



WEB COPY

W.P. No.29637 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.12.2024

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.29637 of 2024

M. Purushodaman

Petitioner

v

1. The Commissioner of Land Administration
Land Administration Department
II Floor, Ezhilagam
Chepauk
Chennai 600 005
2. The District Collector
Chennai District Collectorate
“Ma Singaravelar Maligai”
Rajaji Salai
Chennai 600 001
3. The Tahsildar
Maduravoyal Taluk
Bharathi Salai Phase – III
Nolambur
Chennai 600 037
4. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai 600 003
5. Mageswaran

Respondents

Writ Petition filed under Article 226 of the Constitution of India

1/12



seeking a writ of mandamus directing the respondents 1 to 4 to remove the encroachments in the land classified as “Grazing Grounds” measuring an extent of 5 acres 89 cents situated in Nolambur Village, Maduravoyal Taluk, Chennai District, comprised in Survey No.105 and maintain the same as a Grazing Ground free from any encroachment in view of the petitioner's representations dated 20.10.2020, 28.10.2020 and 17.04.2024.

For petitioner	Mr. R. Lohith
For RR 1 to 3	Mr. T.K. Saravanan Govt. Advocate
For R4	Ms. Vanitha Joice Rani Standing Counsel
For R5	Mr. K.M. Kodaiarasu

ORDER

(made by M. SUNDAR, J.)

Captioned 'writ petition' (for brevity 'WP') was earlier listed before another Hon'ble Division Bench and in the listing on 14.10.2024, another Hon'ble Division Bench made the following proceedings/order:

'W.P.No.29637 of 2024
THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY,J.

(Order of the court was made by the Hon'ble Chief Justice)

Petition seeks a mandamus to direct respondents 1 to 4 to remove encroachments on the land in Survey No.105.



2. According to petitioner, the revenue records indicate that land in Survey No.105 is grazing land. Petitioner has also annexed to the petition a response received under the Right to Information Act, 2005, which mentions one Prabhu has encroached on 0.50 cents of land by putting up a compound wall and he has a court order to that effect. It is also mentioned that the said Survey No.105 is subdivided into two parts Survey Nos.105/1 and 105/2. It is also stated that no patta has been granted in respect of the land in Survey No.105/1 and one Maheswaran (V.P.M.Construction) is enjoying the land in Survey No.105/2. Maheswaran of V.P.M.Construction is fifth respondent to the petition. The report under the Right to Information Act, 2005 also states that Survey No.105/2 is classified as Grama Natham.

3. Mr.Prabakar, learned State Government Pleader, is requesting for two weeks' time for taking instructions.

4. We have to note that notwithstanding the Deputy Tahsildar, who is the Public Information Officer, noting on 6.1.2020 that one Prabhu is encroaching on 0.50 cents of land and fifth respondent is enjoying Survey No.105/2, no steps seem to have been taken by the Tahsildar to call for details.

5. We note that petitioner has also made a representation on 17.4.2024, to which, as averred in the petition, there has been no response.

6. The Tahsildar, who is third respondent, is directed to explain all these points in the affidavit in reply, because it is the responsibility of the Tahsildar to ensure that there is no encroachment on government land. The affidavit shall be filed and copy served by 28.10.2024. Rejoinder, if any, to be filed and copy served by 7.11.2024.

7. Notice shall also be issued to fifth respondent. Private notice is also permitted and affidavit of service shall be filed at least one week before the next date. If fifth respondent wishes to file any reply, it may do so and serve a copy thereof within two weeks of receiving notice, either private or through the court.

Stand over to 11.11.2024.'



2. The aforementioned proceedings shall now be read as integral part and parcel of this order. Therefore, we deem it appropriate to clarify (for the sake of specificity) that Survey No.105 in aforesaid proceedings is a reference to land situate in Survey No.105 in Nolambur Village, Maduravoyal Taluk, Chennai District' (for the sake of convenience and clarity 'said land').

3. We are informed that there have been sub-divisions. Nonetheless, writ petitioner is concerned with original Survey No.105 admeasuring 5 acres and 89 cents or in other words, 5.89 acres. This 5.89 acres in Survey No.105 in Nolambur Village, Maduravoyal Taluk, Chennai District is being referred to as 'said land'.

4. After the aforesaid listing, captioned WP was listed before this Court on 11.12.2024 and this Court made the following proceedings:



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'W.P.No.29637 of 2024

M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

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

There is no representation for writ petitioner either in the physical Court or on 'Videoconferencing' {'VC'} platform. However, Ms.S.Vanitha Joice Rani, learned counsel for R4 and Mr.K.M.Kodaiarasu, learned counsel for R5 are before us in the physical Court. To be noted, this is a hybrid hearing, which is a daily / regular / routine feature in this Court.

2. With the intention of giving an opportunity to writ petitioner and learned counsel for writ petitioner, list this matter again tomorrow but under the cause list caption 'FOR DISMISSAL'.

List on 12.12.2024.'

5. Adverting to aforementioned 11.12.2024 proceedings, Mr.R.Lohith, learned counsel for writ petitioner, expresses regret for missing the matter in the previous listing. Nonetheless, learned counsel is ready to make submissions today.

