



W.P.No.4905 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2025

CORAM

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

and

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

W.P.No.4905 of 2025

&

W.M.P Nos.5432 and 5433 of 2025

in

W.P No.4905 of 2025

Dhanalakshmi
W/o.Paramasivam

... Petitioner

vs

1. The District Collector
Namakkal
Namakkal District
2. The District Revenue Officer
Namakkal
Namakkal District
3. The Revenue Divisional Officer
Trichengode
Namakkal District
4. The Thasildhar
Mohanur Taluk

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Namakkal District

5. The Thasildhar

Paramathy-Velur Taluk

Namakkal District

6. The Revenue Inspector

Palapatti

Namakkal 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 under Section 6 of Tamil Nadu Land Encroachment Act, 1905 issued by the fourth respondent dated 25.01.2025 and quash the same and consequently direct the fourth respondent to consider the petitioner's reply notice dated 18.12.2024 which is sent by the petitioner's counsel.

For Petitioner : Mr.G.Anbuchezeiyan

For Respondents : Mr.T.K.Saravanan
Additional Govt. Pleader

ORDER

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

Captioned main 'Writ Petition' ['WP' for the sake of brevity] has been filed with a certiorarified mandamus prayer. Certiorari limb of the prayer assails a notice / order {signed on 25.01.2025 by R4 (Thasildhar, Mohanur



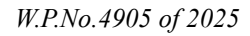
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Taluk, Namakkal District)). This notice/order has been made under Section 6 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of convenience] and shall hereinafter be referred to as 'impugned order' for the sake of brevity, convenience and clarity. To be noted, the mandamus limb of the prayer seeks a directive to R4 to consider petitioner's notice through lawyer (styled as 'Reply Notice') dated 18.12.2024.

2. At the outset, Mr.G.Anbuchezeiyan, learned counsel for writ petitioner contended that the impugned order was not preceded by a notice under Section 7 of said 1905 Act. In other words, writ petitioner was not show-caused before making of impugned order is learned counsel's say.

3. Issue notice to respondents.

4. Mr.T.K.Saravanan, learned Additional Government Pleader, who accepted notice for all six respondents, submitted on instructions that the impugned order was preceded by a notice under Section 7 of said 1905 Act being a notice signed by R6 on 16.12.2024. Learned State counsel submitted, on instructions, that the notice under Section 7 of said 1905 Act was received by writ petitioner's spouse Mr.Paramasivam. In support of his



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क्र.सं.	संगणक प्रोग्रामिंग भाग	कंप्यूटर प्रोग्रामिंग भाग	अन्य भाग	संगणक प्रोग्रामिंग भाग	अन्य भाग
1	प्रोग्रामिंग भाग	प्रोग्रामिंग भाग	अन्य भाग	प्रोग्रामिंग भाग	अन्य भाग


 Director, Government of India
 New Delhi

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5. Learned counsel for writ petitioner could not enter upon a dispute or contestation on above and that by itself douses the point on which the writ petitioner predicated his campaign against the impugned order in the Admission Board.

6. Nonetheless the writ petitioner wanted to advance some more arguments and therefore, the main WP was taken up with the consent of learned counsel on both sides. To be noted, main WP was taken up also for the reason that the scope of the captioned WP is very limited.

7. Learned counsel for writ petitioner submitted that the writ petitioner had caused a legal notice dated 18.12.2024 to be issued but proceedings under said 1905 Act have commenced post legal notice. This may not be the correct position as Section 7 notice is dated 16.12.2024, it has been served on writ petitioner's spouse on 16.12.2024 but the legal notice is dated 18.12.2024 and it has been mailed (as per postal receipt placed before us) only on 18.12.2024 at 11.30am from Paramathi Post Office.



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8. Be that as it may, the contents of the notice brings to light that there is a reference to a civil suit viz., O.S.No.46 of 2020. This suit O.S.No.46 of 2020 is on the file of District Munsif Court, Paramathi, it has been filed by the writ petitioner and all eight respondents are official respondents (including six respondents in the captioned main WP). We find that the suit is one for bare injunction. It is not restricted to land which is subject matter of impugned order but learned counsel for writ petitioner submits that Item No.4 in the plaint schedule properties is the subject matter of impugned order. Section 14 of said 1905 Act deals with bar of jurisdiction of Courts and the same reads as follows:

*'14. **Bar of jurisdiction of Courts.**- Notwithstanding anything contained in any law for the time being in force, no order passed or proceeding taken by any officer or authority or the State Government under this Act shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any power conferred by or under this Act.'*



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9. In the light of Section 14, we are of the considered view that reference to civil suit is a non-starter. Therefore, this point also does not aid the writ petitioner counsel in his campaign against the impugned order.

10. This takes us to the alternate remedy point.

11. When learned counsel for writ petitioner was requested to address this Court on alternate remedy point, learned counsel submitted that the suit filed by the writ petitioner being O.S.No.46 of 2020 on the file of District Munsif Court, Paramathi is the alternate remedy and that the writ petitioner has already availed the same. This Court is constrained to write that this is no argument, as alternate remedy point turns on the provision for a statutory appeal under Section 10 of said 1905 Act which lies qua impugned order. In other words, impugned order can be assailed by the writ petitioner by way of a statutory appeal under Section 10 of said 1905 Act and such statutory appeal lies to R1. There is also a provision for stay pending decision in statutory appeal. This is vide Section 10-B of said 1905 Act.



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12. 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 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.

13. Notwithstanding the submission of learned counsel for writ petitioner which we are constrained to observe as no argument and a non-starter, we deem it appropriate to write that alternate remedy rule is not an absolute rule and it is a rule of discretion. In other words, alternate remedy rule is a self-imposed restraint. In the case on hand, considering the facts and circumstances of the case, we have no hesitation in holding that the alternate remedy rule is a to be applied against the writ petitioner. The



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reasons are a) the matter turns heavily on facts, b) there is nothing to demonstrate that the alternate remedy is inefficacious, and c) the case of the writ petitioner does not fall under any of the exceptions to alternate remedy.

14. As regards exceptions to alternate remedy rule, the oft-quoted case is *Whirlpool* Case being judgment dated 26.10.1998 rendered by Hon'ble Supreme Court in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai* reported in *CDJ 1998 SC 371* and the four exceptions are:

- (i) Enforcement of fundamental rights;
- (ii) Violation of Natural Justice Principles (NJP);
- (iii) Order being 'wholly' without jurisdiction; and
- (iv) When the vires of a statute are assailed.

15. The narrative, discussion and dispositive reasoning set out supra leaves us with the considered view that neither the certiorari limb nor the mandamus limb of the prayer can be acceded to. As regards the mandamus limb, we need to add that it is a notice prior to the impugned order and discussion in this regard has already been alluded to and set out supra.



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16. Ergo, the sequitur is, captioned WP fails and the same is dismissed. Consequently, captioned 'Writ Miscellaneous Petitions' ['WMPs' for the sake of brevity] also perish with the main WP. The result is, captioned WMPs are also dismissed. We are of the view that this case may warrant costs to be imposed but considering the facts and circumstances of the case and adequate information on how the writ petitioner is circumstanced not being readily made available to us, we refrain from imposing costs.

(M.S.,J.)

(K.G.T.,J.)

13.02.2025

Neutral Citation : Yes / No
Speaking / Non-speaking order
gpa



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To

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

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