



W.P.No.3128 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.3128 of 2025**

**&**

**W.M.P No.3443 of 2025 in W.P.No.3128 of 2025**

Thangavel

S/o.Narayanasamy

.. Petitioner

VS

1) The Tahsildar

Palladam Taluk

Palladam

Tiruppur District

2) The Land Revenue Inspector

Pongalur

Palladam Taluk

Tiruppur District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order dated 22.01.2025 passed under Section



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6 of the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act 3 of 1905) on the file of the 1<sup>st</sup> respondent herein and quash the same.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.T.K.Saravanan  
Government Advocate for R1 &R2

### **ORDER**

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

Captioned main 'Writ Petition' ['WP' for the sake of brevity] has been filed assailing a 'notice / order dated 22.01.2025 made by R1 [Tahsildar, Palladam Taluk, Tiruppur District]' {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 brevity}.



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3. Mr.K.Govi Ganesan, learned counsel for the writ petitioner adverting to the impugned order submitted that the same pertains to 'S.No.402/2, Vavipalayam Village, Palladam Taluk, Tiruppur District' [hereinafter 'said land' for the sake of convenience] but said land is patta land qua writ petitioner vide Patta No.674.

4. Issue notice.

5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for both the respondents and learned State counsel adverting to the FMB sketch submitted that in S.No.402/2, there is a Nilaviyal Pathai (நிலவியல் பாதை) and even according to the impugned order, encroachment is to the extent of 223 square meters whereas patta qua said land is for 3-47.00 Hectares. In other words, 3 Hectares and 47 ares is total extent whereas the impugned order is qua 223 square meters and according to learned State counsel this pertains to encroachment in what is known as 'Nilaviyal Pathai' as shown in dotted lines in the FMB sketch.



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6. Owing to the limited scope of the main WP, main WP is taken up in the Admission Board with the consent of learned counsel on both sides.

7. We find that the dispute turns heavily on facts. To be noted, notice under Section 7 of said 1905 Act is dated 06.01.2025. There was an enquiry on 10.01.2025, the writ petitioner has sent a legal notice on 13.01.2025 and the impugned order has been made on 22.01.2025. Learned counsel for writ petitioner submits that prior to Section 7 notice, there was an inspection on 27.12.2024 when the writ petitioner was not in Town and on returning home, the writ petitioner sent a representation dated 31.12.2024. The contestations and disputes turn heavily on facts and therefore, we are of the considered view that it would be appropriate to relegate the writ petitioner to the remedy of statutory appeal under Section 10 of said 1905 Act. To be noted, whether it is 'Nilaviyal pathai' as in the FMB sketch or 'patta land' turns on facts and



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until there is a fact finding that it is patta land, it cannot be gainsaid that the impugned order is wholly without jurisdiction. This is another buttressing reason that has impelled us to relegate the writ petitioner to the remedy of statutory appeal. To be noted, we remind ourselves that alternate remedy Rule is not an absolute rule and it is a rule of discretion and it depends on facts and circumstances of each case.

8. Considering the time frame i.e., the factual position that the impugned order was served on the writ petitioner only on 23.01.2025, we deem it appropriate, in the facts and circumstances of the case, to accede to the request of the learned counsel for writ petitioner that he will file an appeal on or before 31.01.2025 (Friday). This appeal is a statutory appeal under Section 10 of said 1905 Act. Learned counsel submitted that along with the appeal, he will file a stay petition under Section 10-B of said 1905 Act.

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



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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 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.

10. Though obvious, we make it clear that any further coercive action will be subject to / depending on orders in the stay petition which will be made on or before 14.02.2025. If appeal and stay petition are not filed on or before 31.01.2025, respondents/State can proceed in accordance with law.

11. Captioned WP is disposed of in the aforesaid manner relegating the writ petitioner to alternate remedy of statutory appeal with aforementioned time lines and observations. Consequently, captioned



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Writ Miscellaneous Petition thereat is disposed of as closed. There shall be no order as to costs.

[M.S., J]

[K.R.S., J]

29.01.2025

Index: Yes/No

Speaking order / Non-speaking order

gpa

**P.S. I: Upload forthwith**

**P.S.II : All concerned including Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.**

**P.S.III:After the order was made, Mr.K.Govi Ganesan, learned counsel on record for writ petitioner requested for return of original impugned order for pursuing the alternate remedy of appeal. Let the same be returned forthwith under due acknowledgment from counsel on record.**



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

**gpa**

To

- 1) The Tahsildar  
Palladam Taluk  
Palladam  
Tiruppur District
- 2) The Land Revenue Inspector  
Pongalur  
Palladam Taluk  
Tiruppur District
- 3) The Section Officer  
ER Section  
Madras High Court

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