



W.P.No.3177 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.3177 of 2025

and

W.M.P.No.3512 of 2025

M.Ilavarasi
W/o.Muthu

...Petitioner

Vs

1. The Assistant Executive Engineer
Water Development Department
Coovam Basin Sub Division
Chepauk
Chennai-600 005.

2. The Assistant Engineer
Water Development Department
Coovam River Division III
Chepauk
Chennai-600 005.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned orders dated 21.01.2025 issued by the 1st respondent under Section 6 of the

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Land Encroachment Act, 1905 dated 27.12.2024 issued by the 2nd respondent under Section 7 of the Land Encroachment Act, 1905 and quash the same.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.V.Ravi
Special Government Pleader

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed seeking a writ of certiorari qua two notices / orders, one dated 27.12.2024 issued by R2 [The Assistant Engineer, Water Development Department, Coovam River Division III, Chepauk, Chennai-600 005] 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} and another dated 21.01.2025 issued by R1 [The Assistant Executive Engineer, Water Development Department, Coovam Basin Sub Division, Chepauk, Chennai-600 005] under Section 6 of said 1905 Act. These two notices / orders shall hereinafter be collectively referred to as 'impugned orders' for the sake of brevity and clarity. Wherever necessary



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27.12.2024 order of R2 shall be referred to as 'I impugned order' and

21.01.2025 order of R1 shall be referred to as 'II impugned order' for the sake of clarity, convenience and brevity.

2. Mr.N.Manokaran, learned counsel on record for writ petitioner in his campaign against impugned orders submitted that I impugned order is wholly without jurisdiction as R2 does not have the authority to issue such an order.

3. Issue notice.

4. Mr.V.Ravi, learned Special Government Pleader accepted notice for both respondents and fairly submitted that R2 is neither an 'authorized officer' (within the meaning of Section 6 of said 1905 Act) nor a 'specified officer not being an authorized officer' (within the meaning of Section 7 of said 1905 Act).

5. This narrows down the scope of captioned main WP, therefore, with the consent of learned counsel on both sides, main WP was taken up in the Admission Board.

6. As already alluded to supra, I impugned order has been issued by R2 under Section 7 of said 1905 Act which reads as follows:

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'7. Prior notice to person in occupation.- Before taking proceedings under section 6, the Collector or Tahsildar, or Deputy Tahsildar or Revenue Inspector or any authorized officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer') as the case may be, shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864), or in such other manner as the State Government by rules or orders under section 8 may direct:

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he has been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar or Deputy Tahsildar or authorised officer having jurisdiction, as the case may



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be, and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar or authorised officer having jurisdiction, as the case may be.'

7. A scanned reproduction of I impugned order is as follows:

[illegible]



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8. A careful perusal of the language in which Section 7 of said 1905 Act is couched makes it clear that a notice under Section 7 can be issued only by 6 categories of authorities and they are:

- (i) Collector;
- (ii) Tahsildar;
- (iii) Deputy Tahsildar;
- (iv) Revenue Inspector;
- (v) Authorized officer; and
- (vi) Specified Officer other than authorized officer.

9. As learned State Counsel has very fairly submitted, on instructions that R2 is neither an authorized officer nor a specified officer not being an authorized officer, legal drill at hand becomes simple. The reason is, R2 is obviously, not anyone of the other four authorities namely, Collector, Tahsildar, Deputy Tahsildar and Revenue Inspector.

10. As I impugned order is wholly without jurisdiction, we deem it appropriate to interfere and quash the same. On certiorari being acceded to



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qua I impugned order, II impugned order perishes as a consequence. The reason is, Section 6 notice / order cannot be issued / made without being preceded by Section 7 notice.

11. Before we write the operative portion of this order, we make it clear that all rights and contentions of respondents and / or any other State authority are preserved for initiating action under appropriate Statute like 'the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' {hereinafter 'Tanks Act' for the sake of convenience, clarity and brevity} and 'the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' {hereinafter 'Tanks Rules' for the sake of convenience, clarity and brevity} thereunder and / or any other appropriate / applicable Statute. If such proceedings are commenced, we make it clear that the same will proceed on its own merits and in accordance with law untrammelled by this order and rights and contentions of noticees / writ petitioners or any other noticees will also stand preserved for responding to such notices. We make it clear that this is a rider observation which we make.



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12. Ergo, the sequitur is, captioned main WP is allowed and consequently, captioned WMP thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

30.01.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

To

1. The Assistant Executive Engineer
Water Development Department
Coovam Basin Sub Division
Chepauk
Chennai-600 005.
2. The Assistant Engineer
Water Development Department
Coovam River Division III
Chepauk
Chennai-600 005.



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

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