



W.P.No.17315 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.17315/2025, W.M.P.No.19620/2025 & W.M.P. No.22749/2025

A. Sundaramoorthy

Petitioner

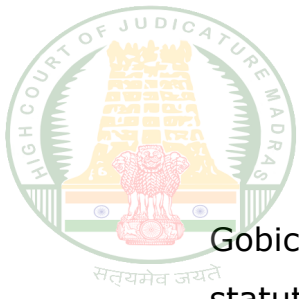
vs.

1. The District Collector  
Erode District  
Erode
2. The Tahsildar  
Gobichettipalayam Taluk Office  
Gobichettipalayam Taluk  
Erode District
3. The Land Revenue Inspector  
Kasipalayam Division/Circle  
Gobichettipalayam Taluk  
Erode District

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus by calling for the records relating to the notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 28.04.2025 issued by the second respondent as illegal, arbitrary, void *ab initio* and quash the same and consequentially, direct the second respondent not to demolish the bridge constructed by the petitioner in survey number 248 to an extent of 0.39.50 hectare situated at Allukuli "B" Village,

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Gobichettipalayam Taluk, Erode District, pending disposal of the statutory appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905.

For petitioner      Mr. S.M. Sivasooriyan  
For RR 1 to 3      Mr. M.S. Arasakumar  
Government Advocate

For petitioner  
in  
W.M.P.No.22749 Mr. R.T. Vishnu  
of 2025

### **ORDER**

[made by M.SUNDAR, J.]

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed *inter alia* assailing a notice/order dated 28.04.2025 made by R2 (Tahsildar) which shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

2. Mr. S.M. Sivasooriyan, learned counsel on record for writ petitioner, as part of his campaign against the impugned order, adverted to the same and submitted that the writ petitioner has not caused any encroachment.

3. Mr. M.S. Arasakumar, learned State counsel for respondents, submitted that the impugned order has been made by R2



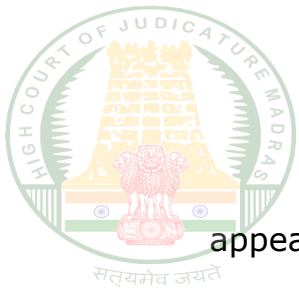
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in exercise of powers under Section 6 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' (for brevity 'said 1905 Act') after show causing the writ petitioner under Section 7 of said 1905 Act.

4. Be that as it may, Mr. R.T. Vishnu, learned counsel who is before this Court, submitted that he has filed an implead WMP in W.M.P.No.22749 of 2025 (hereinafter 'implead WMP' for the sake of convenience and clarity) seeking impleadment of one V.T. Karthikeyan as R4 in the captioned main WP.

5. As implead WMP is not shown in the cause list, this Court requested papers from the Registry, the same were placed before this Court and with the consent of learned counsel for writ petitioner, learned State counsel for respondents and learned counsel for implead petitioner, implead WMP is also taken up.

6. Reverting to the captioned main WP, this Court is of the considered view that there is an effective and efficacious alternative remedy for the writ petitioner. The writ petitioner can file a statutory



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appeal under Section 10 of said 1905 Act and such statutory appeal will lie to R1 (District Collector). In other words, R1 is the appellate authority *qua* said appeal under Section 10 of said 1905 Act. This apart, there is also a provision to seek stay, pending statutory appeal and that is Section 10-B of said 1905 Act.

7. In the instant case, there is no argument that alternative remedy is not effective or efficacious. It is not a case of enforcement of fundamental rights, violation of principles of natural justice or proceedings being wholly sans jurisdiction and it is certainly not a challenge to vires of a statute. Therefore, oft-quoted **Whirlpool** exceptions do not come into play *i.e.*, exceptions *vide* ratio in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others** reported in **(1998) 8 SCC 1**.

8. As regards alternative remedy, this Court is acutely conscious that it is not an absolute rule and it is a rule of discretion. In this view of the matter, considering the facts and circumstances of the case, the nature of the grounds that are being canvassed *qua* challenge to the impugned order, we are of the considered view that



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the writ petitioner should be relegated to alternative remedy of statutory appeal under Section 10 of said 1905 Act.

