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W.P.No.15909 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.15909 of 2021

and

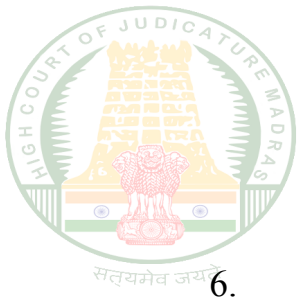
W.M.P.No.16811 of 2021

K.Ramasamy
S/o.Kesava Kounder

... Petitioner

vs.

1. The State of Tamil Nadu
Rep. by the Secretary
Revenue and Disaster
Management Department
Fort St.George
Chennai-600 009.
2. The District Collector
Kallakurichi District.
3. The District Revenue Officer
Kallakurichi.
4. The Revenue Divisional Officer
Kallakurichi.
5. The Tahsildar
Kallakurichi.



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6. Perumal
S/o.Venkatesan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari, calling for the records of the 3rd respondent relating to Na.Ka.Aa.5/5185/2021 dated 03.07.2021 and quash the same.

For Petitioner : Ms.AL.Ganthimathi
Senior Counsel
for Ms.R.Priyadharshini
For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R5
Mr.P.Venkatraman, for R6

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity, convenience and clarity} has been filed assailing an 'order dated 03.07.2021 bearing reference Na.Ka.Aa.5/5185/2021 made by R3 [The District Revenue Officer, Kallakurichi]' {hereinafter 'impugned order' for the sake of brevity, convenience and clarity}. In and vide the impugned order, R3 has concluded that there is an encroachment in the road (தெரு) and certain observations have been made qua patta granted in favour of

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writ petitioner.

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2. Ms.AL.Ganthimathi, learned Senior Counsel, instructed by Ms.R.Priyadharshini, learned counsel for writ petitioner, Mr.T.K.Saravanan, learned State Counsel for R1 to R5 and Mr.P.Venkatraman, learned counsel for R6 (private respondent) are before this Court.

3. Captioned main WP was taken up with the consent of all the aforementioned learned counsel.

4. At the outset, this Court wanted to know the provision of law under which the impugned order has been made by R3.

5. In response, learned State Counsel submitted that the impugned order has been made by R3 pursuant to a judicial order dated 24.06.2021 made in W.P.No.11844 of 2021 and W.M.P.No.12591 of 2021 and a scanned reproduction of order dated 24.06.2021 in W.P.No.11844 of 2021 is as follows:

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W.P.No.11844 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P.No.11844 of 2021

and

W.M.P.No.12591 of 2021

V.Perumal,
S/o.Venkatesan,
29A, Kerama Chavadi Street,
Kallakurichi,
Kallakurichi District.

... Appellant

Vs

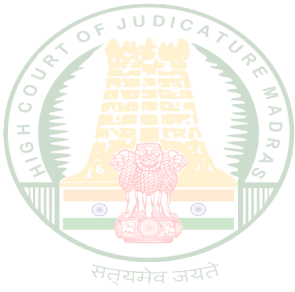
1.The District Collector,
Kallakurichi,
Kallakurichi District.

2.The Revenue Divisional Officer,
Kallakurichi,
Kallakurichi District.

3.The Tahsildar,
Kallakurichi Taluk,
Kallakurichi District.

4.The Commissioner,
Kallakurichi Municipality,
Kallakurichi Municipal Office,
Salem Main Road,

<https://www.mhc.tn.gov.in/judis/>



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W.P.No.15909 of 2021

W.P.No.11844 of 2021

Kallakurichi 606202.

5.The Inspector of Police,
Kallakurichi Police Station,
Kallakurichi District.

6.K.Ramasamy,
S/o.Kesava Kounder,
52, Thruvalluvar Street,
Kallakurichi.

... Respondents

PRAYER : Petition filed under Article 226 of Constitution of India for issuance of Writ of Mandamus directing the respondents 1 to 5 to remove the encroachment made by the 6th respondent and his men in the Government land in survey No.314/18 and 314/1A, situated in Kallakurichi Village, Kallakurichi Taluk, Kallakurichi District.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mrs.R.Anitha
State Government Counsel (for R1 to R4)

