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W.P. No.3472 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.02.2025

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P.No.3472 of 2025 and W.M.P. No.3850 of 2025

N. Subramanian

Petitioner

v

1. The District Collector
Collectorate
Kallakurichi District
Kallakurichi 606 202
2. The Tahsildar
Chinna Salem Taluk
Salem Main Road
Chinna Salem
Tamil Nadu 606 201
3. The Block Development Officer
Chinna Salem
Salem Main Road
Chinna Salem
Tamil Nadu 606 201
4. The Panchayath President
Rayappanur Village
Chinna Salem
Tamil Nadu

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of show cause notice in Na.Ka.No.A1/2478/2024 dated nil on the file of the 4th respondent and quash the same.



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For petitioner	Mr. M.B. Mushtaque Ahamed
For RR 1 & 2	Mr. T.K. Saravanan Government Advocate
For RR 3 & 4	Mr. T.M. Rajangam Government Advocate

ORDER

(made by M. SUNDAR, J.)

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed assailing a notice issued by R4 (Panchayat President, Rayappanur Village) made in October of 2024 bearing reference ந.க.எண்.ஆ1/2478/2024 (hereinafter 'impugned notice' for the sake of convenience and clarity) under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, (Tamil Nadu Act III of 1905) (for brevity 'said 1905 Act').

2. When the matter was taken up, Mr. M.B. Mushtaque Ahamed, learned counsel for writ petitioner, submitted that a similar issue came up earlier before this Court in W.P. Nos.1291, 1296 and 1300 of 2025 and this Court, *vide* a common order dated 22.01.2025, set aside the impugned notices therein on jurisdictional point, *i.e.*, on the point that R5 therein (President, Padavedu Village Panchayat) is not competent to issue impugned notices under Section 7 of said 1905 Act.



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3. Issue notice to respondents.

4. Mr. T.K. Saravanan, learned Government Advocate, accepts notice for RR 1 and 2 and Mr. T.M. Rajangam, learned Government Advocate, accepts notice for RR 3 and 4.

5. Learned State counsel for RR 1 and 2 fairly concedes that captioned main WP is directly and squarely covered by aforesaid earlier order dated 22.01.2025 in W.P. Nos.1291, 1296 and 1300 of 2025 and writ miscellaneous petitions thereat.

6. The aforesaid order dated 22.01.2025 is reproduced and extracted as follows:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.1291, 1296 & 1300 of 2025

and

W.M.P.Nos.1537, 1545 & 1550 of 2025

S.Vijayakumar
S/o.Subramani

... Petitioner
in W.P.No.1291 of 2025

P.Palani
S/o.Ponnusamy

... Petitioner
in W.P.No.1296 of 2025

G.Yasotha

... Petitioner
in W.P.No.1300 of 2025



Vs.

1. The District Collector
Vengikkal
Tiruvannamalai
Tiruvannamalai District.
2. The Tahsildar
Polur Taluk Office
Polur
Tiruvannamalai District.
3. The Block Development Officer
Polur Panchayat Block
Tiruvannamalai District.
4. The Revenue Inspector
Santhavasal
Polur Taluk
Tiruvannamalai District.
5. The President
Padavedu Village Panchayat
Padavedu, Polur Taluk
Tiruvannamalai District.

... Respondents
in all WPs

Prayer :

Writ Petition No.1291 of 2025 filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 5th respondent herein vide his impugned notice dated 15.06.2023 issued under Section 7 of the Chennai III Act 1905 and quash the same as highly illegal and further for a direction directing the 2nd respondent herein to survey the lands comprised in S.No.271/B, situated in Padavedu Village and if found proper for dwelling to issue patta in favour of the petitioner in view of the petitioner's representations dated 13.05.2022 and 02.07.2023.

Writ Petition No.1296 of 2025 filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 5th respondent in the notice dated 15.06.2023 issued under Section 7 of the Chennai III Act 1905 and quash the same as illegal and further for a direction to survey the lands comprised in S.No.271/B, situated in Padavedu Village and if found proper for dwelling to issue patta in favour of the petitioner in view of the petitioner's representations dated 05.07.2022 and 02.07.2023.

Writ Petition No.1300 of 2025 filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 5th respondent in the notice dated 15.06.2023 issued under Section 7 of the Chennai III Act 1905 and quash



the same as illegal and further for a direction to survey the lands comprised in S.No.271/B, situated in Padavedu Village and if found proper for dwelling to issue patta in favour of the petitioner in view of the petitioner's representations dated 08.08.2022 and 02.07.2023.

