IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2025

CORAM

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

**W.P.Nos.12628 and 12632 of 2025**
**& W.M.P Nos.14213 and 14218 of 2025**

Kings International Medical Academy Pvt. Ltd.,
Represented by its Chief Executive Officer
Mr.Daniel Athistakumar
Having its Registered Office at
No.122, East Coast Road
Poonjeri Village, Mamallapuram – 603 104 ... Petitioner in both WPs

vs.

1. The District Collector
Chengalpattu District
Chengalpattu – 603 001

2. The Revenue Divisional Officer
Chengalpattu Division
Chengalpattu – 603 001

3. The Tashildar
Thirukkazhukundram Taluk
Chengalpattu District

4. The Executive Officer
Mamallapuram Town Panchayat
Mamallapuram – 603 104

5. The Revenue Inspector
Mamallapuram – 603 104 ... Respondents in W.P.No.12628 of 2025

1. The District Collector
Chengalpattu District
Chengalpattu – 603 001

2. The Revenue Divisional Officer
Chengalpattu Division
Chengalpattu – 603 001

3. The Tashildar
Thirukkazhukundram Taluk
Chengalpattu District

4. The Executive Officer
Mamallapuram Town Panchayat
Mamallapuram – 603 104

5. The Revenue Inspector
Mamallapuram – 603 104
6. Thiru.P.N.Rajkumar
Son of Thiru.P.C.Natarajan
No.36, School Street
Poonjeri Vilage
Mamallapuram Town Panchayat
Thirukkazhukundram Taluk
Chengalpattu District – 603 104
7. The Commissioner of Land Administration
Ezhilagam
Chepauk
Chennai – 600 005 ... Respondents in W.P.No.12632 of 2025

**(R6 and R7 *suo motu* impleaded vide this order)**

**Prayer in W.P No.12628 of 2025:**Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records leading to the show-cause notice dated 26.03.2025 issued by the fifth respondent and quash the same.
**Prayer in W.P No.12632 of 2025:**Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records leading to the letter dated 22.03.2025 bearing Na.Ka.No.B3/2066/2025 issued by the first respondent and quash the same.

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|---|---|---|
| For Petitioner | : | Mr.B.Arvind Srevatsa<br>in both WPs |
| For Respondents | : | Mr.T.K.Saravanan<br>Additional Government Pleader<br>for all respondents<br>in W.P.No.12628 of 2025<br>& R1 to R5 & R7<br>in W.P.No.12632 of 2025<br><br>Mr.S.Angamuthu for R6<br>in W.P.No.12632 of 2025 |

## COMMON ORDER

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

As regards the captioned main 'Writ Petitions' ['WPs' in plural and 'WP' in singular for the sake of brevity and convenience], in terms of sequence, though W.P.No.12632 of 2025 is after W.P.No.12628 of 2025, owing to the impugned order in W.P.No.12632 of 2025 being prior in point of time, 'W.P.No.12632 of 2025' shall be referred to as 'I WP' and 'W.P.No.12628 of 2025' shall be referred to as 'II WP'].

2. Mr.Arvind Srevasta, learned counsel on record for writ petitioner in both the captioned WPs is before this Court. The 'writ petitioner' shall be referred to as 'KIMAPL' denoting 'Kings International Medical Academy Private Limited'.

3. Short facts (shorn of elaboration) are that one Thiru. P.N.Rajkumar, son of Thiru.P.C.Natarajan filed a writ petition in W.P.No.13468 of 2024 in this Court with a prayer to mandamus official respondents to remove alleged encroachment in a 'water body (pond) in Survey No.65 of Poonjeri Village, Thirukkazhukundram Taluk, Chengalpattu District' [hereinafter 'said pond' for the sake of convenience and clarity]; that this writ petition came to be disposed of by this very Bench in and by an order dated 12.07.2024 *inter alia* directing R1 (District Collector, Chengalpattu District) to consider the representation sent by Thiru.P.N.Rajkumar after show-causing KIMAPL, who is writ petitioner before us; that this Court directed R1 to make an order on merits after considering the response of KIMAPL; that there was a further direction that if R1 comes to the conclusion that there is

encroachment, proceedings in accordance with law under applicable Statute shall be commenced and concluded within a time frame; that pursuant to this order, R1 (R2 in W.P.No.13468 of 2025) show-caused KIMAPL, gave a personal hearing itself on 14.03.2025, took the stated position of KIMAPL into consideration and made an 'order dated 22.03.2025' ['I Impugned order' for the sake of convenience]; that pursuant to the I impugned order, R5 has issued a notice signed on 26.03.2025 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 this has been assailed in II WP; that this '26.03.2025 order made by R5' shall be referred to as 'II Impugned order'; that the II impugned order is under challenge in the II WP.

4. Learned counsel for writ petitioner KIMAPL submits that kernel of the case of the writ petitioner's response (when show-caused and personal hearing was given) is that KIMAPL is not claiming any rights qua said pond but as it owns lands in and around said property, a request was made to permit KIMAPL to maintain the said pond but without making orders in the said application, I impugned order has been made followed by II

impugned order. This is the say of learned counsel for writ petitioner.

5. Issue notice to respondents.

6. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 to R5.

