



W.P.No.4850 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.4850 of 2025

and

W.M.P.No.5374 of 2025

1. V.Palaniammal
W/o.Late Venkatachala Gounder
2. V.Eswaramurthy
S/o.Late Venkatachala Gounder
3. S.Jaganathan
S/o.Late Subbey Gounder

...Petitioners

Vs

1. The District Collector
Tiruppur District
Tiruppur.
2. The District Revenue Officer
Tiruppur District
Tiruppur.
3. The Tahsildar
Palladam Taluk
Palladam, Tiruppur District.



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4. P.Ashok Kumar
S/o.S.Palanisamy

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the files of the 1st respondent pertaining to its proceedings bearing Na.Ka.2196/2024/Aa3 dated 22.11.2024 quash the same as illegal and consequently, forbear the respondents from interfering with the peaceful possession and enjoyment of the petitioner's family pathway in Survey No.323 at Anupatti Village, Palladam Taluk, Tiruppur District.

For Petitioners : Mr.R.Viduthalai
Senior Counsel
for Ms.R.Revathy
For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R3

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity, convenience and clarity} has been filed assailing an 'order dated 22.11.2024 bearing reference Na.Ka.2196/2024/Aa3 made by R1 [the District Collector, Tiruppur District, Tiruppur]' {hereinafter 'impugned order' for the sake of brevity, convenience and clarity}.

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2. Mr.R.Viduthalai, learned Senior Counsel appearing on behalf of counsel on record for writ petitioners, advertng to impugned order of R1 submitted that the same has been made vide Section 10-B of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} which is a provision which provides for stay pending decision in an appeal or revision.

3. Learned Senior Counsel drew our attention to internal page No.8 of impugned order and more particularly, that portion captioned 'உத்தரவு', paragraph No.6 thereunder and concluding paragraph which read as follows:

'உத்தரவு :

தமிழ்நாடு நில ஆக்கிரமிப்புச் சட்டம் 1905 பிரிவு 10(B)-ன்படி அளித்த மேல்முறையீட்டாளர் மனுவின் பேரில், மேல்முறையீட்டாளர் பதிலுரை, ஆட்சேபனைதாரர் பதிலுரை, பல்லடம் வட்டாட்சியர், வட்ட சார் ஆய்வாளர், கரடிவாவி உள்வட்ட நில வருவாய் ஆய்வாளர் அறிக்கை, அனுப்பப்பட்ட கிராம நிர்வாக அலுவலர் ஆகியோர் அறிக்கை மற்றும் கிராம ஆவணங்கள் ஆகியவை கவனமுடன் பரிசீலனை செய்யப்பட்டன.'

'6. இந்நேர்வில் பல்லடம் வட்டாட்சியார் பிறப்பித்த உத்திரவினை ஆட்சேபித்து தமிழ்நாடு நில ஆக்கிரமிப்பு



சட்டம் 1905 பிரிவு 10(B)-ன்படி திரு.ஈஸ்வரமூர்த்தி
என்பவரின் மேல்முறையீட்டு மனு வரப்பெற்றுள்ளது.'

'மேலும், தமிழ்நாடு ஆக்கிரமிப்பு சட்டம் 1905-ன் பிரிவு
10(B)-ன்கீழ் மேல்முறையீட்டு செய்யப்பட்ட மேல்முறையீட்டு
மனுதாரர் திரு.ஈஸ்வரமூர்த்தி த/
பெ.வெங்கடாசலக்கவுண்டர் என்பவரின் மேல்முறையீட்டு மனு
ஏற்புடையதல்ல எனக் கருதி மேற்படி மேல்முறையீட்டு
மனுவை தள்ளுபடி செய்தும் இதன் மூலம்
உத்தரவிடப்படுகிறது.'

4. Learned Senior Counsel, on instructions, submitted that writ petitioners have now under pain of dispossession construing the impugned order to be disposal of their main appeal.

5. Issue notice to official respondents.

6. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 to R3 and submits on instructions that the impugned order is a final order in main appeal under Section 10 of said 1905 Act and is not an interim order under Section 10-B of said 1905 Act. To buttresses his submission, learned counsel drew our attention to the subject part of impugned order and relevant portion of subject reads as follows:



'பொருள் : ஆக்கிரமிப்பு - மேல்முறையீட்டு மனு -
தமிழ்நாடு நில ஆக்கிரமிப்புச்சட்டம் 1905 (பிரிவு 10)
திருப்பூர் மாவட்டம் - பல்லடம்

7. Learned State Counsel also pointed out that no stay petition under Section 10-B of said 1905 Act seeking stay pending decision of appeal has been taken out by writ petitioners. We also find that no stay petition has been annexed to typed set of papers.

