for writ petitioners does not come to the aid of the writ petitioners in the case on hand.

11. Reverting to the case on hand, learned State counsel submits that the impugned orders are in effect 'orders' though the caption says 'அறிவிப்பு'.

12. Whether the responses to the show cause notices under Section 7 of said 1905 Act were received at all itself is question which



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turns on facts, inter-alia in this view of the matter, we are of the considered view that this is a case where the writ petitioners have to be relegated to the remedy of statutory appeal under Section 10 of said 1905 Act.

13. This Court has repeatedly held that said 1905 Act is a self-contained Code. The reason *inter-alia* is that there is a provision to have the alleged encroacher show caused under Section 7 of said 1905 Act followed by an order (considering the cause shown). The order under Section 6 is appealable under Section 10 [District Collector is the appellate authority] and there is a provision for further revision to the Government under Section 10-A [Section 10-A(3) to be precise] of said 1905 Act. Pending appeal / revision, there is a provision for making interim prayer vide Section 10-B of said 1905 Act. Therefore, said 1905 Act is a self-contained Code in every sense of the expression.

14. It is open to the writ petitioners to file statutory appeals under Section 10 together with stay petitions under Section 10-B, if so advised and so desired subject of course to limitation as prescribed. If



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such statutory appeals together with stay petitions thereat are filed subject of course to limitation and condonation of delay prayer (if any), the same shall be considered on its own merits and in accordance with law by R1, who is the Appellate Authority.

15. In the light of the narrative, discussion and dispositive reasoning thus far, we find no reason to interfere with the impugned orders. The sequitur is, captioned WP fails and the same is dismissed. Consequently, captioned Writ Miscellaneous Petition (WMP) thereat also perishes with the main WP and the same is also dismissed. There shall be no order as to costs.

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

02.01.2025

Index : Yes / No

Neutral Citation : Yes / No

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P.S: After the order was passed, Mr.G.Surya Narayanan, learned counsel on record for writ petitioners requested for return of the original impugned orders so as to enable the writ petitioners to file statutory appeals in accordance with our order/accepting our order. Registry to return the original impugned orders to the learned counsel

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on record for writ petitioners under due acknowledgement forthwith.

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To

- 1.The District Collector,
Tiruvarur, Tiruvarur District.
- 2.The Tahsildar,
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Tiruvarur District.
- 3.The Block Development Officer,
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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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