7. Before we proceed further, we are of the considered view that Thiru.P.N.Rajkumar, who is writ petitioner in W.P.No.13468 of 2024, should have been added as a respondent but the same has not been done. Therefore, we add Thiru.P.N.Rajkumar, son of Thiru.P.C.Natarajan as R6 in W.P.No.12632 of 2025 and Mr.S.Angamuthu (Enrollment No.1771/09), learned counsel with address for service at No.134 and 135, 2nd Floor, Broadway Road, Chennai – 600 104 accepts notice for R6. Considering the nature of the matter, main WPs were taken up in the Admission Board with the consent of all the aforesaid learned counsel on both sides.

8. After hearing all the parties, we are of the considered view that the I impugned order will now be treated as an order made under said 1905 Act revisable by 'Commissioner of Land Administration' ('CLA') under Section 10-A (b) of said 1905 Act. It will be open to writ petitioner/KIMAPL to file a revision before CLA together with a stay petition under Section 10-B of

said 1905 Act. For this purpose, we add CLA as R7 and Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R7 also.

9. Before we write the operative portion, we make it clear that we have not expressed any view or opinion on the merits of the matter i.e., on the alleged encroachment qua said pond one way or the other. This is to pave the way for the revisional authority (R7) to consider the statutory revision on its own merits and in accordance with law.

10. In the light of the narrative and discussion thus far, the following order is made:

i) Writ petitioner before us i.e., KIMAPL fairly agrees to file a statutory revision under Section 10-A(b) of said 1905 Act before R7 assailing I impugned order, being order dated 22.03.2025;

ii) writ petitioner/ KIMAPL submits that along with the above statutory revision, a stay petition seeking stay pending revision under Section 10-B of said 1905 Act will also be filed within a period three weeks from today i.e., on or before 29.04.2025;

iii) the aforementioned statutory revision and stay petition thereat shall be considered in a revisional drill by R7 on its own merits and in accordance with law;

iv) II impugned order now merges with the I impugned order, as I impugned order is a show-cause notice and I impugned order has been made after giving adequate opportunity including personal hearing to the writ petitioner/KIMAPL. This means that the question of an order under Section 6 does not arise;

v) The aforementioned stay petition under Section 10-B of said 1905 Act seeking stay pending revision shall be disposed of by R7 as expeditiously as the business of R7 permits but in any event, within five weeks from 29.04.2025 i.e., on or before 03.06.2025;

vi) Coercive action qua said pond and writ petitioner / KIMAPL (if any and if that be so) shall be subject to / depending on the orders in the stay petition to be made by R7;

vii) If the orders in the stay petition made by R7 are adverse to the writ petitioner, the same shall be kept in abeyance for a period of two weeks from the date of service of the orders on the writ petitioner so as to enable the writ petitioner to work out remedies in law which may be available to the writ petitioner;

viii) It is made clear that no time frame is fixed for disposal of statutory revision but it is open to R7/revisional authority to take up statutory revision depending on the official business of R7.

11. It is made clear that this order is being made as (a) the writ petitioner agreed in the first round of litigation vide W.P.No.13468 of 2024 and order dated 12.07.2024 to have the legal drill done by R1 and (b) writ petitioner has now agreed to file a revision against I impugned order.

12. Another aspect of the matter which we deem appropriate to write (for the sake of clarity) is either in an order to be made as an appellate authority under Section 10 or by way of any other order, personal hearing is not imperative. In the case on hand, vide our earlier order dated 12.07.2024 in W.P.No.13468 of 2024, this Court has not directed personal hearing but

has only directed opportunity to be given but R1 at his discretion has chosen to give personal hearing considering the nature of the matter.

13. In this regard, this Court reminds itself that in ***State Bank of India officers*** case law, [***State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019***] {authored by one us (M.Sundar.J.,)}, the difference between 'reasonable opportunity' and 'personal hearing' was elucidated, relevant paragraph is Paragraph 23 and the same reads as follows:

> *'23. A careful reading of Point 3(b) of said Circular reveals that Circular also has noticed the difference between the two expressions used in the two provisos i.e., proviso to Section 22(4) and proviso to Sections 27(1) and 27(2). The reason is, Circular makes it clear that the dealer should be given 'reasonable opportunity and personal hearing' as per Section 22(4) whereas while making a reference to Sections 22, 25 and 27, circular says that order should not be made without 'affording an opportunity to the dealer'. Therefore, even the circular has instructed the Assessing officer to give personal hearing only when the exercise is under Section 22(4). With regard to generic Sections 22, 25 and 27, the circular only says that no order should be made without affording an opportunity to the dealer. Therefore, it follows as an inevitable and in the considered view of this Court indisputable sequitur that opportunity to the dealer to be afforded under Section 22 and the opportunity to be afforded to the dealer under Section 27 are different and distinct as alluded to supra. In other words, while it is personal hearing under Section 22 (4) of TNVAT Act, it is reasonable opportunity to show-cause under Section 27 of TNVAT Act.'*

14. To be noted, the above ***State Bank of India officers Association*** order of this Court was carried in appeal vide W.A.No.4073 of 2019 and Hon'ble Division Bench vide order dated 16.12.2019 dismissed the writ appeal confirming the afore-referred 01.08.2019 order.

15. This Bench is in absolute agreement with State Bank of India Officers Association principle as regards distinction between 'reasonable opportunity' and 'personal hearing'.

Captioned WPs and captioned WMPs are disposed of in the aforesaid manner. There shall be no order as to costs.

**(M.S.,J.) (K.G.T.,J.)**
**08.04.2025**

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

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

*gpa*

**W.P.Nos.12628 and 12632 of 2025**

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