



W.P.No.4025 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.4025 of 2025
&
W.M.P.Nos.4512 to 4514 of 2025
in
W.P.No.4025 of 2025

S.B.Bowmesh
S/o.S.Bhagavathiappan

... Petitioner

VS

1. The Tahsildar
Vandalore Taluk
Chengalpattu Taluk – 603 210
2. The Village Administrative Officer
Urapakkam Village
Vandallur Taluk
Chengalpattu District – 603 210
3. The Revenue Inspector
Vandalur Taluk
Chengalpattu District – 603 210
4. Abirami Nagar, Vaigai Nagar
Priya Nagar -1 & Priya Nagar-2

Page Nos.1/8



W.P.No.4025 of 2025

(Regn.No.28/2007)

Rep. By its President

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Plot No.57, Abirami Nagar

Urapakkam, Chennai – 603 210

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records and quash the impugned notice dated 03.01.2025 issued by the first respondent under Section 6 of the Tamil Nadu Encroachment Act (No.III), 1905.

For Petitioner : Mr.S.S.Kumar

ORDER

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

Captioned main 'Writ Petition' ['WP' for the sake of brevity] has been filed with a certiorari prayer assailing a 'notice/order dated 03.01.2025 made by R1' [hereinafter 'impugned order' for the sake of convenience and clarity].

2. The impugned order has been made under Section 6 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of convenience].



W.P.No.4025 of 2025

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3. As against any decision or order made by R1 or his deputy (Deputy

Tahsildar) a statutory appeal remedy is available vide Section 10(a) of said

1905 Act. To be noted, Section 10 of said 1905 Act reads as follows:

'10. Appeal.-- *An appeal shall lie--*

(a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and

(aa) to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the Commissioner of Land Administration from any decision or order of a District Collector passed otherwise than on appeal.'

4. Mr.S.S.Kumar, learned counsel on record for writ petitioner is before us and this Court wanted learned counsel to address the Court on the



W.P.No.4025 of 2025

afore-referred alternate remedy point.

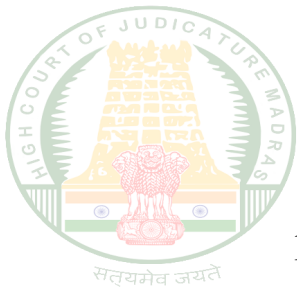
WEB COPY 5. In response, learned counsel submitted that Section 3 of said 1905

Act makes it clear that it would apply only to persons who unauthorizedly occupy Government property but petitioner is an authorized occupant.

6. This Court finds that captioned writ petition does not pass muster in the Admission Board and is liable to be dismissed on alternate remedy point and the reasons are as follows:

(i) The argument of learned counsel turns on the question as to whether writ petitioner is an unauthorized occupant of Government land or not, which turns heavily on facts and therefore, it is only appropriate that the writ petitioner resorts to statutory appeal under Section 10 of said 1905 Act;

(ii) 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



W.P.No.4025 of 2025

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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;

(iii) There is neither any material nor any argument in the Admission Board to the effect that alternate remedy is ineffectacious;

(iv) Hon'ble Supreme Court has repeatedly held that alternate remedy rule is not an absolute rule and it is a rule of discretion. This Court has respectfully followed this principle. As regards exceptions to alternate remedy rule, the lead case is **Whirlpool** Case being judgment dated 26.10.1998 rendered by Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai** reported in **CDJ 1998 SC 371**, which carves out four exceptions and they are:

- (i) Enforcement of fundamental rights;
- (ii) Violation of Natural Justice Principles (NJP);



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W.P.No.4025 of 2025

(iii) Order being 'wholly' without jurisdiction; and

(iv) when the vires of a statute are assailed.

Captioned WP does not fall under any of the categories and it is not even the argument of learned counsel for writ petitioner that it falls under any of the aforementioned categories. *Inter-alia* in this view of the matter, this Court writes that instant case is a fit case for exercising discretion qua alternate remedy rule against the writ petitioner;

(v) Alternate remedy rule no doubt is a self-imposed restraint. This Court finds that this is a case where the self-imposed restraint should be exercised as there is no reason to make an exception to the self-imposed restraint;

(vi) As already alluded to supra, said 1905 Act is a self-contained code and even against an order in appeal under Section 10 by the Appellate Authority, a further statutory revision lies under Section 10-A (1)(c) and pending appeal/revision, there is provision (Section 10-B) to seek interim stay.



W.P.No.4025 of 2025

WEB COPY 7. In the light of the narrative, discussion and dispositive reasoning thus far, this Court has no hesitation in writing that the captioned WP does not pass muster in the Admission Board on the short point i.e., point of efficacious alternate remedy being available to the writ petitioner.

8, Ergo, the sequitur is, captioned writ petition fails and the same is dismissed. Captioned writ miscellaneous petitions thereat also perish with the main WP and they are also dismissed. Considering the facts and circumstances of the case and the manner in which arguments were advanced in the Admission board, we refrain from imposing costs.

(M.S.,J.) (K.G.T.,J.)
10.02.2025

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

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W.P.No.4025 of 2025

**M.SUNDAR, J.,
and**

K.GOVINDARAJAN THILAKAVADI, J.,

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To

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W.P.No.4025 of 2025

10.02.2025

Page Nos.8/8