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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2025

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR

AND

THE HON'BLE MR. JUSTICE T. VINOD KUMAR

W.P.No.29330 of 2025 and W.M.P.No.32878 of 2025

K. Govinda Krishnan

Petitioner

vs.

1. The District Collector
Collectorate
Villupuram & District 605 602
2. The Revenue Divisional Officer
O/o. The Revenue Division
Tindivanam Taluk
Villupuram District
3. The Tahsildar
Gingee Taluk
Villupuram District
4. Shanmugam

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records from the 1st respondent in respect of the impugned order Na.Ka.Aa.5/2503710/2024 dated 01.02.2025 and quash the same and consequently to direct the respondents No.1 to 3 to remove the encroachment on the Vilakki Vaikkal which is running through S.No.89/1, 89/2A3, 89/2A4, 90/3C & 91/6.

For petitioner

Mr. P. Vijendran

For RR 1 to 3

Mr. T.K. Saravanan
Additional Government Pleader

- - - - -



ORDER

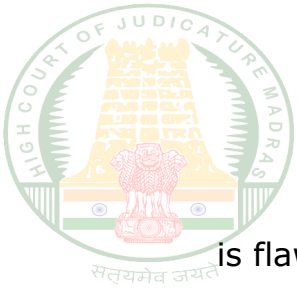
(made by M. SUNDAR, J.)

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Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed with a prayer seeking issue of a writ of certiorarified mandamus.

2. In and *vide* the certiorari limb, an order dated 01.02.2025 bearing reference Na.Ka.Aa.5/2503710/2024 made by first respondent (District Collector) has been assailed and this order of first respondent shall hereon and henceforth be referred to as 'impugned order' for the sake of brevity, convenience and clarity.

3. Mr. P. Vijendran, learned counsel on record for writ petitioner, advertng to the impugned order, submitted that the same has been made by first respondent in exercise of his powers under Section 10 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of convenience and clarity] but proceedings ought to have been made 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 convenience, clarity and brevity].



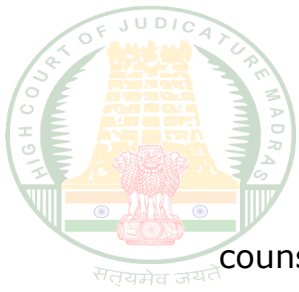
4. Learned counsel also submitted that the impugned order is flawed as it has misread a Civil Court decree.

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

6. Mr. T.K. Saravanan, learned Additional Government Pleader, accepts notice for official respondents (respondents 1 to 3) and submits that a statutory revision lies as against the impugned order and that statutory revision is under Section 10-A of said 1905 Act.

7. Before we proceed further, as the matter turns on alternative remedy plea, we find that the legal perimeter within which the captioned main WP should perambulate stands vastly descoped and therefore, captioned main WP is taken up with the consent of learned counsel for writ petitioner and learned State counsel dispensing with notice to fourth respondent (private respondent) but it is made clear that this order will not impact the rights and contentions of fourth respondent (private respondent) in any manner and on the contrary, all the rights and contentions of fourth respondent will stand preserved, if writ petitioner resorts to alternative remedy or with regard to any other proceedings *qua* impugned order.



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8. As regards the first point of alternative remedy, learned counsel on record for writ petitioner submitted that writ petitioner is not a party to the proceedings which culminated in the impugned order. This Court, in and *vide* **Palanisamy** case (order dated 11.07.2025 in W.P.No.25273 of 2025 and W.M.P.28447 of 2025 thereat), has made it clear that a third party revision would lie under Section 10-A. The relevant paragraph in **Palanisamy** case is paragraph 8 and the same reads as follows:

'8. We carefully examined the factual matrix of the case at hand. The language in which Section 10-A is couched and the ecosystem and architecture of said 1905 Act, lead us to the conclusion that in the case on hand, writ petitioners should be permitted to file a third party revision under Section 10-A seeking revision of the impugned order of R1 and the main reason for this conclusion is, subsection (3) of Section 10-A which makes it clear that no decision or order shall be made by the Revisional Authority without giving, any person, reasonable opportunity of making any representation (if he so desires) if the order is going to be prejudicial to such person.'

To be noted, one of us (M. SUNDAR, J.) is a party to the Division Bench which rendered the order in **Palanisamy** case.

9. This Court is informed by learned State counsel that **Palanisamy** case has attained legal quietus. Therefore, applying **Palanisamy** case principle, we deem it appropriate to relegate writ petitioner to alternative remedy of third party revision considering the facts and circumstances of the case and the nature of the matter at hand. To be noted, it will suffice to write that none of the exceptions to the alternative remedy rule is attracted. It is also deemed appropriate to write that this Court is acutely conscious that alternative remedy rule is not an absolute rule and that it is a rule of



discretion but the rule of discretion is exercised in favour of relegating writ petitioner to alternative remedy considering the facts and circumstances of the case and the nature of the matter at hand, as already alluded to in the earlier part of this narrative.