For Petitioner in all WPs : Mr.J.Ashok
For Respondents in all WPs : Mr.V.Ravi,
Special Government Pleader
assisted by
Mr.M.S.Arasakumar
Government Advocate

COMMON ORDER

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

Captioned three main 'Writ Petitions' {hereinafter 'WPs' in plural and 'WP' in singular for the sake of brevity} have been filed assailing three separate notices, all dated 15.06.2023 issued by R5 [The President, Padavedu Village Panchayat, Padavedu, Polur Taluk, Tiruvannamalai District] 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} which shall hereinafter be collectively referred to as 'impugned notices' for the sake of convenience and clarity.

2. Notwithstanding very many averments and grounds in the writ affidavit, Mr.J.Ashok, learned counsel on record for writ petitioners predicated his campaign against impugned notices on one point and that one point is that impugned notices have been issued by an authority, who does not have power to issue the notice under Section 7 of said 1905 Act.

3. Issue notice to respondents.

4. Mr.V.Ravi, learned Special Government Pleader, accepts notice for all respondents.

5. Learned Special Government Pleader, on instructions, submitted that R5 is vested with power to issue notice under Section 7 of said 1905 Act.

6. Considering the limited scope of the captioned main WPs, main WPs were taken up in the Admission Board with the consent of learned counsel on both sides.

7. Before we proceed further, we deem it appropriate to record certain facts, trajectory the captioned matters have taken thus far and facts that unfurled in hearing qua captioned WPs and an adumbration in this regard is as follows:



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W.P. No.3472 of 2



(i) The subject matter of impugned notices is 'lands in S.No.271/B, Padavedu Village, Polur Taluk, Tiruvannamalai District' {hereinafter 'said lands' for the sake of brevity};

(ii) R5 in the captioned main WPs had earlier filed a writ petition in W.P.No.36811 of 2024 with a prayer to mandamus R1 to R4 before us (to be noted, R1 to R4 in the captioned main WPs are R1 to R4 in W.P.No.36811 of 2024 also) to remove alleged encroachment/s in said lands on the ground that the said lands have been classified as 'Kuttai Poromboke'. To be noted, writ petitioner in captioned W.P.No.1291 of 2025 [S.Vijayakumar, Son of Subramani], writ petitioner in W.P.No.1296 of 2025 [P.Palani, Son of Ponnusamy] and writ petitioner in W.P.No.1300 of 2025 [G.Yasotha] are R11, R9 and R18 respectively in W.P.No.36811 of 2024. This W.P.No.36811 of 2024 came to be disposed of by this Court in and by an order dated 04.12.2024 which reads as follows:



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W.P.No.36811 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM

THE HONOURABLE MR JUSTICE M.SUNDAR

and

THE HONOURABLE MR JUSTICE K.RAJASEKAR

W.P.No.36811 of 2024

R.Srinivasan
Panchayat President
Padavedu Village Panchayat
Polur Panchayat Union,
Polur Taluk
Tiruvannamalai - 606 905.

... Petitioner

Vs.

1. The District Collector
Thiruvannamalai District.
2. The Tahsildar
Polur Taluk
Thiruvannamalai District
3. The Block Development Officer
Polur Panchay Block
Thiruvannamalai District.
4. The Revenue Inspector
Santhavasal, Polur Taluk
Thiruvannamalai District.

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5. Ramalingam
S/o.Shanmugam
6. Kalyana Raman
S/o.Pannaram
7. Ezhilmaran
S/o.Shanmuga Chettiar
8. Ragu
S/o.Vasu
9. Pazhani
S/o.Ponnusamy
10. Sivakumar
S/o.Kuppan
11. Vijayakumar
S/o.Subramani
12. Nedunchezian
S/o.Annamalai
13. Saravanan
S/o.Dhanapal
14. Babu
S/o.Chotta Sayub
15. Muniyammal
S/o.Chinna Kuzhanthai
16. Kamala
S/o.Pillaiyar

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W.P.No.36811 of 2024



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W.P. No.3472 of 2



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W.P.No.36811 of 2024

17. Sampath
S/o.Annamalai
18. Yashodha
S/o.Govindasamy
19. Selvamurthy
S/o.Ramanujalu

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 4 to expeditiously remove the encroachments in the lands classified as "Kuttai Poramboke" and comprised in S.No.271/B, Padavedu Village, Polur Taluk, Thiruvannamalai District by following the due process of law.

For Petitioner : Mr.Prashanth Nadaraj B
For Respondents : Mr.V.Ravi
Special Government Pleader
for R1 to R4

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition has been filed seeking a mandamus directing the respondents 1 to 4 to remove the encroachments in the lands comprised in S.No.271/B, Padavedu Village, Polur Taluk, Thiruvannamalai District which

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W.P.No.36811 of 2024

has been classified as "Kuttai Poramboke".