8. We make it clear that all rights and contentions of private respondent (R4) are preserved and therefore, there is no impediment in taking up the main WP in the Admission Board with the consent of learned counsel on both sides.

9. As we have recorded the stated position of learned State Counsel made on instructions that the impugned order is an order in main appeal under Section 10 of said 1905 Act, the legal drill on hand becomes fairly simple. It comes to light that those portions of the impugned order which refer to Section 10-B of said 1905 Act are either not happily worded or there are inadvertent errors. Suffice to say that the impugned order being order



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dated 22.11.2024 bearing reference Na.Ka.2196/2024/Aa3 made by R1 is now construed as an order in statutory main appeal under Section 10 of said 1905 Act.

10. This takes us to the alternate remedy point.

11. Before we delve into the same, it is made clear that alternate remedy rule, no doubt is not an absolute rule and it is a rule of discretion. It is also a self-imposed restraint. Nonetheless, this Court has repeatedly held that 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' which is being referred to as '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 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.



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12. A careful perusal of the scheme of said 1905 Act makes it clear that writ petitioners have an efficacious alternate remedy by way of a statutory revision under Section 10-A(1)(c) of said 1905 Act. Entire Section 10-A of said 1905 Act captioned 'Revision' reads as follows:

"10-A Revision - (1) Any decision or order passed under this Act may be revised either suo motu or on application -

(a) by the District Collector, if such decision or order was passed by a Deputy Tahsildar, Tahsildar or Collector;

(b) by the Commissioner of Land Administration if such decision or order was passed by any officer other than the appellate authority;

(c) by the State Government if such decision or order was passed by the appellate authority or the Commissioner of Land Administration.

(2) The power conferred by sub-section (1) shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appears to have exercised a jurisdiction not vested in him or it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.

(3) No decision or order shall be passed under sub-section (1) prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into



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consideration, before such decision or order is passed.'

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13. We also deem it appropriate to extract and reproduce Section 10-B of said 1905 Act and the same reads as follows:

'10-B. Stay pending decision in appeal or revision.--

Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector; the District Collector (the appellate authority), the Commissioner of Land Administration or the State Government, as the case may be, may, by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised.'

14. A careful perusal of Section 10-B of said Act makes it clear that writ petitioners can prefer a statutory revision assailing the impugned order of R1 and can also seek stay pending decision in revision. If writ petitioners choose this course of action (if so advised and if so desired), we make it clear that Revisional Authority shall consider the statutory revision as well as stay petition thereat on its own merits and in accordance with law untrammelled by this order.



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15. Learned Senior Counsel also adverted to the limitation point i.e., limitation qua statutory revision. We find that sub-section(4) of Section 11 of said 1905 Act deals with Revisional Authority with adequate power qua condonation of delay in statutory revision. Sub-section(4) of Section 11 of said 1905 Act reads as follows:

'11. Limitation for appeal and revision. - (1)

(2)

(3)

(4) Notwithstanding anything contained in sub-sections (1) and (2), the officer or authority concerned or the State Government may admit an appeal or application preferred after the period specified therein, if such officer or authority or Government is or are satisfied that the appellant or applicant had sufficient cause for not preferring the appeal or application within that period.'

16. We make it clear that it is open to writ petitioners to seek condonation including exclusion of time spent in captioned WP by resorting to Section 14 of the Limitation Act, 1963. If such a course is adopted, it is open to Revisional Authority to consider the same on its own merits and in accordance with law.



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17. Learned Senior Counsel also brought to our notice that a title suit in O.S.No.47 of 2024 filed by writ petitioners against official respondents (*inter alia* arraying R4 as D4) is pending. This O.S.No.47 of 2024 is on the file of Subordinate Judge's Court, Palladam. We also make it clear that title suit and interlocutory applications thereat will also proceed on its own merits and in accordance with law.

18. In the light of the narrative thus far, we are not interfering with the impugned order. To put it differently, certiorari limb of prayer is not acceded to but as regards the mandamus limb, captioned WP is disposed of with the aforementioned observations. Consequently, captioned Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

[M.S.,J.]

[K.G.T.,J.]

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Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

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