IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.7351 of 2025
&
W.M.P.Nos.8204 and 8207 of 2025
in W.P.No.7351 of 2025

M/s.Association of Greenwoods' Community
Represented by its President Chakkaravarthy Rajagopal
S/o.M.Rajagopal
Woods Club, Greenwood City
Navalur
Chennai – 600 130 ... Petitioner

vs.

1. The District Collector
Chengalpattu District
Chengalpattu – 603 111

2. The Tahsildar
Thiruporur Taluk, Thiruporur
Chengalpattu – 603 110

3. M/s.Navalur Suresh Nagar Residents Association
Rep. By its President Mr.Seshathri.P.
Office at Plot No.20, Suresh Nagar
Navalur, Chennai – 600 130
Its Residential Address – Flat No.15B

1st Main Road, Perungudi
Chennai – 600 096

4. M/s. Arihant Unitech Realty Projects Ltd.,
Having its Office at No.6, Community Centre
Saket, New Delhi – 110 017
Represented by its Authorized Signatory
Mr.O.P.Madhav ... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records culminating order dated 03.02.2025 its Reference No.Na.Ka.14692/2024/AA3 passed by the first respondent and quash the same and direct the second respondent to remeasure the property based on the Survey Report dated 28.05.2024 issued by the Tahsildar ordered by this Court.

For Petitioner	:	Mr.Aravind Subramaniam Senior counsel for Mr.D.Lingappa
For Respondents	:	Mr.T.K.Saravanan Addl. Govt. Pleader for R1 and 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 with a prayer for issue of a Writ of Certiorarified Mandamus. In and vide the certiorari limb of the prayer, an order dated 03.02.2025 bearing reference ந.க.14692/2024/AA3 made by R1 (District Collector, Chengalpattu District) has been assailed and this order shall hereinafter be referred to as 'impugned order' for the sake of brevity, convenience and clarity. As regards the mandamus limb, there is a prayer to direct R2 (The Tahsildar, Thiruporur Taluk) to remeasure (based on a survey report dated 28.05.2024) the property that is subject matter of captioned writ petition.

2.The mandamus limb is consequential qua the certiorari limb.

3.When the captioned matter was listed in the Admission Board for the first time (first listing) on 05.03.2025, the following proceedings were made:

' ***W.P.No.7351 of 2025***

&

W.M.P Nos.8202, 8204 and 8207 of 2025

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI.,J.

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

Learned counsel for writ petitioner sought time to place before us certain case laws particularly on alternate remedy. Request acceded to.

2. List in the Admission Board i.e., Motion List but under the cause list caption 'ADJOURNED ADMISSION' day-after-tomorrow.

List on 07.03.2025.'

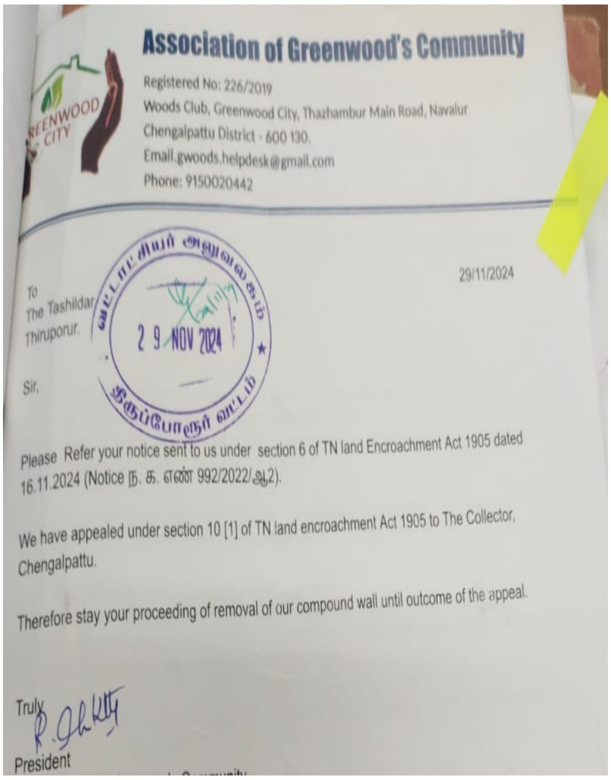
4.Before we embark upon the legal drill of considering the case laws pressed into service by the writ petitioner, we deem it appropriate to write that as regards how case laws have to be relied on and how a citation should be adverted to, we respectfully follow the dictum laid down by Hon'ble Constitution Bench in ***Padma Sundara Rao*** case [***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in ***(2002) 3 SCC 533: 2002 SCC OnLine SC 334***], wherein the factual matrix is, a notification issued under Section 6 of the Land Acquisition Act, 1894 was assailed in Madras High Court and the High Court relying on N.Narasimhaiah case reported in *(1996) 3 SCC 88* held that the same was validly issued. The matter was carried to Hon'ble Supreme Court on the question of law as to whether after quashing of a notification under section 6, a fresh period of one year is available to the State Government to issue another notification under section 6. It is in this context, i.e., while deciding this legal question, a Constitution Bench of Hon'ble Supreme Court declared the law as regards how courts should place reliance on case laws / precedents. Relevant paragraph is paragraph 9 and the same reads as follows:

