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W.P.No.24782 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.24782 of 2021
and
W.M.P. No.26059 of 2021 in W.P.No.24782 of 2021

H.Sivakumar

... Petitioner

Vs.

1.The Tahsildar,
Uthagamandalam,
The Nilgiris District.

2.The Commissioner,
Ootacamund Municipality,
The Nilgiris District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorari to call for the entire records
relating to the order dated 18.10.2021 issued under Section 6 of the
Land Encroachment Act, 1905 (Act 3 of Chennai) on the file of the first
respondent herein and quash the same.



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W.P.No.24782 of 2021

For Petitioner : Mr.L.P.Shanmugasundaram
For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1
Mr.P.Srinivas for R2

ORDER

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

Captioned main 'Writ Petition' [hereinafter 'WP' for the sake of brevity] has been filed with a prayer for writ of certiorari assailing an 'order dated 18.10.2021 made by R1 [Tahsildar, Uthagamandalam, The Nilgiris District] under Section 6 of 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of brevity]' {hereinafter 'impugned order' for the sake of convenience and clarity}.

2. Mr.L.P.Shanmugasundaram, learned counsel on record for writ petitioner, Mr.T.K.Saravanan, learned Additional Government Pleader for R1 and Mr.P.Srinivas, learned standing counsel for Ootacamund Municipality/R2 are before us. We heard out all the learned counsel.

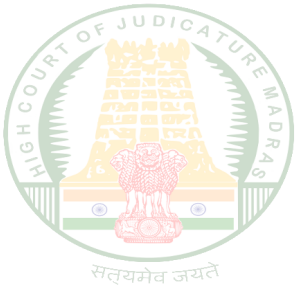


W.P.No.24782 of 2021

WEB COPY

3. Though myriad grounds have been raised in the captioned WP and very many submissions have been made on merits, we find that the entire matter turns on a short point/question and that short point/question is whether the impugned order of R1 was preceded by a show cause notice under Section 7 of said 1905 Act.

4. Learned counsel for writ petitioner emphatically submits that the writ petitioner was not served with show cause notice under Section 7 of said 1905 Act. To put it differently, learned counsel for writ petitioner submits that the writ petitioner was not given an opportunity before the impugned order was made by R1. Learned State counsel for R1 submitted to the contrary and drew our attention to counter affidavit of R1 dated 11.04.2022, more particularly paragraph 7 thereat, wherein there is a categorical assertion that the jurisdictional Revenue Inspector had issued a notice under Section 7 of said 1905 Act dated 30.09.2021. To be noted, copy of this 30.09.2021 notice under Section 7 of said 1905 Act has been annexed to the counter affidavit and a scanned reproduction of the same is as follows:



WEB COPY



W.P.No.24782 of 2021

1905 ஆம் ஆண்டு சென்னை III ஆவது நிலஆக்கிரமிப்புச் சட்டத்தின்
7-வது பிரிவில் கீழ் அறிவிப்பு

உதகை வட்டம் மற்றும் கிராமத்தில் வசிக்கும் H/2/3/4/5 (13).
என்பவருக்கு கீழ்க் கண்டுள்ள விவரப்பட்டியலில் குறிப்பிடப்பட்டுள்ள அரசின் சொத்தாக இருக்கிற
நிலத்தை அனுபதி பெறாமல் நீங்கள் அனுபோகத்தில் வைத்துக்கொண்டு இருப்பதாக
தெரியவந்தது. சட்டத்தின் 3(1) பிரிவின்கீழ் நிலத்தின் முழுத்தன்மைவுடன்

