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W.P.No.1726 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

Coram

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

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.1726 of 2025

&

W.M.P No.1977 of 2025 in W.P.No.1726 of 2025

Haripriya

Wife of K.Jagadeeshwaran

.. Petitioner

VS

1. The Tahsildar

Tambaram Taluk, Tambaram

2. The Revenue Inspector

Madambakkam Firka

Tambaram Taluk, Tambaram

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to 1st respondent proceedings in Na.Ka.No.4022/2024/A3 dated 31.12.2024 and consequential proceedings dated 06.01.2025 and quash the same and further direct the 1st respondent to conduct enquiry in respect of notice issued by the 2nd respondent dated 22.10.2024.



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For Petitioner : Mr.K.Sakthivel
For Respondents : Mr.M.S.Arasa Kumar
Govt. Advocate for R1 and R2

ORDER

(Order of the Court was made by M.SUNDAR, J.)

Subject matter of captioned main writ petition is land comprised in 'S.No.206/1 [admeasuring 0.10.00 hectares.ares] at No.17, Agaramthen Village, Tambaram Taluk, Chengalpattu District' [hereinafter 'said land' for the sake of brevity and convenience].

2. Captioned writ petition has been filed assailing an 'order dated 31.12.2024 bearing reference ந.க.எண்.4033/2024/ஆ3 made by R1' [hereinafter 'impugned order' for the sake of convenience and clarity]. To be noted, impugned order has been made by R1 in exercise of powers under Section 6 of 'The Tamil Nadu Land Encroachment Act, 1905



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(Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity, convenience and clarity}.

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3. Mr.K.Sakthivel, learned counsel for writ petitioner submitted that the impugned order is completely without jurisdiction as according to him said land is private land.

4. Issue notice.

5.Mr.M.S.Arasa Kumar, learned Government Advocate accepts notice for both the respondents and submits on instructions that said land is 'punjai tharisu' and there are other alleged encroachers, who are also covered by the impugned order and other encroachers have preferred statutory appeals under Section 10 of said 1905 Act.



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6. Owing to the limited scope of the captioned main writ petition, with the consent of learned counsel on both sides, main writ petition was taken up.

7. Notwithstanding very many averments/grounds raised in the writ affidavit, learned counsel for writ petitioner predicated his campaign against the impugned order on the following points:

i) Impugned order is completely without jurisdiction as said land is a private land and said 1905 Act does not apply;

ii) Prior to impugned order, a notice signed by R1 on 22.10.2024 was issued under Section 7 of said 1905 Act, writ petitioner sent a reply dated 04.11.2024 but impugned order has been made without holding enquiry which is a requirement vide sub-section (2) of Section 6 of said 1905 Act.

8. Before we set out the response of the State counsel to the aforesaid points, we deem it appropriate to capture some factual points



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and trajectory the matter has taken, the details of which are as follows:

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i) One B.Santhanam filed a 'Public Interest Litigation' ['PIL' for the sake of brevity] *inter alia* with regard to said land, this PIL came to be disposed of by another Hon'ble Division Bench in and by an order dated 22.02.2024 and the same reads as follows:



W.P.No.1268 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.1268 of 2024

B.Santhanam .. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Commissioner for Land Administration
Land Administration Department, 2nd Floor
Edhilagam, Chapeauk, Chennai – 600 025.
2. The District Collector
Chengalpattu District.
3. The Revenue Divisional Officer
Tambaram Division, Tambaram, Chennai – 45.
4. The Tehsildar
Tambaram, Chennai – 45.
5. The Directorate of Vigilance and Anti Corruption
No.243, MKR Road, Alankur
Chennai – 600 016.
6. The Sub Registrar
Tambaram, Chennai – 73.

