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W.P.No.2876 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2025

Coram

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

and

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

W.P.No.2876 of 2025

& W.M.P Nos.3172 and 3173 of 2025 in W.P.No.2876 of 2025

1.M.Shanmuganathan

S/o.Malaiswamy

2. S.Akila

D/o.M.Shanmuganathan

3. S.Aravindan

S/o.M.Shanmuganathan

.. Petitioners

VS

1. The District Collector

Singaravelar Maligai

Chennai

2. The Executive Engineer, Zone – 1

Greater Chennai Corporation

Zonal Office-01

No.945, Thiruvottiyur High Road



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Thiruvottiyur, Chennai- 600 019

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3. The Tahsildar

Thiruvottiyur

Chennai – 600 019

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the concerned records relating to this order No.ந.க.எண்.B1/1852/2024 dated 13.01.2025 passed by the third respondent and quash the same and consequently restrain the respondents from evicting the petitioners from Survey No.20, Door No.13A/8, 1st Street, Thiruvalluvar Nagar, Kathivakkam Village, Ennore, Chennai – 600 057.

For Petitioners : Mr.M.Gnanasekar

For Respondents : Mr.M.S.Arasa Kumar
Government Advocate for R1 & R3
Mr.D.B.R.Prabhu
Standing counsel for R2

ORDER

(Order of the Court was made by K.RAJASEKAR, J.)

The present writ petition has been filed to restrain the respondents from evicting the petitioners from Survey No.20, Door No.13A/8, 1st Street, Thiruvalluvar Nagar, Kathivakkam Village, Ennore, Chennai – 600 057.



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2. The first petitioner is the son-in-law of P.R.Kesavan and on 13.01.2025, a notice under Section 7 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} was served and it was also responded by the petitioners herein, who are in possession of the property. They have also stated that the notice was served on the dead person, who is the father-in-law of the first petitioner and grandfather of the petitioners 2 and 3. The learned counsel for the petitioners further submitted that they have sent a detailed representation dated 01.01.2025 for the notice dated 28.12.2024 and the same was also not considered by the third respondent and 'order under Section 6 of said 1905 Act was passed on 13.01.2025' [hereinafter 'impugned order'] without considering the representation sent by the petitioners herein.

3. Issue notice to the respondents.

4.Mr.M.S.Arasa Kumar, learned Government Advocate accepts notice for R1 & R3 and Mr.D.B.R.Prabhu, learned Standing counsel



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accepts notice for R2.

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5. Learned State counsel submitted that already this Court has passed an order dated 03.01.2025 in W.P.No.39956 of 2024 in respect of very same land wherein this Court had directed the first respondent to consider the appeals filed by the parties concerned.

6. The learned counsel for writ petitioners has stated before this Court that he has also filed an appeal under Section 10 of said 1905 Act and the same is pending. He further submitted that he would also move a stay petition under Section 10-B of the said Act, 1905 before the Appellate Authority for staying the further proceedings, within 31.01.2025 (Friday).

7. 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



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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.

8. In view of the above facts and circumstances, we direct the petitioners to canvass all their contentions including the contentions raised in the present writ petition in the statutory appeal under Section 10 of said 1905 Act. The first respondent herein is directed to consider the stay petition, if any filed, within a period of fortnight i.e., by 12.02.2025.

9. Learned State counsel submits that if appeal and stay petition are filed on or before 31.01.2025, the stay petition under Section 10-B of said 1905 Act would be disposed of on its own merits and in accordance with law as expeditiously as the business of Appellate Authority (District Collector) would permit but in any event, within a fortnight from 31.01.2025 i.e., by 14.02.2025. The time frame is only for the stay petition



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but it is open to the Appellate Authority to take up the main appeal and dispose of the same also in this time frame, if the official business of Appellate Authority otherwise permits. To put it differently, we are not fixing any time frame for the main appeal.

Accordingly, this writ petition is disposed of with liberty to the petitioners to work out their remedy in the statutory appeal filed by them. Consequently, W.M.P Nos.3172 and 3173 of 2025 are closed. There shall be no order as to costs.

[M.S., J] [K.R.S., J]
29.01.2025
(1/3)

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



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

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