> *'**9.**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

5.Today, Mr. Aravind Subramaniam, learned Senior counsel instructed by Mr.D.Lingappa, counsel on record for the writ petitioner was before us. On alternate remedy, learned Senior counsel pressed into service ***State of H.P and Ors. Vs.Gujarat Ambuja Cement Ltd. and Ors.*** reported in ***MANU/SC/0421/2005***, drew our attention to paragraph 21 thereat and submitted that alternate remedy is a rule of discretion and not a rule of compulsion. ***Gujarat Ambuja Cement*** arose under Sales Tax Law and an order made by an Assessing Authority *inter alia* granting exemption is the fulcrum of the factual matrix thereat. That was a case where the High Court exercised writ jurisdiction on the teeth of alternate remedy and Hon'ble Supreme Court held that there is no error in the order of the High Court on the basis of two well recognized exceptions to the doctrine of exhaustion of statutory remedies. One exception is that the proceedings initiated before a forum under a provision of law which is ultravires and another exception is where the impugned order has been made in violation of 'natural justice principles' ['NJP' for brevity]. It is in this context that Hon'ble Supreme Court made it clear that alternate remedy rule is a self-imposed restraint. In this view of the matter, ***Gujarat Ambuja Cement*** case does not come to the aid of the writ petitioner as it is not the case of the writ petitioner that the impugned order was made under a provision which is ultravires or where the impugned order is an abuse of process of law. To be noted, impugned order has been made by R1 as Appellate Authority in exercise of appeal powers under Section 10 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity}. While there can be no disputation that alternate remedy rule is not an absolute rule, it is a rule of discretion and that it is a self-imposed restraint qua writ courts, the point in the case at hand is whether ***Gujarat Ambuja Cement*** comes to the aid of writ petitioner. Therefore, it will suffice to say that on facts ***Gujarat Ambuja Cement*** is clearly distinguishable and it does not come to the aid of the writ petitioner as it is neither a case of proceedings under law that is ultravires nor is it a case of violation of NJP.

6.The next judgment relied on by learned Senior counsel is, the oft-quoted ***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.*** ***Whirlpool*** case arose under the Trademarks Act and exceptions to the alternate remedy rule were laid down by Hon'ble Supreme Court in ***Whirlpool***. The exceptions have come to stay in legal parlance as '*Whirlpool exceptions*'. Exceptions have been well recognized by Hon'ble Supreme Court in catena of authorities and the 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. In the case on hand, the writ petitioner's case does not fall under any of the exceptions and therefore, ***Whirlpool*** case does not come to the aid of the writ petitioner. On the contrary, ***Whirlpool*** case would apply in cases where the writ Court would adhere to the self-imposed restraint when none of the exceptions are attracted.

7.The next case law pressed into service by writ petitioner is ***Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M.Kamalia and ors*** reported in ***MANU/SC/1065/2003***. This is a case which arose out of a Public Interest Litigation. Learned counsel drew our attention to paragraph 26 of the MANU report and submitted that when an order is made by an authority in a post-haste manner, alternate remedy will not come in the way of exercise of writ jurisdiction. In support of this contention, learned Senior counsel submitted that the statutory appeal of the writ petitioner is dated 03.02.2025 and the impugned order has been made by Appellate Authority on the same day in great haste. In the light of this point, we issued notice to the official respondents and Mr.T.K.Saravanan, learned Additional Government Pleader accepted notice for R1 and R2 and learned State counsel produced the records before us. A careful perusal of the records brings to light that the writ petitioner Association itself has written a letter dated 29.11.2024 stating that the statutory appeal has been preferred and a scanned reproduction of the letter from the Government file is as follows:



Association of Greenwood's Community

Registered No: 226/2019
Woods Club, Greenwood City, Thazhambur Main Road, Navalur
Chengalpattu District - 600 130.
Email.gwoods.helpdesk@gmail.com
Phone: 9150020442

29/11/2024

To
The Tashildar,
Thiruporur.

