



W.P.No.6523 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.02.2025

CORAM

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

and

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

W.P.No.6523 of 2025

&

W.M.P.No.7185 of 2025 in W.P.No.6523 of 2025

1.K.Jagadeeswaran
S/o.Late Krishnan

2. J.Haripriya
S/o.K.Jagadeeswaran

... Petitioners

vs

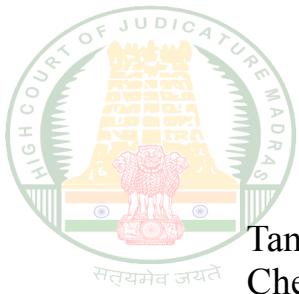
1. The State of Tamil Nadu
Rep. by its Commissioner of Land Administration
Land Administration Department
2nd Floor, Ezhilagam, Chepauk
Chennai - 600 025

2. The District Collector
Chengalpattu District

3. The District Revenue Officer
Chengalpattu District

4. The Revenue Divisional Officer
Tambaram Division

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Tambaram
Chennai - 45

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5. The Tahsildhar
Tambaram

6. The Additional Chief Secretary /
Commissioner of Revenue Administration
The Secretariat
Fort St.George
Chennai – 600 009

7. B.Santhanam ... Respondents

(R6 and R7 suo motu impleaded vide this order)

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus forbearing the respondents particularly 2nd and 4th respondents from further demolishing the petitioners houses in S.Nos.205/8 & 206/1 of Agaramthen Village in Tambaram Taluk, Chengalpattu District till the statutory limiation of 30 days for preferring revision under Section 10-A of the Tamil Nadu Encroachment Act against the order passed by the second respondent in Na.Ka.721/2025/Aa3 dated 17.02.2025.

For Petitioners : Mr.G.Mohammed Aseef

For Respondents: Mr.T.K.Saravanan
Additional Government Pleader R1 to R6

Mr.M.Elumalai for R7



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ORDER

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

Writ petitioners before this Court have been visited with proceedings under 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity, convenience and clarity}.

2. The genesis is a 'Public Interest Litigation' ['PIL' for the sake of brevity] filed by one Thiru.B.Santhanam vide W.P.No.4268 of 2024, which came to be disposed of by another Hon'ble Division Bench on 22.02.2024. To be noted, first writ petitioner (K.Jagadeeswaran) is R7 in the PIL. The PIL was disposed of on 22.02.2024 and it was disposed of vide a simple order recording the stated position of the learned State counsel that survey would be conducted within three months and if any encroachment is found, action would be taken to remove the encroachment expeditiously (it is obvious that 'action' is within the perimeter of due process of law and in accordance with law). Thereafter, proceedings were kick started under said 1905 Act and orders came to be made by R5 (Tahsildar, Tambaram) under



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Section 6 of said 1905 Act. This order is dated 31.12.2024 bearing reference Na.Ka.No.4022/2024/A3. This order was followed by an order dated 06.01.2025 Second writ petitioner before us J.Haripriya assailed the same by way of W.P.No.1726 of 2025 and the same came to be disposed of by another Division bench to which one of us (M.Sundar.,J.) was a party. In and by an order dated 23.01.2025 *inter alia* holding that the question as to whether the land that is the subject matter of case at hand is private land or not turns heavily on facts, writ petitioner was relegated to 'alternate remedy' further holding that the writ petitioner did not fall under **Whirlpool** exceptions i.e., 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**.

3. Thereafter, writ petitioners resorted to alternate remedy and this Court is informed that a statutory appeal under Section 10 of said 1905 Act was filed on 25.01.2025 and the same came to be disposed of by 'R2 (The District Collector, Chengalpattu District) in and by an order dated 17.02.2025 bearing reference ந.க.721/2025/ஆ3' [hereinafter 'said order' for the sake of convenience and clarity]. This Court is informed that this



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order of Appellate Authority was served on the writ petitioners on 18.02.2025.

4. Mr.G.Mohammed Aseef, learned counsel for writ petitioners advertng to said order submitted that the writ petitioners have the right of further alternate remedy by way of statutory revision under Section 10-A of said 1905 Act and vide Section 11 of said 1905 Act, 30 days from the date of service of Appellate Authority order is the limitation. To be noted, this is vide sub-section (1) of Section 11. Learned counsel submits that 30 days from 18.02.2025 would elapse on 20.03.2025 but even before 30 days time has elapsed, demolition has commenced is learned counsel's further say. Learned counsel also emphatically submits that writ petitioners shall prefer a statutory revision under Section 10-A of said 1905 Act.

5. Issue notice.

6. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 to R5 and submits, on instructions, that pursuant to aforementioned PIL order, a contempt petition has been preferred in this Court (Contempt Petition No.3193 of 2024) and therefore, the demolition commenced.



