



W.P.No.1959 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

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

W.P.No.1959 of 2025

V. Ramasamy

Petitioner

vs.

1. The District Collector
Salem District
2. The Revenue Divisional Officer
Athur
Salem District
3. The Tahsildar
Thalaivasal, Salem District
4. The Village Administrative Officer
Vellaiyur
Thalaivasal Block, Salem District
5. The Inspector of Police
Veeraganur
Athur Taluk
Salem District
6. Dharma
7. Natrajan
8. S. Selvakumar
9. Venkatesan

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10. The Assistant Engineer
Water Resources Department
Irrigation Section
Thalaivasal Taluk
Salem District

Respondents

(R10 *suo motu* impleaded as per order
dated 27.01.2025 passed in
W.P.No.1959 of 2025)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 to 5 to restore the water canal encroached by respondents 6 to 9 in Survey No.142/6 situated at No.63, Vellaiyur Village, Thalaivasal Taluk, Salem District.

For petitioner

Mr. S. Kumar

For RR 1 to 5 & 10

Mr. M.S. Arasakumar
Government Advocate

ORDER

[made by M.SUNDAR, J.]

Captioned 'writ petition' (hereinafter 'WP' for the sake of brevity) pertains to a 'water canal in Survey No.142/6 at No.63, Vellaiyur Village, Thalaivasal Taluk, Salem District' (hereinafter 'said canal' for the sake of convenience and clarity).



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2. Mr. S. Kumar, learned counsel for writ petitioner, submits there are encroachments in said canal and RR 6 to 9 (private respondents) are the alleged encroachers.

3. Issue notice to official respondents (RR 1 to 5).

4. Mr. M.S. Arasakumar, learned Government Advocate, accepts notice for official respondents (RR 1 to 5) and submits, on instructions, that a survey would be conducted and if encroachments are found *qua* said canal, as alleged, action would be initiated for removal of encroachments *inter alia* under '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, convenience and clarity) and 'the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' (hereinafter 'Tanks Rules' for the sake of brevity) thereat. This submission is recorded.

5. To be noted, initiating action under Tanks Act and Tanks Rules thereunder means that the private respondents as well as any other alleged encroacher/s should be put on notice and this is *vide*



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T.S. Senthil Kumar principle [**T.S.Senthil Kumar vs. Government of Tamil Nadu**] being order dated 10.02.2010 reported in **(2010) 3 MLJ 771, 2010 Writ LR 113** and **MANU/TN/0281/2010**, wherein, law was laid down by a Hon'ble Division Bench which was reiterated in **T.K.Shanmugam's case [T.K.Shanmugam Vs. State of Tamil Nadu]** reported in **2015 (5) LW 397**, by a Hon'ble Full Bench *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, 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.



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(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, aforementioned **T.K. Shanmugam** principle is reiteration of **T.S.Senthil Kumar's** case wherein vires of certain provisions of Tanks Act was sustained and abovereferred natural justice principles were telescoped into statute/Rules.

6. We make it clear that all rights and contentions of private respondents (RR 6 to 9) as well as any other alleged encroacher/s are preserved when show caused under Tanks Act and Tanks Rules thereunder. Therefore, with the consent of learned counsel for writ petitioner and learned State counsel for official respondents, captioned WP is taken up making it clear that preservation of rights and



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contentions of private respondents and other alleged encroacher/s, when they are proceeded against *vide* Tanks Act and Tanks Rules thereunder, will act as a safety valve and that ensures that there is no impediment in captioned WP being taken up and disposed of with the consent of learned State counsel and counsel for writ petitioner. We do so.

7. Owing to the fact the alleged encroachment is in said canal, we deem it appropriate to *suo motu* implead the Assistant Engineer, Water Resources Department, Irrigation Section, Thalaivasal Taluk, Salem District, as R10 in this writ petition. We do so. Mr.M.S.Arasakumar, learned Government Advocate, accepts notice for newly impleaded R10.

8. Learned State counsel also submits, on instructions, that the aforementioned exercise stated in paragraph no.4, *supra*, would be commenced and concluded as expeditiously as the business of official respondents would permit but in any event it will be concluded within twelve weeks from today *i.e.*, on or before 21.04.2025. This submission is also recorded.



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9. Captioned WP stands disposed of recording the stated position of learned State counsel. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)
27.01.2025

cad
Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

P.S.

List on 09.06.2025 under the cause list caption 'FOR REPORTING COMPLIANCE'



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M.SUNDAR, J.

and

K.RAJASEKAR, J.

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