29 NOV 2024

Sir,

Please Refer your notice sent to us under section 6 of TN land Encroachment Act 1905 dated 16.11.2024 (Notice ந. க. எண் 992/2022/அ2).

We have appealed under section 10 [1] of TN land encroachment Act 1905 to The Collector, Chengalpattu.

Therefore stay your proceeding of removal of our compound wall until outcome of the appeal.

Truly
President

When the aforementioned file was shown to learned Senior counsel, learned Senior counsel, on instructions, fairly submitted that the aforementioned letter is from the writ petitioner only. Therefore, even as of 29.11.2024, appeal has been filed. In this regard, it is to be noted that No.7 in the reference part of impugned order mentions that the statutory appeal is dated

28.11.2024. It is also seen that there is a connected PIL being W.P.No.12071 of 2022 and in the contempt petition arising out of the same, even as of 17.12.2024, following order has been made by another Hon'ble Division Bench:

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-12-2024

CORAM

THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HONOURABLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

Cont.P.No.1534 of 2023

Navalur Suresh Nagar Residents Association
Rep. By its President,
Office at Plot No.20, Suresh Nagar,
Navalur, Chennai - 600 130. .. Petitioner

Vs

Poongodi
Tahsildar,
Thirupporur,
Chengalpattu District - 603 110. .. Respondent

For Petitioner(s):
Ms.R.V.Gayathri
For M/s.P.B.Ramanujam Associates

For Contemnor(s):

Mr.A.Edwin Prabhakar
State Government Pleader
assisted by Mrs.E.Renganayaki,
Additional Government Pleader

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Mr.Prabakar states that after the order dated 6.5.2022 was passed, when respondents issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (the Act), respondent No.7 filed a writ petition, which came to be disposed of with a direction that the Collector will consider their representation as well and dispose it in accordance with law. Subsequently, an order under Section 6 of the said Act has been passed for removal of the obstruction and an appeal has been preferred against the order issued under Section 6 of the Act.

2. Mr.Prabakar states he has received a letter dated 29.11.2024 from seventh respondent. A copy of the appeal is also annexed to the said letter, in which it is only stated that if the encroachment is removed, seventh respondent will be put to irreparable monetary loss to the tune of lakhs of rupees.

3. Mr.Prabakar states, since the appeal has been filed, the Collector has to consider the same and dispose of in accordance with law. At the same time, Mr.Prabakar states he has no instructions as to whether any application under Section 10B of the said Act for stay of *the order under Section 6 of the said Act has been filed. Mr.Prabakar states, if any such stay application is filed or if stay has not been granted, the order will be executed. Statement accepted.*

Stand over to 21.1.2025 for directions.

(K.R.SHRIRAM, C.J) (SENTHILKUMAR RAMAMOORTHY J.)
17-12-2024 '

(underlining made by this Court for ease of reference)

The above buttresses the position that the statutory appeal is actually dated 28.11.2024 and not 03.02.2025 as submitted by the learned senior counsel for the writ petitioner. Therefore, the argument that the impugned order has been made in undue haste on the same day as that of the appeal does not hold water, becomes a damp squib and therefore, ***Jagdishbhai M.Kamalia*** case does not come to the aid of the writ petitioner.

8.To be noted, alternate remedy available to the writ petitioner is by way of a statutory revision under Section 10-A. To be precise, it is 10-A(1)(c), which reads as follows:

'10-A.Revision._(1) Any decision or order passed under this

Act may be revised either suo motu or on application-

(a) ....

(b) .....

(c) by the State Government if such decision or order was passed by the appellate authority or the Commissioner of Land Administration.'

Adverting to the above provision, learned counsel submitted that unlike the above provision i.e., Section 10, revision provision does not say 'shall' and it deploys 'may'. In support of this contention, an English case law in ***RSL Funding, LLC v. Alford*** [239 Cal.App.4th 741 (Cal.Ct.App.2015)] was pressed into service. This English case law reiterates the principle that 'may' is permissive and 'shall' is mandatory. This argument in our considered view is no argument as 'may' occurring in Section 10-A qualifies *suo motu*. As a revision can either be *suo motu* or on an application (unlike a statutory appeal under Section 10 which cannot be *suo motu)* the expression 'may' occurs in Section 10-A and 'may' is obviously qua *suo motto*. To put it differently this 'shall' and 'may' argument as between the statutory appeal provision (Section 10) and statutory revision provision (Section 10-A) is clearly a non-starter.