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

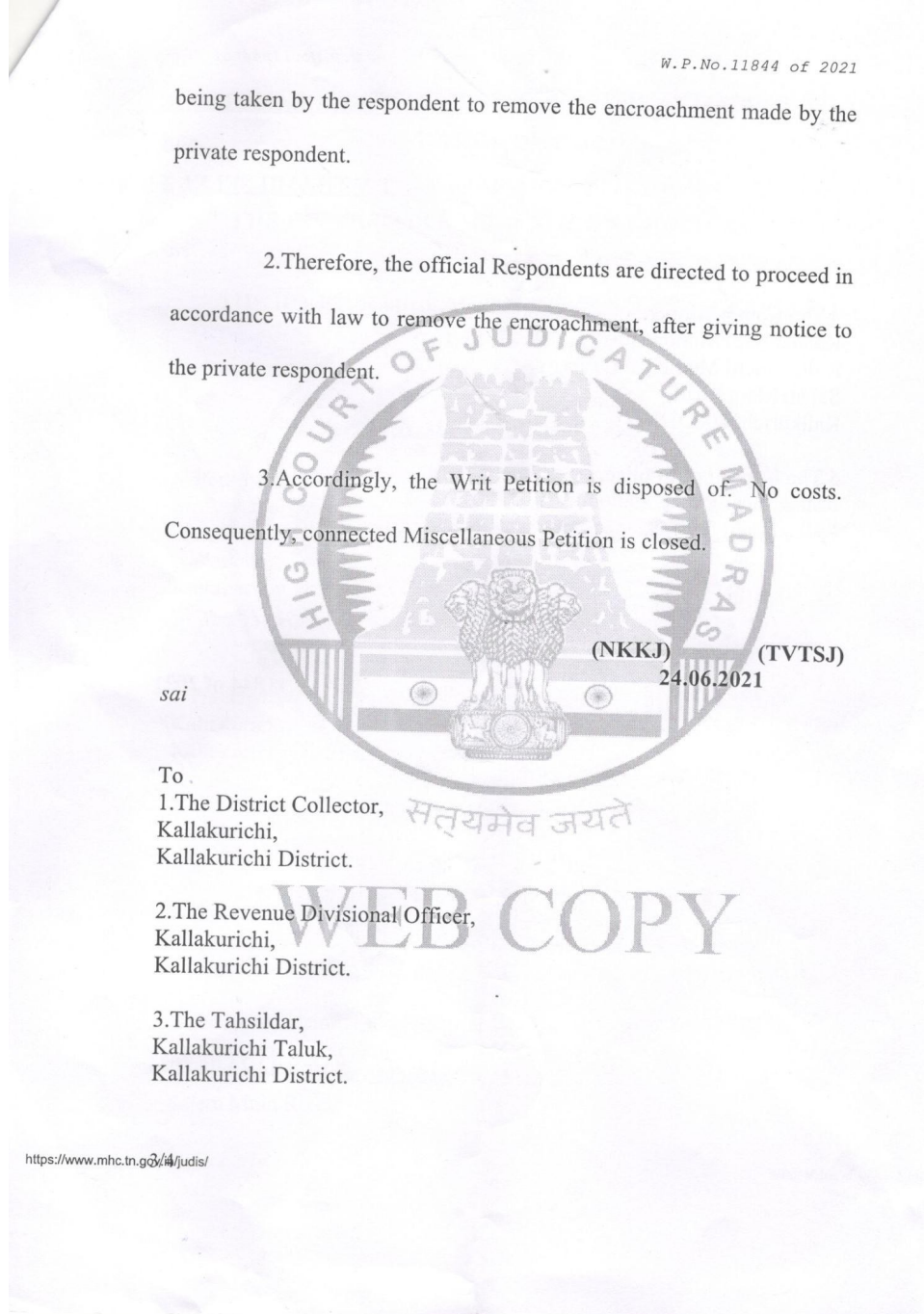
When the matter is called today, Mr.R.J.Karthick, learned counsel appearing on behalf of the Petitioner would submit that action is

<https://www.mhc.tn.gov.in/judis/>



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6. A careful perusal of aforementioned judicial order makes it clear that a directive is given only to proceed 'in accordance with law' to 'remove the encroachment' 'after giving notice to private respondent'.

7. Proceedings 'in accordance with law' necessarily means that the State should have resorted to proceedings under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} and put the writ petitioner on notice vide Section 7 of said 1905 Act followed by an order to be made under Section 6 of said 1905 Act and there is a provision for statutory appeal under Section 10 of said 1905 Act and Statutory revision under Section 10-A of said 1905 Act, if that be so. On the contrary, R3 has straight away made the impugned order. R3 has assumed jurisdiction which is not vested in R3. To be noted, writ petitioner has raised specific grounds in this regard and they are grounds (i) and (ii) of paragraph No.8 of writ affidavit and the same read as follows:

'(i) The impugned order passed by the third respondent is without jurisdiction, arbitrary and against the provisions of the Revenue Standing Orders.



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(ii) *The third respondent erred in assuming power which is not vested in him under the Revenue Standing Orders.'*

8. In the light of the stated position of parties, as the earlier judicial order only directs the State to proceed in accordance with law, we have no hesitation in accepting the lack of jurisdiction point as regards 'Removal of Encroachment' {hereinafter 'RoE' for the sake of brevity, convenience and clarity} and interfering with the impugned order on this short point.

9. The impugned order of R3 is set aside on the short point of lack of jurisdiction as regards RoE.

10. It is open to the State to commence action under said 1905 Act as expeditiously as the official business of R3 permits but in any event, within a period of eight weeks from today i.e., on or before 14.10.2025. If proceedings are commenced under said 1905 Act, all questions are left open and all rights and contentions of writ petitioner, State as well as private respondent (R6) stand preserved.



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11. As regards patta also, all questions are left open and all rights and contentions of R6 are also preserved. We have noticed that R3 does have revisional powers under Section 13 of the Tamil Nadu Patta Pass Book Act, 1983 (Tamil Nadu Act 4 of 1986) but as a common order has been made regarding RoE as well as patta as the issues are dovetailed nay inextricably intertwined, we are dislodging the entire impugned order leaving open all questions.

Captioned WP is allowed albeit with preservation of rights and observations in the aforesaid manner. Consequently, captioned writ miscellaneous petition is closed. There shall be no order as to costs.

(M.S.J.,)

(H.C.J.,)

19.08.2025

Index : Yes

Neutral Citation : Yes

Speaking order

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W.P.No.15909 of 2021

**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

mk

To

1. The State of Tamil Nadu
Rep. by the Secretary
Revenue and Disaster
Management Department
Fort St.George
Chennai-600 009.
2. The District Collector
Kallakurichi District.
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19.08.2025

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