1905-ஆம் ஆண்டின் III-
ஆவது சட்டத்தின் 3(1) பிரிவின்கீழ் விதிக்கப்பட்ட விதத்துடன் சட்டத்தின் 5-ஆவது பிரிவின்கீழ் ஏன்
உங்களுக்கு தீர்வை விதிக்கக்கூடாது என்பதற்கும், அதனுடன்/ அல்லது உங்களை
தீர்த்துக் கொடுத்து அப்டுறப்படுத்தி அதிலுள்ள பயிர்கள், விளைச்சல்கள், கட்டடங்கள்,
கட்டுமானங்கள், அதில் விட்டுவைத்திருக்கப்பட்டுள்ளவை ஆகிய இவைகள் சட்டத்தின் 6-ஆவது
பிரிவின்கீழ் ஒரு பரிமுதல் செய்யப்பட்டத்கூடாத என்பதற்கும், காரணத்தை நீங்கள் விரும்பினால்
2014-ஆம் ஆண்டு அக்டோபர் 14-ல் தேதிக்குள் தெரிவித்து, எழுத்து
வழியிலாவது என்/என் டாட்சியர் முன்பாக தெரிவிக்கலாம் என்பதை இதனால் உங்களுக்கு
அறிவிக்கப்படுகிறது.

விவர அட்டவணை:

கிராமம்	அளவை எண் உப பிரிவு	நிலத்தின் விவரம்	முழுப் பரப்பு	அனுபோகத்திலுள்ள பரப்பு	அனுபோகத்தின் தன்மை.
(1)	(2)	(3)	(4)	(5)	(6)
உதகை கிராமம் 2/3/4/5	H/6/66	சின்னம் 446/66/6 66/66/6	0.06.43 சென்னை	2.30 ஏக்கர்	சின்னம் (244/6)

மாண்புமிகு மேட்ராஸ் உயர்நீதிமன்றம் W.P.NO.26722/13 & M.P.NO.1/13 நாள்:
08.10.2014 மற்றும் அரசாணை நிலை எண். 540 (வருவாய் (எல்.டி6(2)-த்துறை,
நாள்: 04.12.2014 -ன்படி நடவடிக்கை மேற்கொள்ளப்படும்.

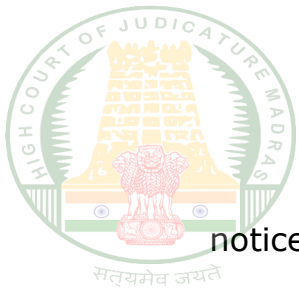
குறிப்பிட்ட நோட்டீஸுக்கு ஒரு பிரதிபை மேலே குறிப்பிட்ட நிலத்தை அனுபவத்தில்
வைத்துக் கொண்டுக்கொண்டு நிதினாவது அவர் காரணமாய் வசிக்கும் இடத்திலே அவருடைய
குறிப்பிட்ட நிலத்தை வசதி வந்த ஒரு நபரிடத்திலாவது அவரிடத்தில் அதிகாரம் பெற்றிருக்கும்
காரணமாய் அனுபவத்திலாவது ஒப்புவித்தாகிலும் அவர் கடைசியாய் வசித்துக்
கொண்டிருக்கிற தெரிய வருகிற இடத்திலேயாவதற்கும் தெரியும்படியான ஒரு பாகத்திலாவது
அனுபவத்திலேயாவது வருகிற நிலத்திலேயாவதற்கும் தெரியும்படியான ஒரு பாகத்திலாவது மேற்படி
பிரதியை ஒரு பாகம் இந்த அறிவிப்பை சேர்க்க வேண்டும்.

H. அ. அ. அ. (944 2244 831)
சின்னம் (66)
சின்னம்
262 கடை
சின்னம்

92
DIRECTOR
TAMIL NADU

5. Captioned WP gets further descoped and turns on a shorter point/micro question i.e., as to whether the aforesaid 30.09.2021

Page Nos.4/12



W.P.No.24782 of 2021

notice under Section 7 of said 1905 Act was served on the writ petitioner. Though there is an acknowledgement/endorsement in the bottom of the notice (handwritten) and though the learned State counsel contends that this is acknowledgement evidencing the service on writ petitioner, the endorsement is not clear. In the counter affidavit of R1 also, the exact date of service of Section 7 notice on the writ petitioner has not been mentioned. To be noted, there is not even an averment that Section 7 notice has been duly served on the writ petitioner.

6. Faced with the above situation, learned State counsel fairly submitted that without expending time qua aforesaid issue and aforereferred submission that Section 7 notice was not served on the writ petitioner/noticee, it would be desirable to dislodge the impugned order (without expressing any opinion on merits), permit the writ petitioner to now respond to the aforementioned Section 7 notice within a fortnight from today i.e., 21.07.2025. R1 can consider the response of the writ petitioner and pass orders afresh on its own merits and in accordance with law.