9.Lastly, learned counsel relied on judgment of Hon'ble Supreme Court in ***A.P.Electrical Equipment Corporation Vs. The Tahsildar & Ors. Etc.,*** in Civil Appeal Nos.4526 to 4527 of 2024 being an order dated 27.02.2025. Learned counsel drew our attention to paragraph 48 thereat to say that even disputed questions of fact can be looked into in writ jurisdiction. In the case on hand, it is not one where the writ petitioner is being relegated to alternate remedy solely because of disputed question/s of facts. 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.

10.As already alluded to supra, alternate remedy rule is not an absolute rule and it is clearly a rule of discretion and a self-imposed restraint. On the facts and circumstances of the case, the writ petitioner is unable to demonstrate any reason as to why alternate remedy of statutory revision cannot be resorted to. There is nothing on the part of the writ petitioner to demonstrate that alternate remedy is inefficacious. Therefore, it will suffice to write that ***A.P.Electrical Equipment*** principle also does not come to the aid of the writ petitioner.

11.On alternate remedy rule itself, this Court would respectfully refer to ***Dunlop India*** case [***Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others*** reported in ***(1985) 1 SCC 260***], ***Satyawati Tandon*** case [***United Bank of India Vs. Satyawati Tondon and others*** reported in ***(2010) 8 SCC 110***], ***Commercial Steel*** case law i.e., ***The Assistant Commissioner of State Tax and Others Vs. Commercial Steel Limited*** reported in ***(2022) 16 SCC 447***, ***K.C.Mathew*** case **[*Authorized Officer, State Bank of Travancore Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85*]** and ***Greatship*** case [***State of Maharashtra and Others Vs. Greatship (India) Limited*** reported in ***(2022) 17 SCC 332 2022 SCC OnLine SC 1262***].

12.The factual matrix in ***Dunlop India*** is, the respondent Dunlop

India has been manufacturing rubber goods and allied products like tyres, tubes, etc., The Government of India had issued a notification, under which tyres, falling under Item 16 of the First Schedule to the Central Excise and Salt Act, 1944, were exempt from certain percentage of excise duty to the extent that the manufacturers had not availed themselves of the exemption granted under certain other earlier notifications. The department was of the opinion that the respondent was not entitled to exemption. The respondent claimed the benefit of exemption to a tune of Rs.6.05 Crores and had filed a writ petition before the Calcutta High Court. It had sought interim order restraining the Central Excise Authorities from the levy and collection of excise duty. Learned Single Judge of Calcutta High Court by an interim order allowed the benefit of exemption to the tune of Rs.2,93,85,000/- and the respondent was directed to furnish a bank guarantee and goods were directed to be released on such bank guarantee being furnished. Aggrieved Department preferred appeal before Division Bench which had confirmed the order of learned Single Judge with a slight modification by giving liberty to encash 30% of the bank guarantee. Being aggrieved, the Assistant Collector of Central Excise preferred appeal before Hon'ble Supreme Court.

It is in this context, while deciding the appeal, Hon'ble Supreme Court deprecated the practice of granting interim orders for mere asking and in matters involving public interest and revenue, interim orders ought not to be granted merely because a prima facie case has been shown, more is required. The balance of convenience must be clearly in favour of the making of an interim order and alternative remedy provided by the statute must be availed first. The Court must have good and sufficient reason to bypass the alternate remedy provided by Statute and surely matters involving the revenue where statutory remedies are available are not such matters.

13.Relevant paragraph in ***Dunlop India*** case is paragraph 3 and the same reads as follows:

> *'**3. ....***Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. <u>Surely matters involving the</u>*

> *revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'*

(Underlining made by this Court to supply emphasis and highlight)

14.The factual matrix in ***Satyawati Tondon*** case is respondents had obtained loan from the appellant Bank but was irregular in repayment of the loan amount. The appellant bank sent letters to respondents asking them to deposit the outstanding dues. Initially, first respondent deposited a sum of Rs.50000/- and gave a written undertaking to repay the loan in instalments but failed to fulfil the promise made. Therefore, the appellant bank initiated proceedings by filing an application under 'the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' ['SARFAESI Act' for the sake of brevity], which was allowed by learned District Magistrate/Collector, Allahabad. The first respondent filed a writ petition before the High Court praying to restrain the appellant from taking coercive action. Though an effective alternative remedy was available to the writ petitioner under Section 17 of the SARFAESI Act, the High Court passed the impugned order restraining the appellant from taking action in furtherance of notice issued under Section 13(4) of the SARFAESI Act. When the appellant Bank took the matter to Hon'ble Supreme Court, Hon'ble Supreme Court held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions.