2. The writ petitioner is President of Padavedu Village Panchayat. As an Executive Authority, he has issued notices to private respondents, who have been arrayed as respondents 5 to 19 in the present writ petition for removal of encroachment in Kuttai Poramboke (water body) comprised in S.No.271/B, Padavedu Village, Polur Taluk, Thiruvannamalai District.

3. It is the case of the writ petitioner that alleged encroachers have not come forward to remove the encroachment on their own and hence, the writ petitioner sent communications to official respondents to initiate action against the alleged encroachers. Since no action was taken by the official respondents, the petitioner is before this Court.

4. The learned counsel for writ petitioner submitted that as per Section 131(2) of 'the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' {hereinafter 'said Act' for the sake of brevity, convenience and clarity}, the writ petitioner as a competent authority has already issued

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W.P.No.36811 of 2024

notices to alleged encroachers seeking removal of encroachment in the said land. He further submits that the encroachment is made in Kuttai (water body) and if the encroachers are not coming forward to remove the encroachment on their own, Revenue authorities has to initiate proceedings under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity}. Though notices have been issued to alleged encroachers, they have not come forward to remove the encroachment is learned counsel's say.

5. Issue notice to official respondents i.e., respondents 1 to 4.

6. Mr.V.Ravi, learned Special Government Pleader accepts notice for official respondents 1 to 4.

7. Considering the limited scope of the matter, main writ petition was taken up in the Admission Board itself with the consent of both sides.

8. The learned State Counsel submits that under said 1905 Act, the

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W.P. No.3472 of 2



W.P.No.36811 of 2024

official respondents would take steps to remove the encroachment in the subject land and official respondents would proceed as against the alleged encroachers in accordance with law on the basis of notices already issued by the writ petitioner.

9. Considering the facts and circumstances of the case and considering the submissions made on both sides, we direct the second respondent to initiate proceedings under said 1905 Act after providing an opportunity to alleged encroachers (private respondents) and act in accordance with law.

With the above directions, this Writ Petition is disposed of. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

04.12.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk



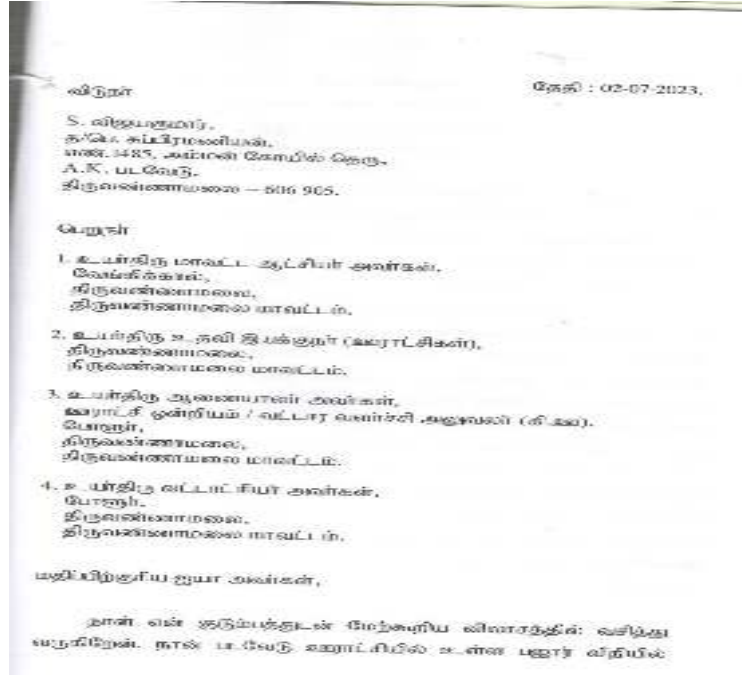
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(iii) Aforementioned 04.12.2024 order of this Court speaks for itself and it now comes to light that 'notices already issued' are *inter alia* impugned notices;

(iv) Impugned notices were not brought to the notice of this Court when 04.12.2024 order was made though it was submitted that notices have already been issued and that notices already issued were notices under Section 131(2) of 'the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' {hereinafter 'said Act' for the sake of brevity, convenience and clarity}. Therefore, this Court, in paragraph No.8 of afore-referred 04.12.2024 order, after recording the submission that notices have already been issued, in paragraph No.9, directed notices under said 1905 Act be issued by R2 but it now comes to light that notices had already been issued under said 1905 Act and that the same have been issued by R5;

