



W.P.No.3707 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

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

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.3707 of 2025

and

W.M.P. Nos.4095, 4098 and 4099 of 2025

in W.P. No.3707 of 2025

- 1.Indhira
- 2.Baby
- 3.Poorani
- 4.Vedavalli
- 5.Selvi
- 6.Meenakshi
- 7.Dhanabakkiyam
- 8.Mahalakshmi
- 9.Vijayalakshmi
- 10.Parameshwari
- 11.Rajalakshmi
- 12.Manickaselvi
- 13.Rajeshwari
- 14.Selvi
- 15.Chithra
- 16.Manjuladevi
- 17.Ranjini
- 18.Rukmani
- 19.Vennila
- 20.Bhuvaneshwari
- 21.Gandhimathi
- 22.Kalaiselvi

... Petitioners

Vs.



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The State rep. By

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- 1.The District Collector,
O/o. District Collector Office,
Cuddalore District.
- 2.The District Revenue Officer,
O/o.District Revenue Office,
Cuddalore District.
- 3.The Superintendent of Police,
Cuddalore District,
Cuddalore.
- 4.The Tahsildar,
Tahsildar Office,
Cuddalore District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned notice dated 20.01.2025 bearing Na.Ka.No.A1/3963/2024 which was affixed by the fourth respondent on the wall of VAO office on 28.01.2025 and to quash the same and consequently direct the respondents 1 to 4 not to disturb peaceful possession of the land in Survey No.207/2 at Vellakarai Madhura, Kodukkanpalayam, Cuddalore District without following due procedure of law.



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For Petitioners : Mr.R.Thirumoorthy
Mr.S.Arunkumar
and Mr.J.Ganesh

For Respondents : Mr.T.K.Saravanan,
Government Advocate

ORDER

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

In the captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity), Mr.R.Thirumoorthy, learned counsel on record for writ petitioners is before us on VC (video conferencing) platform. Two other counsel on record viz., Mr.S.Arunkumar and Mr.J.Ganesh are before us in the physical Court. To be noted, this is a hybrid hearing which is a regular/routine/daily feature in this Court.

2. In the captioned main WP, inter-alia 'notices/orders 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}' [hereinafter 'impugned orders' for the sake of convenience and clarity] have been assailed.



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3. Learned counsel for writ petitioners submits that the impugned orders were not preceded by Section 7 notices.

4. Issue notice.

5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all four respondents.

6. Learned State counsel, on instructions, submitted before us that the impugned orders were preceded by notices under Section 7 of said 1905 Act. In support of this contention, learned State counsel placed before us a typed set of papers dated 03.02.2025 after furnishing a copy of the same to learned counsel on record for writ petitioners Tvl. S.Arunkumar and J.Ganesh, who are present in the physical Court.

7. Owing to the limited scope of the captioned main WP, captioned main WP was taken up in the Admission Board/Motion List with the consent of learned counsel on both sides.



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8. Notwithstanding very many averments in the support affidavit i.e., writ affidavit and grounds thereat, learned counsel for writ petitioners predicated his campaign against the impugned orders on two grounds and they are as follows:

(i) Impugned orders were not preceded by notices under Section 7 of said 1905 Act (already alluded to supra);

(ii) Procedure for enquiry has not been followed before making the impugned orders.

9. In response to the aforesaid two points, learned State counsel submitted as follows:

9.1 Impugned orders were preceded by Section 7 notices. Some of the writ petitioners have received the notices and in the case of some others who have refused to receive, affixture has been resorted to. In support of



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this submission, learned State counsel has placed before us a typed set of papers dated 03.02.2025 (as already alluded to supra) wherein revenue proceedings pursuant to refusal as well as affixture photographs have been annexed.

9.2 On the second point, learned State counsel submitted on instructions that impugned orders have been made after due enquiry.

10. By way of reply, learned counsel for writ petitioners submitted that Section 7 notices refer to முந்திரி மற்றும் வீடுகள் whereas the impugned orders refer to வீடுகள். On this basis, it was contended that Section 7 notices have been issued for land and impugned orders have been issued for superstructure.

11. We carefully considered the rival submissions.

12. On the first point, learned counsel for writ petitioners pressed into service an order dated 27.01.2025 made in W.P.No.1805 of 2025 and Writ Miscellaneous Petitions thereat for the proposition



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that when Section 6 order is not preceded by Section 7 notice it is liable to be set aside. This is **Peruma** case (**Peruma Vs. The District Collector, Krishnagiri District, Krishnagiri**). We carefully considered **Peruma** case. We are of the view that **Peruma** case is distinguishable on facts. In **Peruma** case, learned State counsel was not able to place any document to demonstrate that there was affixture, moreover, in the written instructions given to State counsel, there was not even an averment that Section 7 notices were affixed. This is captured in paragraph 5 of **Peruma** case, which reads as follows:

'5. To be noted, there is no document to demonstrate that there is affixture. It is to be noted that R3 in written instructions to learned State Counsel has not averred that Section 7 notice has been affixed.'

Therefore, **Peruma** case does not come to the aid of learned counsel for writ petitioners in the case on hand.

13. As substantial material have been placed before us by the



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learned State counsel to demonstrate that Section 7 notices have already been served or affixed and that too after making appropriate proceedings regarding affixture by the Village Administrative Officer, we are of the view that any further disputation will turn heavily on facts and therefore, it can be canvassed in a statutory appeal under Section 10 of said 1905 Act, if so desired and if so advised.

14. Likewise, the point that procedure for enquiry has not been followed can also be canvassed by the writ petitioners in a statutory appeal.

15. As regards the description of the property as முந்திரி மற்றும் வீடுகள் in Section 7 notices and as வீடுகள் in Section 6 orders hardly matters as Section 7 notices as well as Section 6 orders (orders/impugned orders) pertain to 'Survey No.207/2 in Vellakarai Madhura, Kodukkanpalayam Village in Cuddalore Taluk, Cuddalore District' (hereinafter 'said land' for the sake of convenience and clarity). As Section 7 notices as well as impugned orders under Section 6 pertain to said land i.e., Survey No.207/2, we are of the considered view that this argument does not hold water.

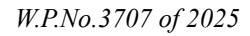


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16. Be that as it may, this Court has repeatedly held that said 1905 Act is a self-contained Code. The reason *inter-alia* is that there is a provision to have the alleged encroacher show caused under Section 7 of said 1905 Act followed by an order (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.

17. As regards alternate remedy, it is not an absolute rule and it is a rule of discretion. In other words, alternate remedy rule depends on facts and circumstances of each case and it is a rule of discretion. In the case on hand, considering the disputations and contestations, we are of the considered view that this is a fit case to apply the alternate remedy rule and say that a statutory appeal under Section 10 of said 1905 Act is an efficacious remedy. Learned counsel for writ



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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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