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7. K.Jagadeeswaran
8. C.David Wilson

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the respondents 1 to 5 to take immediate action as against 7th and 8th respondent and remove all the encroachments made by them in the Government Lands in S Nos.11/1 to 11/13 including newly formed sub divisions originally classified as Anadeenam of Kaspapuram Village and in S Nos.209, 205/8A and 206/1 of Agaramthen Village in Tambaram Taluk, Chengalpattu District on the basis of the petitioners complaint dated 24.6.2023 and further representations dated 31.07.2023 and 20.11.2023.

For the Petitioner : Mr.K.Perumal

For the Respondents : Mr.C.Kathiravan
Special Government Pleader
for R1 to R4 and R6

Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.Sylvester John
for R5

ORDER

(Made by the Hon'ble Chief Justice)

Heard Mr.K.Perumal, learned counsel for the petitioner,
Mr.C.Kathiravan, learned Special Government Pleader for respondents
1 to 4 and 6 and Mr.R.Muniyapparaj, learned Additional Public
Prosecutor assisted by Mr.Sylvester John, learned counsel for
respondent 5.

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W.P.No.4268 of 2024

2. Learned Special Government Pleader submits that survey would be conducted preferably within a period of three months from today and upon survey, if any encroachment is found, action would be taken to remove the encroachment expeditiously.

3. In view of the said statement, no orders are necessary in the present writ petition. The writ petition, accordingly, stands disposed of. There shall be no order as to costs. Consequently, W.M.P.No.4575 of 2024 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

22.02.2024

Index : Yes/No
Neutral Citation : Yes/No



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Complaining of non-compliance with aforereferred order, Mr.B.Santhanam has filed a contempt petition in Contempt Petition No.3193 of 2024 and another Hon'ble Division Bench is in seizin of the same.

8. Reverting to the points urged by learned counsel for writ petitioner, response of the State counsel is as follows:

(i) It is incorrect to say that the said land is private land by placing reliance on a Gazette Publication dated 04.05.1966. It is submitted that said Gazette publication pertains to Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1962 and there is a reference to S.No.206 (not sub-divided) admeasuring 25 cents declaring the same to be surplus land qua one T.V.Jeyachandra Naidu (to be noted, copy of the Gazette Publication has been placed before us by the writ petitioner). Another Gazette Publication dated 07.05.1980 (placed before us by the writ petitioner) is also under the same Act and the same



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cannot be relied on to say that said land has not been declared as surplus land that is required for public purpose. Learned State counsel substantiated his submission stating that one Ms.Rajina, wife of Mr.Rajendran who is similarly placed qua writ petitioner filed a writ petition in W.P.No.794 of 2025 seeking patta and the same has been dismissed by this Court in and by order dated 10.01.2025;

(ii) Impugned order was made after enquiry.

9. We now deem it appropriate to discuss the three case laws relied on by the writ petitioner in support of points raised:

i) ***D.Sathish*** case [***D.Sathish Vs. Tahsildar, Sirkali Taluka and Others*** reported in ***CDJ 1997 MHC 304***] being order dated 11.07.1997; ***D.Sathish*** case arises under said 1905 Act but that is a matter where the disputation was before Section 6 proceedings was issued, no prior notice under Section 7 was issued. In the light of the language in which Section 6 has been



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couched, the Division Bench came to the conclusion that it is a Section 6 notice and while ordering confiscation, there is no mention about the conduct of summary inquiry as contemplated under sub-clause (2) of Section 6 of the Act. Therefore, this case law really does not aid the petitioner;

ii) *J.Suresh Kumar* case law [*J.Suresh Kumar, Rep. By his power agent R.C.Mani Vs. The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan, Chennai and Others* reported in *CDJ 2018 MHC 2664*] being order dated 27.03.2019. *J Suresh Kumar* case arises under the Town and Country Planning Act, 1971. However, there is a mention about said 1905 Act and the desirability. Learned State counsel submits that this again does not come to the aid of the writ petitioner as it pertains to enquiry procedure and if writ petitioner is aggrieved, he can always canvass the same in the statutory appeal to the District Collector



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under Section 10 of said 1905 Act. In this regard, we deem it appropriate to write 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.

iii) The third case law pressed into service by the writ petitioner is the oft-quoted celebrated ***Whirlpool*** Case Law being judgment dated 26.10.1998 rendered by Hon'ble Supreme



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Court in *Whirlpool Corporation Vs. Registrar of Trade Marks,*

Mumbai reported in *CDJ 1998 SC 371*. *Whirlpool* case law is

qua alternate remedy and the four circumstances under which a

Court will necessarily interfere on the teeth of alternate remedy.