15.The factual matrix in ***K.C.Mathew*** is that the respondent had obtained loan from the appellant bank but failed to repay the loan. The loan account of the respondent was declared a non performing asset. The appellant bank proceeded under the SARFAESI Act and issued statutory notice under Section 13(2), the objections raised by the respondent were considered and rejected and thereafter, a possession notice was issued. The respondent preferred a writ petition and the writ court passed an interim order granting stay of further proceedings. The appeal before the Division Bench was also dismissed. Challenging the same, the appellant bank preferred appeal before Hon'ble Supreme Court. It is in this context, Hon'ble Supreme Court observed that the discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions. In ***K.C. Mathew's*** case, ***Satyawati Tondon*** principle has been reiterated.

16.Relevant paragraph in ***K.C.Mathew*** is paragraph 10 and the same reads as follows:

> *'10. In **Satyawati Tondon** the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)*
>
> > *“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the*

> *Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
>
> *55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'*
>
> ***(underlining made by this Court to supply emphasis and highlight)***

17.The factual matrix in ***Commercial Steel*** is, the respondent is engaged in the business of iron and steel. The respondent purchased some materials from suppliers at Karnataka. The consignment of goods was being carried in a truck and while it was proceeding from State of Karnataka, it was intercepted at Jeedimetala. The tax invoice indicated that the goods were earmarked for delivery at Balanagar, Telangana. It is the case of the appellant that in the guise of inter-State sale, the respondent was attempting to sell the goods in the local market by evading SGST and CGST. A order of detention was issued and a notice was served on the person in charge of the conveyance. Challenging the proceedings, the respondent filed writ petition and sought for refund of tax. The High Court entertained the writ petition and ordered for refund of the amount. Aggrieved the appellant preferred appeal before Hon'ble Supreme Court. Hon'ble Supreme Court observed that the existence of alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution and a writ petition can be entertained in exceptional circumstances. Relevant paragraphs in ***Commercial Steel*** case law are paragraphs 10 and 11 and the same read as follows:

> *'10. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy*

is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

11. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court entertaining a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

18.The factual matrix in ***Greatship*** is that the respondent was issued proceedings under 'the Maharashtra Value Added Tax, 2002' ['MVAT Act' for the sake of brevity] and 'the Central Sales Tax Act, 1956' ['CST Act' for the sake of brevity]. The assessing officer issued notice of assessment calling upon the respondent assessee to produce relevant documents and also to show cause as to why it should not be assessed under the relevant provisions of the MVAT Act. The respondent submitted required documents and also showed cause vide letter dated 03.05.2018. Though personal hearing was fixed, it was not held. The assessing officer passed an assessment order determining the tax liability along with interest and penalty under the MVAT Act and the CST Act. The respondent preferred writ petition challenging the assessment order without availing the appeal remedy. The High court set aside the assessment order and the demand notice. Against the same, the State has preferred appeal before the Hon'ble Supreme Court. The Supreme Court has observed that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions. Relevant paragraph in ***Greatship*** case law is Paragraph 15 and the same reads as follows:

> *'15. Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under*

Article 226 of the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions.'

19.As much as alternate remedy rule, it has to be applied with utmost rigour in fiscal statute. We are of the considered view that it should be applied with rigour in matters pertaining to revenue records and public land /encroachment.

20.Ergo the sequitur is, we are of the considered view that we have no hesitation in holding that this is a fit case where the alternate remedy rule has to be applied.

21.As we have not expressed any view or opinion on the merits of the matter, if the writ petitioner resorts to alternate remedy of revision under

Section 10-A, more particularly Section 10-A (1)(c), it is open to the revisional authority to consider the statutory revision on its own merits and in accordance with law but the writ petitioner resorting to alternate remedy will be subject to limitation and condonation of limitation *inter alia* vide Section 11(4) of said 1905 Act.

22.As regards the private respondents i.e., R3 and R4, as we are not expressing any view or opinion on the merits of the matter but we are relegating the writ petitioner to alternate remedy and we are not making any orders adverse to R3 and R4, we make it clear that all the rights and contentions of R3 and R4 will stand preserved notwithstanding this order. Therefore, there is no impediment in taking up the main WP in the Admission Board and we do so with the consent of learned counsel on both sides.

23.The sum sequitur of the narrative, discussion and dispositive reasoning thus far is, captioned writ petition fails and the same is dismissed. Consequently, captioned WMPs thereat also perish with the main WP and the same are also dismissed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
10.03.2025

Index : Yes/No
Neutral Citation : Yes
gpa/vvk

To

1. The District Collector
   Chengalpattu District
   Chengalpattu – 603 111

2. The Tahsildar
   Thiruporur Taluk, Thiruporur
   Chengalpattu – 603 110

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

gpa/vvk

W.P.No.7351 of 2025

10.03.2025