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9. In this regard, before proceeding further, it is deemed appropriate to write that this Court, in order dated 29.04.2025 in W.P.Nos.8355 and 8357 of 2022 and W.M.P. Nos.8324 and 8237 of 2022 thereat, respectfully advertent to the **Girnar** principle, *i.e.*, declaration of law made by a Constitution Bench of the Hon'ble Supreme Court in **Girnar Traders (3) vs. State of Maharashtra** reported in **(2011) 3 SCC 1**, held that said 1905 Act is a self contained Code. To be noted, **Girnar** principle is one where Hon'ble Supreme Court declared the law as regards what would be a self-contained Code. It was held that a statute, which is a complete legislation with regard to the purpose for which it is enacted and provides for complete machinery to deal with purposes sought to be achieved by the statute with dependence on other legislations being absent or at best minimal, is a self-contained Code. In this context, as regards said 1905 Act, *inter alia*, there is a provision to have the alleged encroacher show caused under Section 7 of said 1905 Act followed by an order (considering the cause shown). The order under



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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 of said 1905 Act. Pending appeal / revision, there is a provision for making interim prayer *vide* Section 10-B of said 1905 Act. Such a three-tier machinery has been put in place to check unauthorised occupation of lands which are the properties of the Government by imposition of penal or prohibitory assessment or charge, after giving adequate and ample opportunity to a person who is alleged to be in occupation of public roads, streets, lanes and paths, bridges, ditches, dikes and fences, rivers, streams, nalas, lakes, tanks and such other properties of Government. This **Girnar** principle was affirmatively referred to by a 7 Member Bench of Hon'ble Supreme Court in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re.*** reported in **(2024) 6 SCC 1**. Suffice to say that said 1905 Act is clearly a self-contained Code.

10. Reverting to the facts of the case on hand, this Court finds that a very interesting scenario unfurls. Captioned main WP has been filed in this Court on 05.05.2025 (Vacation Court) but even prior to the



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filing of the captioned main WP, writ petitioner has taken recourse to alternative remedy by filing a statutory appeal under Section 10 of said 1905 Act. This statutory appeal is dated 05.02.2025 and it has been annexed to the case file as part of the typed set of papers and a scanned reproduction of the same is as follows:

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**BEFORE THE DISTRICT COLLECTOR, ERODE**

**APPEAL NO.                      OF 2025**

A. Sundaramoorthy,  
S/o, Arunachalagounder,  
No. 21/137, Unjakkadu Thottam,  
Alukuli B Village,  
Gobichettipalayam Taluk,  
Erode District. ...Appellant

Vs

1. The Tahisildar,  
Gobichettipalayam Taluk office,  
Gobichettipalayam Taluk,  
Erode District.

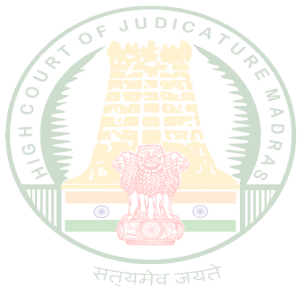
2. The Land Revenue Inspector,  
Kasipalayam Division/Circle,  
Gobichettipalayam Taluk,  
Erode District. ...Respondents

**APPEAL UNDER SECTION 10 OF THE TAMIL NADU LAND**  
**ENCROACHMENT ACT, 1905.**

1. It is submit that the appellant i.e Mr. Sundaramoorthi and his brother Mr. Samiyappan is the absolute owners of the land in survey number No. 249/2B to an extent of 3-37.00 hectare situated at Alukuli B Village, Gobichettipalayam Village, Erode District and patta No. 622 stands in the name of appellant and his brother Mr. Samiyappan. The appellant herein is cultivating the banana plant in the above said land.

2. It is submitted that on 07.01.2025, the 2<sup>nd</sup> respondent issued notice under section 7 of the Tamil Nadu Land Encroachment act, 1905 stating that the appellant is the encroacher of the land in survey number 248 to extent of 0.39.50 Hectare situated at Alukuli B Village,

A. Sundam



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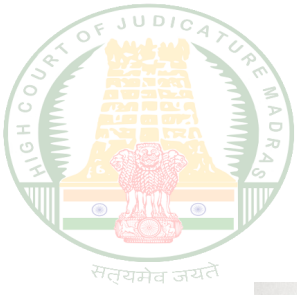
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Gobichettipalayam Taluk, Erode District and further the appellant had instructed to vacate the said land within 15 days from the date of notice.

3. It is further submitted that, the appellant is not an encroacher. Actually, the survey number 249/2B adjacent land to the survey number 285 to an extent of 0.39.50 hectare and classified as Geological stream. On that Geological stream the appellant had laid down a bridgelike Cement pipes and concrete is laid over the stream to connecting the appellant's land in survey number No.249/2B to an extent of 3-37.00 hectare to carry agricultural produce through tractor, for using the aged people and animals like cow, goat with spending a sum of Rs.300000/(Three Lakhs only). And the appellant further submits that there is no disturbance to the public and the appellant did not disturb flow of the water and the appellant is not occupying the any land as stated by the respondents. Hence, the notice under section 7 of the land encroachment act is not correct and nature of violation.

