



W.P.No.6524 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.6524 of 2025

M.Selvamari
S/o.Munusamy

... Petitioner

VS.

1. The District Collector
Collectorate Office
Coimbatore District
2. The Revenue Divisional Officer (North)
O/o.The Revenue Divisional Officer (North)
Coimbatore District
3. The Tahsildar
Taluk Office,Mettupalayam
Coimbatore District
4. The Revenue Inspector
Mettupalayam Taluk
Coimbatore District
- 5, The Head Surveyor
Mettupalayam Taluk
Coimbatore District

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6. The Village Administrative Officer
No.11, Sirumugai Village
Mettupalayam Taluk
Coimbatore District

7. Nagarajan
S/o.Sambaiyagounder

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the impugned order ஒ.மு.4695/2022/அ8 dated 03.10.2023 on the file of the Respondent No.3 and quash the same and to execute the order passed by the Respondent No.3 in ந.க.4695/2022/அ8 dated 18.06.2024.

For Petitioner : Mr.V.Vadivalagia Nambi

For Respondents : Mr.T.K.Saravanan
Addl. Govt. Pleader for R1 to R6

ORDER

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

Subject matter of captioned writ petition is land comprised in 'S.No.928/2 in Sirumugai Village, Mettupalayam Taluk, Coimbatore District' [hereinafter 'said land' for the sake of convenience].

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2. Mr.V.Vadivalagia Nambi, learned counsel for writ petitioner is before this Court. Learned counsel for writ petitioner submits that R7 (Nagarajan), the private respondent has encroached upon said land, such encroachment is in front of writ petitioner's house causing obstruction, writ petitioner sent a complaint to R3 (Tahsildar, Mettupalayam), action was initiated under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} and after Section 7 notice dated 08.11.2023, an order under Section 6 of said 1905 Act was made on 01.12.2023 is his further say. Learned counsel also submits that post 01.12.2023 order under Section 6 of said 1905 Act, R3 has issued communication signed on 18.06.2024 calling upon R7 to remove the encroachment in said land, the same has not happened but now the same R3 has issued another 'proceedings dated 03.10.2023 bearing reference डू.मु.4695/2022/अ.8' [hereinafter 'impugned order' for the sake of convenience] stating that there will be no encroachment if the Village Panchayat lays a road. Assailing the impugned order, captioned writ petition has been filed is learned counsel's say.

3. Issue notice to official respondents.

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4. Mr.T.K.Saravanan, learned Additional Government Pleader accepts

notice for the official respondents and very fairly submits that R3 does not have jurisdiction to issue the impugned proceedings. In other words, It is the stated position of learned State counsel that the impugned proceedings made by R3 is wholly without jurisdiction. We place on record our appreciation for the fair stand taken by learned State counsel.

5. Be that as it may, we deem it appropriate to dilate a little more on the matter. 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 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.

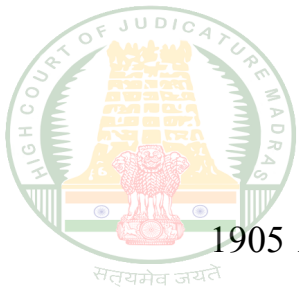


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6. Proceedings against R7 has been initiated under said 1905 Act by issue of Section 7 notice dated 08.11.2023 followed by an order under Section 6 of said 1905 Act dated 01.12.2023. Thereafter, the remedy available to R7 is an appeal under Section 10 of said 1905 Act, which will lie to R1 and there is also a provision for further revision under Section 10-A of said Act, which will lie to the State Government [Section 10-A(1)(c)]. There is also a provision for interim stay pending statutory appeal/statutory revision vide Section 10-B of said 1905 Act. In this view of the matter, R3 become functus officio on passing the Section 6 order dated 01.12.2023. Therefore, R3 after becoming functus officio cannot pass another order that too an order which is diametrically opposed to the contents of order under Section 6 of said 1905 Act. In this view of the matter, we have no hesitation in saying that impugned proceedings are wholly without jurisdiction.

7. This takes us to the rights and contentions of R7, who is not before us. This Court makes it clear that all the rights and contentions of R7 to prefer a statutory appeal under Section 10 and further revision under Section 10-A of said 1905 Act, if so advised and if so desired (statutory appeal and statutory revision qua 01.12.2023 order under Section 6 of said



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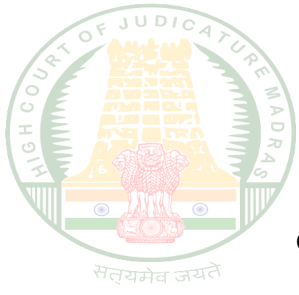
1905 Act made by R3) are preserved. The appeal will now obviously be belated. Therefore, it is subject to limitation vide sub-section (4) of Section 11 of said 1905 Act.

8. As regards the impugned proceedings, there is nothing to demonstrate that R7 was party to it. Learned State counsel also submits that there is no material to demonstrate that R7 was party to it. In this view of the matter, this Court is not passing any orders adverse to R7. Therefore, we dispense with notice to R7 and make it clear that all the rights and contentions of R7 are preserved in the manner set out herein above. This means that there is no impediment in taking up the main writ petition in the Admission Board with the consent of learned counsel for writ petitioner and State counsel. We do so.

9. The following order is made:

i) Impugned proceedings being proceedings dated 03.10.2023 bearing reference *ஒ.மு.4695/2022/அ.8* made by R3 is set aside;

ii) All the rights and contentions of R7 are preserved for preferring a statutory appeal (subject to limitation, condonation



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etc.,) and further statutory revision under Section 10 and

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order made under Section 6 of said 1905 Act.

Captioned writ petition is allowed albeit with preservation of rights in the aforesaid manner and observations set out supra. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

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Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking order

gpa

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3. The Tahsildar

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