W.P.No.24782 of 2021

7. The aforereferred submission of learned State counsel appeals to us and we find the same to be a very pragmatic approach considering the facts and circumstances of the case and the nature of the matter. Therefore, we accept this submission. Further, before we write the operative portion of this order, it is deemed appropriate to write that this Court, in **C.Gopinathan** case reported in **2025:MHC:1162** (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 following **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. **Girnar** principle is that if a statute provides for a complete machinery to deal with the purpose sought to be achieved by that law and its dependence on other legislations is either absent or minimal, such a statute is a self contained Code.

8. The ecosystem of said 1905 Act, *i.e.*, the purpose sought to be achieved by said 1905 Act is to lay down procedure for eviction of encroachment of lands belonging to the Government. As regards said 1905 Act, *inter alia*, there is a provision to have the alleged encroacher



W.P.No.24782 of 2021

show caused under Section 7 of said 1905 Act followed by an order under section 6 (considering the cause shown). The order under Section 6 is appealable. Section 10 is the appeal provision and inter-alia 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. This order of Revisional Authority is obviously subject to judicial review. This is the legal architecture of the machinery put in place to deal with the purpose sought to be achieved by 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 (besides 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.

9. The purpose sought to be achieved by said 1905 Act and the architecture of the machinery put in place to achieve the same when tested on the touchstone of **Girnar** principle leaves us with the view

Page Nos.7/12



W.P.No.24782 of 2021

that said 1905 Act is a self contained Code which provides for complete machinery to deal with the purpose sought to be achieved with no dependence on other legislations or at the highest minimal dependence on other legislations. Suffice to say that said 1905 Act is clearly a self-contained Code.

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

10.1 The impugned order being order dated 18.10.2021 made by R1 [Tahsildar, Uthagamandalam, The Nilgiris District] is dislodged without expressing any view one way or the other on the merits of the matter. To be noted, impugned order is dislodged solely for the purpose of a de novo legal drill after giving an opportunity to writ petitioner;

10.2 The aforereferred Section 7 notice dated 30.09.2021 (issued by jurisdictional Revenue Inspector) shall now be construed to have been served on the writ petitioner today (07.07.2025);



W.P.No.24782 of 2021

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*10.3 Writ petitioner shall now respond to the
aforereferred Section 7 notice within a fortnight from
today i.e., on or before 21.07.2025;*

*10.4 R1 or any other competent revenue authority
shall consider the aforereferred response of the writ
petitioner on its own merits and in accordance with law
and make an order under Section 6 of said 1905 Act as
expeditiously as the business of R1 permits;*

*10.5 Though obvious, we make it clear that all
contentions i.e., all question raised by the writ petitioner
including the points raised in the captioned WP are left
open for being raised by the writ petitioner when the writ
petitioner's response being considered on its own merits
and in accordance with law;*

*10.6 The order made by R1 or any other competent
revenue authority under Section 6 of said 1905 Act shall
be served on the writ petitioner under due
acknowledgement within seven working days from the*



W.P.No.24782 of 2021

date on which the order is made;

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10.7 Though obvious, we make it clear that coercive action (if any and if that be so) shall be subject to and depending on the further proceedings under said 1905 Act which this Court has repeatedly held that said 1905 Act is a self contained Code about which there is allusion elsewhere supra.

11. Captioned main WP is disposed of in the aforesaid manner. As we have held that further coercive action (if any and if that be so) will be subject to legal drill under said 1905 Act, captioned Writ Miscellaneous Petition (WMP) thereat has become otiose and the same is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(H.C.J.)

07.07.2025

Index : Yes / No

Neutral Citation : Yes / No

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To

Page Nos.10/12



W.P.No.24782 of 2021

WEB COPY

- 1.The Tahsildar,
Uthagamandalam,
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The Nilgiris District.



WEB COPY



W.P.No.24782 of 2021

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

W.P.No.24782 of 2021

07.07.2025