4. It is submitted that without considering the above facts, the respondents are trying to demolish the bridge constructed by the appellant in survey number 248 which is used by appellant as pathway. The notice under section 7 of the Tamil Nadu Land Encroachment Act was issued on 07.01.2025. Hence my appeal is within the time as per the act. But before adjudicating this issue the Tahsildar is trying to demolish the bridge constructed by the appellant. Hence, I am filing this appeal before this appellate authority as per the land encroachment act. Hence the interest of the justice the interim order is necessary to protect my interest in the above said land. By granting interim order no harm or prejudice to the respondent. If not granting any interim order I will put irreparable loss and injuries.

A. Sundaraj



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5. I reserve my rights to raise the additional grounds.  
(a). For the forgoing reasons it is prayed that this respectable forum may be pleased to pass an order of stay all further proceedings in notice dated 07.01.2025 under section 7 of the Land encroachment Act 1905 issue by the respondents herein till disposal of the appeal.

(b). For the forgoing reasons it is prayed that this forum may be pleased to allow this appeal by setting aside the notice dated 07.01.2025 under 7 of the land encroachment Act 1905 issued by the 2<sup>nd</sup> respondent herein and pass such further order and render justice.

Dated at Gobichettipalayam on this 5<sup>th</sup> day of February 2025.

Appellant

A. Senthil Kumar

**Document enclosed herewith:**

1. Patta NO.583&622,229
2. A Register
3. Notice 7
4. Sale Deed Document No.1410 of 1996, 1409 of 1996 and 1522 of 1954
5. Copy of Will document No.43 of 1949 ✓
6. Copy of Reply Notice through Advocate

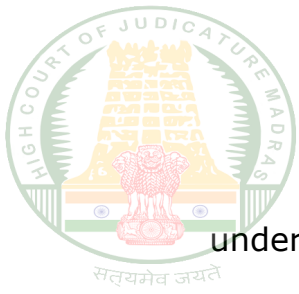


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11. A careful perusal of sub paragraph (a) of paragraph 5 *supra* brings to light that the writ petitioner has also resorted to a prayer of interim stay and obviously, under Section 10-B of said 1905 Act. The writ petitioner having taken recourse to alternative remedy, ought not to have filed the captioned main WP.

12. Be that as it may, as we relegate the writ petitioner to alternative remedy, captioned main WP is disposed of as closed without expressing any view or opinion one way or the other but preserving the rights and contentions of implead petitioner *i.e.*, rights and contentions that may be available to implead petitioner in law.

13. As regards the statutory appeal *supra*, the same shall proceed before R1 (appellate authority) on its own merits and in accordance with law untrammelled by this order. A Division Bench, at the time of hearing this matter in the Vacation Court, has granted an order of status quo on 08.05.2025 and the same was extended on 03.06.2025. This interim order of status quo is now operating. This interim order is vacated and W.M.P.No.19620 of 2025 is closed but we make it clear that R1 shall dispose of the aforereferred stay petition



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under Section 10-B of said 1905 Act as expeditiously as the official business of R1 permits but in any event within a period of three weeks from today, *i.e.*, on or before 27.06.2025 and coercive action, if any and if that be so, can be only subject to and depending on the outcome of the stay petition.

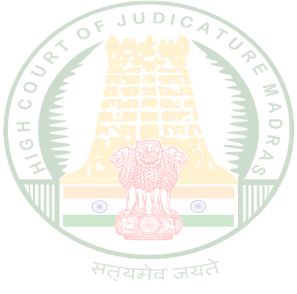
14. Let the statutory appeal and the stay petition proceed before R1 on their own merits and in accordance with law and let the same be carried to their logical end.

15. Captioned main WP stands disposed of in the aforesaid manner. As we have made it clear that coercive action, if any and if that be so, is subject to the outcome of the stay petition under Section 10-B, W.M.P. No.19620 of 2025 has become otiose and the same is disposed of as closed. As already alluded to *supra*, implead W.M.P. stands disposed of as closed albeit with preservation of rights of implead petitioner. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)  
06.06.2025

Index : Yes/No  
Neutral Citation: Yes/No  
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**M.SUNDAR, J.**

and

**HEMANT CHANDANGOUDAR, J.**

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To

1. The District Collector  
Erode District  
Erode
2. The Tahsildar  
Gobichettipalayam Taluk Office  
Gobichettipalayam Taluk  
Erode District
3. The Land Revenue Inspector  
Kasipalayam Division/Circle  
Gobichettipalayam Taluk  
Erode District

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