(v) It is also submitted that writ petitioners have responded to impugned notices *vide* identical responses, all dated 02.07.2023. To be noted, responses placed before us are unsigned and there are no acknowledgments. One of the identical responses i.e., response dated 02.07.2023 in the first captioned WP namely, W.P.No.1291 of 2025 is as follows:





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W.P. No.3472 of 2



எங்கள் வீட்டுக்கு முன் பகுதியில் கடை நடத்தி வருகிறேன். அக்கடையை எங்கள் குடும்பம் பல வருடங்களாக நடத்தி வருகிறது. என் முன்னோர்கள் பல வருடம் முன் இருந்து இக்கடையின் இடத்தில் அனுபவம் மற்றும் சுவாசீனத்தில் இருந்து வந்தனர். இக்கடைகளின் வரி மற்றும் இதர பணப்பற்று செய்து வருவாய்த்துறை இரீசீது அளித்து வருகிறது. இந்த இடம் எந்த புல எண்ணில் வரும் என்பதே எனக்கு தெளிவுப்படுத்தப்படவில்லை. பல வருடங்களாக என் குடும்பத்தார் பெயரிலும் பின்னர் என் மனைவியின் பெயரிலும் வரி செலுத்தப்பட்டு வருகிறது. இக்கடைக்கு மின் இணைப்பு அளித்தும் பயன்பாட்டில் உள்ளது. நாங்கள் நிம்மதியாக எங்கள் கடை (No.1485, A.K. Padavedu, Tiruvannamalai) யை நடத்தி வந்த நிலையில், கடந்த 15-06-2023-ம் தேதியிட்ட நோட்டீஸ் அறிவிப்பு, ஊராட்சி தலைவரால் அனுப்பப்பட்டது. அத்தகைய நோட்டீஸ் ஊராட்சி தலைவரால் தன்னிச்சையாக அனுப்ப முடியாது என்று எனக்கு சட்ட அறிவுரை அளித்தமையால் உங்களிடம் அந்த நோட்டீஸ்க்கான பதில் விளக்கம் அளிக்கிறேன். மேற்கூறிய விவரங்களால் மற்றும் என் நில உடைமையை உறுதி செய்ய பல முறை உங்களிடம் பட்டா வழங்க கோரியும் மனு அளித்துள்ளோம். அது நிலுவையில் உள்ள நிலையில் எங்கள் ஊர் தலைவர் தன்னிச்சையாக அனுப்பிய நோட்டீஸ் வாபஸ் வாங்குமாறும் மற்றும் எங்களுக்கு எங்கள் இடத்திற்கு பட்டா அளிக்குமாறும் தாழ்மையுடன் கேட்டுக் கொள்கிறேன்.

இப்படிக்கு,

(S. விஜயகுமார்)

8. A careful perusal of the aforementioned narrative which captures facts, trajectory thus far and what unfurls from the case files, brings to light that as early as in July of 2023 (02.07.2023), writ petitioners have responded to impugned notices and have specifically raised the point that R5 cannot issue the impugned notices and that such a plea is taken on legal advice.

9. Be that as it may, it is categorically submitted by learned counsel for writ petitioners in all three captioned WPs that after writ petitioners' identical responses dated 02.07.2023 to impugned notices, no orders have been made under Section 6 of said 1905 Act. This categorical submission is recorded.

10. We find from our research that a similar question arose in W.P.(MD)No.16494 of 2023 [*Viswanathan Vs. District Collector and others*] and a Hon'ble Division Bench of Madurai Bench of this Court, in and by an order dated 10.07.2023, has recorded the stated position of learned State Counsel made on instructions that there is no Government Order specifically authorizing Block Development Officer [BDO] or Village Panchayat President to initiate action under Section 7 of said 1905



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Act. It appears that **Viswanathan** case has been given a legal quietus as we find from our further research that the matter does not appear to have been carried to Hon'ble Supreme Court.

11. We are informed by learned Special Government Pleader that the tenure of office of R5 has also lapsed on 05.01.2025.

12. Before we proceed further, we deem it appropriate to capture the obtaining legal position or in other words, the obtaining Section 7 of said 1905 Act. Section 7 of said 1905 Act reads as follows:

'7. Prior notice to person in occupation.- Before taking proceedings under section 6, the Collector or Tahsildar, or Deputy Tahsildar or Revenue Inspector or any authorized officer or any other officer specified by the State Government in this behalf (not being an authorised officer). (hereinafter referred to as the 'specified officer') as the case may be, shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864), or in such other manner as the State Government by rules or orders under section 8 may direct:

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he has been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar or Deputy Tahsildar or authorised officer having jurisdiction, as the case may be, and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar or authorised officer having jurisdiction, as the case may be.'

