



W.P.No.3912 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.3912 of 2025

and

W.M.P. Nos.4332 and 4333 of 2025

in W.P. No.3912 of 2025

1.Malarkodi
2.Saradha
3.S.Selvi
4.Arumugam

... Petitioners

Vs.

1.The District Collector,
Cuddalore District,
Cuddalore.

2.The Revenue Divisional Officer,
Cuddalore District.

3.The Revenue Tahsildar,
Cuddalore Taluk,
Cuddalore District.



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4.The Firka Revenue Inspector,
Thiruvanthipuram,
Cuddalore District.

5.The Superintendent of Police,
Cuddalore Taluk,
Cuddalore District.

6.The Village Administrative Officer,
Vellakkarai Madura Kodukan Palayam Village,
Cuddalore Taluk,
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 of the third respondent notice issued under Section 7 of The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) dated 19.12.2024 under Ref.No.Na.Ka.A1/3693/2024 issued to the petitioners on 31.12.2024 and notice issued under Section 6 of the Chennai Act III of 1905 dated 20.01.2025 under Ref.No.Na.Ka.No.A1/3963/2024 and to quash the same as illegal and invalid and consequently direct the respondents 2 to 4 to issue free patta to the petitioner's land in S.No.207/2, in Vellakkarai Revenue, Madura Kodukanpalayam Village, Cuddalore Taluk, Cuddalore District on par with the people who are issued free patta for the lands in Survey No.8, Vellakkarai Village and Survey No.139/44 in Villangalpattu Village.



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For Petitioners : Mr.D.Balachander
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), inter-alia 'notices 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 'orders under Section 6 of said 1905 Act' [hereinafter 'impugned notices/orders' for the sake of convenience and clarity] have been assailed.

2. Mr.B.Balachander, learned counsel for writ petitioners submits that procedure for enquiry has not been followed before making the impugned orders.

3. Issue notice.

4. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all six respondents.

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5. 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.

6. 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 the ground that procedure for enquiry has not been followed before making the impugned orders.

7. In response to the aforesaid point, learned State counsel submitted on instructions that impugned orders have been made after due enquiry.

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



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9. We carefully considered the rival submissions.

10. Learned counsel for writ petitioners pressed into service ***D.Sathish's case*** being ***D.Sathish Vs. Tahsildar, Sirkali Taluka and Others*** reported in ***1997 SCC OnLine Mad 484*** and ***V.Arunagiri's case*** being ***V.Arunagiri and Others Vs. The Divisional Engineer, National Highways, Thiruvannamalai and others*** reported in ***(1999) 1 CTC 1: (1999) 1 MLJ 308***. Both these case laws were relied on for the proposition that order under Section 6 of said 1905 Act cannot be made without being preceded by a show cause notice under Section 7.

11. We carefully perused both the orders. In ***D.Sathish's case***, Hon'ble Division Bench has observed that a doubt has arisen as to whether a notice was issued under Section 6 or 7. It is captured in paragraph 4, which reads as follows:

'4. The learned single Judge, in the order, has stated that nothing is stated in the affidavit whether any reply has been given by the petitioner to the said notice. When it is the contention of the appellant/petitioner that the impugned notice is under Section 6 of the Act and



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not under Section 7, the question of showing cause does not arise. While ordering confiscation in the event of not handing over, there is nothing to indicate in the order that a summary inquiry was conducted as contemplated under sub-clause (2) of Section 6 of the Act, since the substance of the notice is directing to vacate the land within the stipulated time and therefore, it cannot be considered as a notice under Section 7 of the Act and there is non-compliance of the requirements of law as has been contemplated under the Act.'

12. In **V.Arunagiri's case**, learned State counsel did not dispute that notices were not given to the appellants under Section 7 to take action under Section 6. This has been captured in paragraph 9 and the relevant portion of paragraph 9 reads as follows:

'9.....They also did not dispute that notices were not given to the appellants u/s 7 of the Act, to take action u/s 6 of the said Act. They submitted that action could be taken against the appellants as provided in the said Act.'

13. Therefore, **V.Arunagiri's case** does not come to the aid of the writ petitioners counsel. The reason is, in the case on hand, writ petitioners have been served Section 7 notices and learned State



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counsel emphatically submits that affixture has been resorted to in the manner known to law in some cases where noticees refused to receive Section 7 notices.

14. As substantial materials have been placed before us by the learned State counsel to demonstrate that impugned notices/orders have been made after making appropriate proceedings, 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. The point that procedure for enquiry has not been followed can 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



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6 pertain to said land i.e., Survey No.207/2, we are of the considered view that this argument does not hold water.

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



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alternate remedy rule and say that a statutory appeal under Section 10 of said 1905 Act is an efficacious remedy. Learned counsel for writ petitioners is unable to demonstrate any ground for not resorting to the alternate remedy. If the writ petitioners resort to alternate remedy of statutory appeal under Section 10 of said 1905 Act, the same will lie before the District Collector, Cuddalore (Appellate Authority) and it is open to the Appellate Authority to consider the same on its own merits and in accordance with law subject to limitation.

18. In the light of the narrative thus far, captioned main WP is dismissed albeit preserving the rights of the writ petitioners to pursue alternate remedy of statutory appeal under Section 10 of said 1905 Act, if so desired and if so advised. Consequently, captioned Writ Miscellaneous Petitions (WMPs) thereat are disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
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Neutral Citation : Yes / No
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