The four circumstances are

- a) When the writ petition is for enforcement of fundamental rights;
- b) When there has been violation of NJP ['Principles of Natural Justice'];
- c) When the proceedings are wholly without jurisdiction;
- d) When the vires of an Act is challenged.

Relevant paragraph in *Whirlpool* Judgment as reported in CDJ placed before us is Paragraph 13 and the same reads as follows:

'13. Under Article 226 of the Constitution, the High



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Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of the an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.'

10. As regards the Whirlpool exceptions or Whirlpool circumstances of a writ Court to interfere on the teeth of alternate remedy, in the case on hand, learned counsel pitched himself on Circumstance (c) i.e., that the proceedings are wholly without jurisdiction.

11. In the light of the discussion thus far, particularly two Gazette Publications dated 04.05.1966 and 07.05.1980, both under Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1962 and contention that



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said land is not a private land, we find that the question as to whether said land is private land turns heavily on facts. Therefore, it could be canvassed better in a statutory appeal. Likewise, any irregularity in the enquiry in making the impugned order can be canvassed better in a statutory appeal as statutory appeal is in the nature of the continuation of the enquiry.

12. In this view of the matter, we have no hesitation in saying that Whirlpool principle does not come to the aid of the writ petitioner in the case on hand.

13. Before proceeding further, we deem it appropriate to write that alternate remedy rule is not an absolute rule. It is a rule of discretion. It has been repeatedly held by Hon'ble Supreme Court in a catena of judgments that alternate remedy rule not being an absolute rule and being a rule of discretion or in other words being a self-imposed restraint, it is within the remit and realm of the Court concerned when it comes to



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exercising writ jurisdiction qua alternate remedy. To put it differently, alternate remedy is not a bar but whether the self imposed restraint of the Court will be lifted or not will depend on the facts and circumstances of each case and we find that in the case on hand, this is not a fit case for exercising writ jurisdiction on the teeth of alternate remedy in the form of a statutory appeal under Section 10 of said 1905 Act to an appellate authority which is a District Collector. To be noted, we have already alluded to supra that said 1905 Act is a self-contained code and this Court has repeatedly held so.

14. Another important perspective of the matter is, as regards the impugned order, the writ petitioner is not the lone alleged encroacher. It pertains to several other encroachers qua said land as is evident from the tabulation thereat and we are informed by the learned State counsel that at least three of the encroachers, namely Ms.Siva Rekha, wife of Mr.Ganesan, Mr.Kanniyappan, son of Mr.Krishnan and Mr.Ganesan, son of Mr.Kandhasamy have already filed statutory appeals under Section 10



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of said 1905 Act assailing the same impugned order. Therefore, this is another buttressing factor which leaves us with the conclusion that this is a matter which has to be relegated to alternate remedy.

Ergo, the sum sequitur of the narrative, discussion and dispositive reasoning thus far is that the captioned main writ petition fails and the same is dismissed. Consequently, captioned WMP thereat is also dismissed. There shall be no order as to costs.

[M.S., J] [K.R.S., J]
23.01.2025

Index: Yes/No
Speaking order / Non-speaking order
gpa
To

1. The Tahsildar
Tambaram Taluk, Tambaram
2. The Revenue Inspector
Madambakkam Firka
Tambaram Taluk, Tambaram



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

gpa

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23.01.2025