{putting in a portion of extract in different font
and underlining of same is



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by this Court for ease of reference}

13. In the aforesaid Section 7 of said 1905 Act, the expression '*any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the "specified officer"), as the case may be*', was substituted in place of '*any officer of the Highways Department, not below the rank of a Section Officer and not being an authorised officer*'. This is in and by way of Amendment Act captioned 'The Tamil Nadu Land Encroachment (Amendment) Act, 1975 (Tamil Nadu Act No.20 of 1975)' {hereinafter '*said 1905 Amendment Act*' for the sake of brevity}. We find that said 1905 Amendment Act is a conditional legislation. This is *vide* sub-section (2) of Section 1 which reads as follows:

*'1. Short title and commencement - (1)
(2) It shall come into force on such date as the
State Government may, by notification, appoint.'*

14. The said 1905 Amendment Act received assent of President on 02.07.1975, it was published in Gazette on 08.07.1975 and it kicked in (came into force) on and from 01.10.1976.

15. Be that as it may, following **Viswanathan** case supra, we deem it appropriate to set aside the impugned notices but we make it clear that all rights and contentions of R2 [The Thasildar, Polur Taluk Office, Tiruvannamalai District] are preserved for issuing fresh notice/s under Section 7 of said 1905 Act.

16. Learned Special Government Pleader submits that R2 will issue fresh notice under Section 7 of said 1905 Act as expeditiously as the official business of R2 would permit but in any event within one week from today i.e., by 29.01.2025. This submission of learned Special Government Pleader is recorded.

17. When Section 7 notice is issued by R2, it is open to writ petitioners to send signed responses under due acknowledgment (if so advised and if so desired) within the time specified therein. Thereafter, an order under Section 6 of said 1905 Act or other proceedings as adumbrated in said 1905 Act shall follow.

18. Learned Special Government Pleader, advertent to earlier order dated 04.12.2024 and current scenario, submits that the entire exercise will be completed as expeditiously as the business of R2 would permit but in any event within eight weeks from today i.e., on or before 19.03.2025.

19. We make it clear that impugned notices are set aside solely on lack of jurisdiction (qua R5) point and we are not expressing any view or opinion on the merits of the matter i.e., on the merits of encroachment or contra contention of writ petitioners. Therefore, when fresh Section 7



notices are issued, the matter will be considered on its own merits and in accordance with law untrammelled by any observation made in this order.

Captioned WPs are disposed of in the aforesaid manner. Consequently, Writ Miscellaneous Petitions thereat are disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)
22.01.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

P.S. Though captioned WPs are disposed of, Registry is directed to list the captioned WPs under the cause list caption 'FOR REPORTING COMPLIANCE' on 02.04.2025.'

7. In the light of the stated position of the learned State counsel for RR 1 and 2, captioned main WP is allowed recording the further stated position of the learned State counsel for RR 1 and 2 that R2 will now issue a fresh Section 7 notice as expeditiously as the official business of R2 would permit but in any event within one week from today, *i.e.*, 12.02.2025, it is open to writ petitioner to respond to Section 7 notice and thereafter, an order under Section 6 of said 1905 Act shall follow. Learned counsel further submits that the entire exercise will be completed as expeditiously as the business of official respondents would permit but in any event within eight weeks from today, *i.e.*, by 02.04.2025.



8. As done in the earlier order, we make it clear that impugned notice is set aside solely on the lack of jurisdiction (*qua* R4) point and therefore, we are not expressing any view or opinion on the merits of the matter *i.e.*, on the merits of alleged encroachment or contra contention of writ petitioner. *Ergo*, when a fresh Section 7 notice is issued by R2, matter will be considered on its own merits and in accordance with law untrammelled by any observation made in this order.

9. Captioned WP is allowed as alluded to *supra* albeit with the aforesaid observations. Consequently, connected writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
05.02.2025

Index : Yes/No
Neutral citation : Yes/No
cad

P.S.:

Though captioned WP is disposed of, Registry is directed to list the captioned WP under the cause list caption 'FOR REPORTING COMPLIANCE' on 09.04.2025.



W.P. No.3472 of 2



M. SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

cad

To

1. The District Collector
Collectorate
Kallakurichi District
Kallakurichi 606 202
2. The Tahsildar
Chinna Salem Taluk
Salem Main Road
Chinna Salem
Tamil Nadu 606 201
3. The Block Development Officer
Chinna Salem
Salem Main Road
Chinna Salem
Tamil Nadu 606 201
4. The Panchayath President
Rayappanur Village
Chinna Salem
Tamil Nadu

W.P. No.3472 of 2025

05.02.2025