6. As regards official respondents (RR 1 to 3), Mr. T.K.Saravanan, learned Government Advocate, is before us. As regards Commissioner, Greater Chennai Corporation (R4), Ms. S. Vanitha Joice Rani, learned Standing Counsel, is before us. As regards private respondent (R5) Mr.K.M. Kodaiarasu, learned counsel, is before us.



7. Pursuant to the aforementioned 14.10.2024 proceedings made by the other Hon'ble Division Bench, third respondent (jurisdictional Tahsildar) has filed a status report dated 07.11.2024. Paragraphs 8 and 9 of the status report are relevant and scanned reproduction of the same is as under:

8) In this scenario the petitioner filed by the above writ Petition seeking to remove the encroachment in S.No.105 being Government Land. It is respectfully submitted that pursuant to the Order passed by this Hon'ble Court on 14.10.2024, survey and inspection of the entire field in S.No.105/1 and 105/2 was undertaken on 21.10.2024 and upon such survey it is found that there are about 10 encroachments in Survey No. 105/1 (Government Poramboke- Meikkal) and further there is also one encroachment in Survey No.105/2 (Government Poramboke- Natham), the details of the said encroachments are as follows:

S.No.105/1:-

Sl.No.	Name of the Encroacher	Survey No. Encroached	Extent Encroached Hec.Ares.Sq,mts.	Nature of Encroachment
1	S. Mari and S. Raja S/o. Subramani	105/1	00 01 00.0	Pucca house
2	Selvaraj S/o. Sadhanandam	105/1	00 00 80.0	Pucca House
3	Sankar S/o. Sadhanandam	105/1	00 01 00.0	Pucca house
4	Raji S/o. Arumugam	105/1	00 01 00.0	Hut
5	Ganesan S/o. Sadhanandam	105/1	00 00 80.0	Pucca house
6	Kutty S/o. Sadhanandam	105/1	00 00 80.0	Pucca house
7	S. Velu S/o. Subramani	105/1	00 01 00.0	Pucca house
8	Vijaya W/o. Krishnan	105/1	00 01 50.0	Cement Sheet house and hut
9	Prabhu S/o. Bakthavatchalam	105/1	00 20 00.0	Compound with Cement



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10	V.P. Mageswaran	105/1	00	07	50.0	sheet shed Compound wall
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S.No.105/2:-

1	V.P. Mageswaran	105/2	00.01	00.0	Compound Wall
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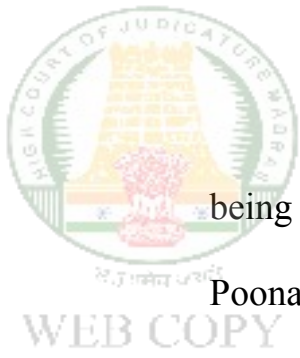
9) It is respectfully submitted that upon identifying the aforesaid encroachments, necessary notices under Section 7 of the Land Encroachment Act, 1905 have been issued to the encroachers on 30.10.2024 (for 10 encroachers in S.No.105/1) and 06.11.2024 (for one encroacher in S.No.105/2). The encroachers namely Tvl.Ganesan and Velu refused to receive the notice and hence in respect of those three encroachers, notices have been affixed in a conspicuous place at their respective houses. Another encroacher namely Prabhu was not available at the site, notice has been affixed in a conspicuous place at their respective place.

8. It is now clear from the status report that State has identified some encroachments and proceedings have been initiated under Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) (for brevity 'said 1905 Act').



9. Before we proceed further, we make it clear that 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.

10. When proceedings under 1905 Act which are said to have been kick started continue, we make it clear that all the rights and contentions of private respondent (R5) remain preserved, *i.e.*, it is open to private respondent (R5) to reply to the Section 7 notice raising all contentions, including contentions raised in the captioned WP by way of a counter affidavit.



11. Be that as it may, another facet of the captioned matter is a s..... being O.S. No.57 of 2021 on the file of the III Additional District Court, Poonamallee (for the sake clarity and convenience 'said suit'). The said suit has been filed by fifth respondent (Mageswaran) before us, along with one G.Kalavathi, as co-plaintiff, and the suit has been filed against 7 private respondents and 3 official defendants. The suit has been filed with a prayer for declaration that sale deed dated 18.02.2000 registered under document no.980/2000 on the file of the Sub Registrar, Konnur, is null and void. The suit also, *inter alia*, seeks declaration that the plaintiffs are possessory title holders of land comprised in Survey No.105/2. There are other limbs of suit prayer which pertain to injunction but we make it clear that the suit which is now next scheduled to come up on 08.01.2025 at trial stage will continue on its own merits and in accordance with law untrammelled by this order and or other proceedings under 1905 Act.

12. In the light of the narrative thus far, we find that it will suffice to record the stated position of the learned State counsel that proceedings under 1905 Act have commenced, with a rider that rights and contentions are preserved and the civil suit will continue on its own merits and in accordance with law. This will suffice for disposal of captioned WP.



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13. *Ergo*, sequitur is captioned WP is disposed of as closed in the aforesaid manner with preservation of rights and observations in the aforesaid manner. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)
12.12.2024

Index : Yes/No
NC : Yes/No
cad



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M. SUNDAR, J.

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K. RAJASEKAR, J.

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