10. As regards limitation, the period of limitation prescribed for statutory revision under Section 10-A is 30 days from the date of receipt of the order that is sought to be revised. This is *vide* sub-section (2) of Section 11 of said 1905 Act. There is also a provision for Condonation of Delay (CoD) and this is *vide* sub-section (4) of Section 11. It is open to the writ petitioner to either demonstrate to the revisional authority that the third party revision is within the prescribed time limit or seek CoD under Section 11(4). If such a plea is made, Revisional Authority shall consider the same on its own merits and in accordance with law untrammelled by instant order.

11. Though this Court relegates the writ petitioner to alternative remedy, this Court deems it appropriate to examine the contention of the writ petitioner that the proceedings ought to have been under the Tanks Act only and not under said 1905 Act as it is a case of encroachment in water body. In this regard, Section 2 of said 1905 Act is relevant as it makes it clear that said 1905 Act is applicable *inter alia* to the bed of the sea, harbours and creeks below high water mark, rivers, streams, nalas, lakes and tanks and all

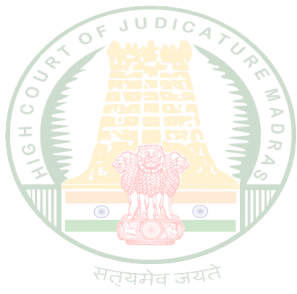


backwaters, canals and water-courses and all standing and flowing water. Therefore, that the alleged encroachment is in a water body is not a statutory impediment for proceeding under said 1905 Act.

12. Be that as it may, as regards Tanks Act which kicked in on 01.10.2007, the object of the Act is, no doubt, to provide for measures for checking the encroachment, eviction of encroachment in tanks which are under the control and management of Public Works Department, protection of such tanks and for matters incidental thereto but Section 11 of Tanks Act makes it clear that operation of Tanks Act and the provisions of Tanks Act shall be 'in addition to' and not 'in derogation of' any other law for the time being in force. Therefore, Tanks Act is clearly 'in addition to' and not 'in derogation of' said 1905 Act. This is more so when it comes to water bodies when Section 11 of Tanks Act is read harmoniously in conjunction with Section 2 of said 1905 Act. For the sake of abundant clarity and specificity, we deem it appropriate to extract and reproduce Section 2 of said 1905 Act and Section 11 of Tanks Act which read as follows:

Section 2 of said 1905 Act:

'2. Right of property in public roads, etc. waters and lands --



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(1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks, and all back waters, canals and water courses and all standing and flowing water, and all lands, wherever situated, save insofar as the same are the property --

(a) of any zamindar, poligar, mittadar, shrotriendar or inamdar or any person claiming through or holding under any of them, or

(b) of any person paying shit, kattubadi, jodi, poruppu or quit rent to any of the aforesaid persons, or

(c) of any person holding under ryotwari tenure including that of a janmi in the Gudalur taluk of the Nilgiris District and in the transferred territory or in any way subject to the payment of land revenue direct to Government, or

(d) of any other registered holder of land in proprietary right or

(e) of any other person holding land under grant from the Government otherwise than by way of licence, and, as to lands, save also insofar as they are temple site or owned as house-site or back yard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land owners, and to all customary rights legally subsisting.

(2) All public roads and streets vested in any local authority shall, for the purposes of this Act, be deemed to be the property of the Government.'

Section 11 of Tanks Act:

'11. Operation of other laws not affected: The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.'

13. The discussion and dispositive reasoning *supra* as regards



interplay *qua* Tanks Act and said 1905 Act leads us to the sequitur that the argument of the writ petitioner cannot be sustained. This

means that if the writ petitioner resorts to alternative remedy of statutory revision under Section 10-A of said 1905 Act, Revisional Authority shall consider the same on its own merits and in accordance with law untrammelled by instant order.

14. The certiorari limb of the prayer stands answered in the aforesaid manner. In other words, we neither dislodge nor sustain the impugned order but relegate the writ petitioner to alternative remedy.

15. The mandamus limb is a consequential prayer and it is Removal of Encroachment (RoE) if any and if that be so and depending on the revision being entertained or otherwise or in any event, subject to finality of impugned order. Therefore, as regards the mandamus limb of the prayer which is a consequential limb, we write that the same is closed.

16. Captioned WP stands disposed of as closed in the aforesaid manner, albeit with preservation of rights and contentions



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of writ petitioner in the manner set out *supra*. Consequently,
captioned writ miscellaneous petition thereat stands disposed of as
closed.

(M.S., J.) (T.V.K., J.)
06.08.2025
(2/2)

cad
Index : Yes/No
NC : Yes/No
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M. SUNDAR, J.

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