



W.P.No.39332 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.39332 of 2024

and

W.M.P.No.42594 of 2024

S.Subash

S/o.Late E.R.Seetharaman

... Petitioner

Vs.

1. The District Collector
Collectorate
Kallakurichi - 606 602.
2. The Revenue Divisional Officer
O/o. Revenue Divisional Office
Kallakurichi
Kallakurichi District - 606 602.
3. The Tahsildar
Taluk office
Vanapuram, Vanapuram Taluk
Kallakurichi District - 605 801.
4. The Block Development Officer
Rishivandhiyam Panchayat Union
Vanapuram, Vanapuram Taluk

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Kallakurichi District - 605 801.

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5. The Village President
Enthal Village
Enthal and Post
Vanapuram taluk
Kallakurichi District - 605 801.

6. P.Sridhar
S/o.Perumal

... Respondents

Prayer :

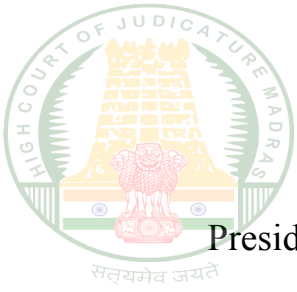
Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 5th respondent culminating to issue the impugned notice dated nil and quash the same and consequently, issue necessary direction by directing the 3rd respondent to cancel the patta bearing No.131 dated 12.03.2024.

For Petitioner	:	Mr.S.Udaya Kumar
For Respondents	:	Mr.M.S.Arasakumar Government Advocate for R1, R2, R3 and R5 Mr.T.K.Saravanan Additional Government Pleader for R4

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 assailing a 'notice issued by R5 [The Village



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President, Enthal Village, Enthal and Post, Vanapuram Taluk, Kallakurichi

WEB COPY District - 605 801] 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}' which shall hereinafter be referred to as 'impugned notice' for the sake of convenience and clarity. The subject matter of the impugned notice is 'land in S.No.100/2, Peral village, Vanapuram Taluk. Kallakurichi District' (hereinafter 'said land' for the sake of brevity).

2. Notwithstanding very many averments and grounds in the writ affidavit, Mr.S.Udaya Kumar, learned counsel on record for writ petitioner predicated his campaign against impugned notice on two points and that one point is, the impugned notice has been issued by an authority, who does not have power to issue the notice under Section 6 of said 1905 Act and second point is, the same has been issued before issuance of 'Show Cause Notice' {'SCN'} under Section 7 of said 1905 Act.

3. Issue notice to respondents.

4. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1, R2, R3 and R5 and Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R4.



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5. Considering the limited scope of the captioned main WP, main WP was taken up in the Admission Board with the consent of learned counsel on both sides.

6. Learned counsel for the writ petitioner submitted that writ petitioner has responded to impugned notice vide response dated 22.11.2024 and submitted that R5 lacks jurisdiction to issue the impugned notice. Learned counsel further submitted that the impugned notice has been issued without issuing SCN under section 7 of said 1905 Act.

7. This Court is of the considered view that the impugned notice issued in the captioned WP is liable to be set aside on the grounds that R5 lacks jurisdiction and SCN under section 7 has not been issued.

8. We find from our research that in W.P.(MD)No.16494 of 2023 **[Viswanathan Vs. District Collector and others]**, 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 Act. It appears that **Viswanathan case**



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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.

9. 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



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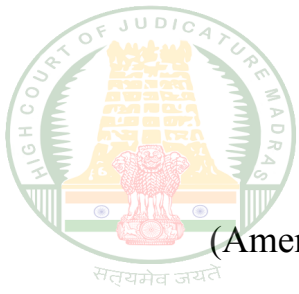
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has been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

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
by this Court for ease of reference}*

10. 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



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(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.'*

11. 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.

12. Be that as it may, following **Viswanathan** case supra, we deem it appropriate to set aside the impugned notice.

13. Learned State Counsel submits that R3 {the Tahsildar, Taluk office, Vanapuram, Vanapuram Taluk, Kallakurichi District - 605 801} will issue fresh notice under Section 7 of said 1905 Act as expeditiously as the official business of R3 would permit but in any event within one week from today i.e., by 28.01.2025. This submission of learned State Counsel is recorded.



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WEB COPY 14. When Section 7 notice is issued by R3, it is open to writ petitioner to send response 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.

15. Learned State Counsel submits that the entire exercise will be completed as expeditiously as the business of R3 would permit but in any event within eight weeks from today i.e., on or before 18.04.2025.

16. We make it clear that impugned notice is set aside on lack of jurisdiction (qua R5) point and also on the point that SCN has not been issued. We are not expressing any view or opinion on the merits of the matter. Therefore, when fresh Section 7 notice is issued, the matter will be considered on its own merits and in accordance with law untrammelled by any observation made in this order.



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Captioned WP is disposed of in the aforesaid manner. Consequently,

Writ Miscellaneous Petition thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

21.02.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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K.GOVINDARAJAN THILAKAVADI, J.,

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