



W.P.No.39956 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.39956 of 2024

and

W.M.P.No.43264 of 2024

Balakrishnan .M

... Petitioner

Vs.

1. State of Tamil Nadu
Rep. by the District Collector
Chennai District.
2. The Revenue Divisional Officer
(North Chennai Division)
Tondiarpet, Chennai-81.
3. The Tahsildar
Thiruvotriyur Taluk
No.304/936, T.H.Road
Ellaiamman Koil Street
Thiruvotriyur, Chennai-19.
4. The Zonal Officer, Zone-1
Greater Chennai Corporation
Thiruvotriyur, Chennai-19.

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5. The Executive Engineer, Zone-1
Greater Chennai Corporation Zonal Office-01
No.945, T.H.Road, Thiruvottiyur,
Chennai-19.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing or forbearing the respondents from interfering with the peaceful possession and enjoyment of petitioner's property at Door No.23/17, Plot No.3, Thiruvallur Nagar 1st Street, Ennore, Chennai-600 057 comprised in Survey No.20 of Kathivakkam Village, Tiruvotriyur Taluk (formerly Saidapet Taluk) Chennai District (formerly Chengalpet District) except by due process of law.

For Petitioner	:	Mr.Manoj Sreevalsan
For Respondent	:	Mr.T.K.Saravanan
		Government Advocate, for R1 to R3
		Mr.G.T.Subramanian
		Standing Counsel
		for R4 and R5

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to 'property at Door No.23/17, Plot No.3, Thiruvallur

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Nagar 1st Street, Ennore, Chennai-600 057 comprised in Survey No.20 of Kathivakkam Village, Tiruvotriyur Taluk (formerly Saidapet Taluk) Chennai District (formerly Chengalpet District)' {hereinafter 'said property' for the sake of brevity, convenience and clarity}.

2. A 'Show Cause Notice' {hereinafter 'SCN' for the sake of brevity} under Section 128 of TNULB Act signed on 26.08.2023 by R5 and the Regional Deputy Commissioner of Greater Chennai Corporation was issued to the writ petitioner. This notice bears reference 'Notice No.Z.O.X.C.No./50/2023' and the same shall hereinafter be referred to as 'said SCN'. Writ petitioner has shown cause by responding to said SCN vide response dated 08.09.2023 enclosing supporting documents as enclosures. Notwithstanding this position, writ petitioner is under pain of dispossession and that has necessitated the filing of captioned main WP is learned counsel's say.

3. Issue notice to respondents.

4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for respondents 1 to 3 and Mr.G.T.Subramanian, learned Standing Counsel accepts notice for R4 and R5.



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5. Mr.G.T.Subramanian, learned Standing Counsel for Greater Chennai Corporation who has accepted notice for R4 and R5 submits that the matter pertains to 'Survey No.20 of Kathivakkam Village, Tiruvotriyur Taluk (formerly Saidapet Taluk) Chennai District (formerly Chengalpet District)' {hereinafter 'said survey number' for the sake of brevity}. Learned Standing Counsel for Greater Chennai Corporation submits that a similar SCN (similar to said SCN) issued to three other persons in different door numbers in the same survey number was assailed by them vide W.P.No.39762 of 2024 and the same came to be disposed of by a Hon'ble Division Bench (Vacation Court) on 27.12.2024. We ferreted out the order from the official website of this Court and a scanned reproduction of the same is as follows:



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W.P. No.39762 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P. No.39762 of 2024
and
W.M.P. Nos.43057 and 43058 of 2024

1. M. Shanmuganathan
2. S. Akila
3. S. Aravindan

..... Petitioners

VS

1. The District Collector,
Singaravelar Maligai,
Chennai.

2. The Executive Engineer,
Zone - 1,
Greater Chennai Corporation,
Zonal Office - 01,
No.945, Thiruvottiyur High Road,
Thiruvottiyur,
Chennai - 600 019.

..... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the concerned records relating to the notice No. Z.O.X.C.No/37/2023 dated 26.08.2023(which was received by the 3rd petitioner through whatsapp on 20.12.2024) issued by the 2nd respondent and quash the same



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For Petitioner : Mr.M. Gnanasekar
For Respondents : Ms.S. Anitha
Spl. Govt. Pleader for R1
Mr.E.C. Ramesh
Standing Counsel for R2

ORDER

[Order of the Court was made by S.M. SUBRAMANIAM J.]

The notice, dated 26.08.2023 issued under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998 is sought to be assailed in the present writ proceedings.

2. The learned counsel for the petitioners Mr.Gnanasekar would submit that the impugned show cause notice was served on the petitioners only on 20.12.2024. Therefore, the present writ petition has been filed.

3. The learned counsel for the writ petitioners made a submission that the waterbody / Thamaraikulam in the present case was assigned in favour of the father-in-law of the 1st petitioner vide assignment, dated 01.07.1974. The Assignment of Government lands / water bodies are made under the Revenue Standing Order, before commencement of the



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Act. Therefore, all assignments and the conditions stipulated in the assignment orders are subject to the conditions stipulated under the Revenue Standing Order. If the assignee violates any of the clauses of the Revenue Standing Order or the terms and conditions stipulated in the assignment, it is liable to be cancelled by the competent authority. Therefore, assignment of the Government lands / Pond would not confer right to title and it is subject to the terms and conditions of the Revenue Standing Orders, under which such assignments are granted by the revenue authorities.

4. In the present case, the assignment of pond was made in the year 1974. The Hon'ble Supreme Court of India and the High Courts have passed number of judgments / orders holding that the water bodies are to be protected. Therefore, the assignment made in respect of water bodies are to be re-visited with reference to the Revenue Standing Orders and based on the relevant records.

5. In the present case, the writ petition has been instituted challenging the show cause notice. Delay occurred, since the notice was served only in November 2024 in the name of a dead person. However

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the copy of the notice has been enclosed along with the typed set filed in the present writ petition. Therefore the petitioners are at liberty to submit their explanations / objections along with the documents, if any, to the competent authority in response to the show cause notice dated 26.08.2023 and on receipt of any such explanations, the respondents shall consider and take a decision and pass speaking orders on merits and in accordance with law. The petitioners are at liberty to submit their explanation, within a period of fifteen days from the date of receipt of a copy of this order. Thereafter, the respondents shall pass final orders as expeditiously as possible.

6. With the aforesaid directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S.J.] [V.L.N.J.]
27.12.2024
(2/2)

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
vsi2



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6. Owing to the limited scope of the captioned main WP, main WP was taken up in the Admission Board with the consent of both sides.

7. A careful perusal of the afore-referred order dated 27.12.2024 in W.P.No.39762 of 2024 brings to light that only difference qua captioned WP is, the writ petitioner in the captioned WP has responded to said SCN. Therefore, recording this position (response dated 08.09.2023 which has been captured supra), we hold that the same order i.e., order dated 27.12.2024 in W.P.No.39762 of 2024 will govern the captioned WP also.

8. Be that as it may, in addition to the aforementioned earlier order made by Hon'ble Division Bench governing the captioned WP, Mr.T.K.Saravanan, learned State Counsel submits that action under 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' {hereinafter 'Tanks Act' for the sake of convenience, clarity and brevity} is envisaged and necessary preliminary notices have been issued. If action under Tanks Act is to be initiated, though obvious we make it clear that procedure laid down by Hon'ble Full Bench in ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} more particularly sub sub-paragraphs (i) to (iii) of sub-



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paragraph (f) of paragraph No.15 has to be followed. To be noted,

paragraph 15(f)(i)(ii) and (iii) of **T.K.Shanmugam** case 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).....
- (d).....
- (e).....



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(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.'

9. This means that writ petitioner will be put on notice / show caused under Tanks Act also. If such a course is adopted, this order will neither impede nor serve as impetus for either of the parties.



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Captioned WP is disposed of in the above said manner.

Consequently, captioned Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

03.01.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

1. State of Tamil Nadu
Rep. by the District Collector
Chennai District.
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(North Chennai Division)
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3. The Tahsildar
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M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

mk

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