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7. Before we proceed further, we deem it appropriate to implead the Additional Chief Secretary / Commissioner of Revenue Administration as R6 as Additional Chief Secretary / Commissioner of Revenue Administration is the Revisional Authority and Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R6 also. We deem it appropriate to implead Mr.B.Santhanam (PIL petitioner) as R7 and Mr.M.Elumalai, learned counsel accepts notice for R7.

8. The prayer in the writ petition as has been set out supra, is very limited and therefore, the legal perimeter within which the captioned main writ petition should perambulate is also very limited. Therefore, with the consent of learned counsel for writ petitioners, learned State counsel and Mr.M.Elumalai, who has accepted notice for R7, main writ petition is taken up.

8. The short point is, whether the demolition commenced before the statutory limitation period of 30 days for statutory revision has elapsed can be sustained. In the facts and circumstances of the case on hand, we find that the answer is in the negative. The reasons are as follows:

a) In and by a detailed judicial order dated 23.01.2025,



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the writ petitioners have been relegated to alternate remedy by holding that they do not fall within the Whirlpool exceptions. Alternate remedy are two tiered. The first tier is an appeal under Section 10 of said 1905 Act and second tier is a revision under Section 10-A of said 1905 Act. There is a judicial order (in the facts of this case) which has relegated writ petitioners to alternate remedy. As of today, they have exhausted the first tier and 30 days time remains for the second tier. In the case on hand, the writ petitioner emphatically submits that the statutory revision (second tier) under Section 10-A will be filed along with a stay petition under Section 10-B (stay pending statutory revision) by Tuesday i.e., by 25.02.2025. This submission is recorded. This means that the writ petitioners will be availing of the second tier of alternate remedy also;

b) Hon'ble Supreme Court in '*In Re: Directions in the matter of demolition of structures*' reported in *2024 SCC OnLine SC 3291* has made it clear that even after orders of



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demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. Adverting to appellate and judicial scrutiny of such orders, vide Paragraph 91.D(i) Hon'ble Supreme Court has held that if the statute provides for an appellate opportunity and time for filing the same or even if it does not so provide, the order will not be implemented for a period of 15 days from the date of receipt of thereof. We respectfully follow the principles enunciated by Hon'ble Supreme Court.

9. Mr.M.Elumalai, learned counsel for R7 submitted that multiple parcels of different lands have been encroached by the writ petitioners. We make it clear that we are not expressing any view or opinion on the merits of the matter as revisional authority shall decide the statutory revision on its own merits and in accordance with law untrammelled by this order.

10. This Court having come to the conclusion that writ petitioners should be given breathing time for availing second tier of alternate remedy



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(as alluded to supra), makes the following order:

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i) Statutory revision under Section 10-A of said 1905 Act (along with a stay petition under Section 10-B of said 1905 Act) shall be filed by the writ petitioners before R6 on or before 26.02.2025;

ii) Writ petitioners filing statutory revision and stay petition in the aforesaid manner means they will be reaching it to the Tapal Section of Secretariat and learned Additional Government Pleader submits that acknowledgement will be given;

iii) The stay petition under Section 10-B of said 1905 Act shall be disposed of by Revisional Authority within one week therefrom i.e., on or before 05.03.2025;

iv) If the order in the stay petition is adverse to the writ petitioners, the same shall be kept in abeyance for another one



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week i.e., till 12.03.2025 so as to enable the writ petitioners to work out their remedies, if so advised and if so desired. This is in tune with directions of Hon'ble Supreme Court in ***'In Re: Directions in the matter of demolition of structures'***.

v) The revision petition shall be disposed of by R6 as expeditiously as the business of R6 would permit;

vi) The order to be made by the Revisional Authority shall be served on R7 as well as writ petitioners under due acknowledgement within 5 working days from the date of the order. The rights and contentions of PIL petitioner as well as writ petitioners are left open in this regard;

vii) If the writ petitioners do not file revision petition in the aforesaid manner, it is open to the respondents to proceed with demolition;



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viii) If writ petitioners file statutory revision, any further

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coercive action (if any and if that be so) will be subject to and depending on outcome of revision.

Captioned writ petition is disposed of as closed in the above said manner albeit with the above directions. No costs. Consequently, captioned WMP is also disposed of as closed.

(M.S.,J.)

(K.G.T.,J.)

21.02.2025

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Index : Yes / No

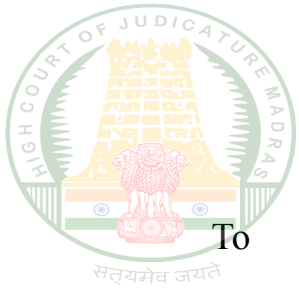
Neutral Citation : Yes / No

Speaking / Non-speaking order

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P.S. I: Upload forthwith

P.S.II : All concerned including Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.



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To

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

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