

WP(MD). No.14632 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Date : 28/03/2025

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**WP(MD). No.14632 of 2021 and 1014 of 2010 and
MP Nos.1 of 2011 and 1 of 2012 and WMP(MD) No.11566 of 2021**

WP(MD) No.1014/2010

K.Akbar Basha

... Petitioner

(Cause title amended vide order dated 11.03.2022
in WMP(MD) No.2708/2022)

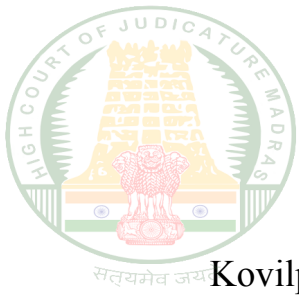
Vs

1. State of Tamil Nadu
represented by its Secretary to Government
Revenue Department
Fort St. George, Chennai 600 009.

2.The Collector,
Tuticorin District,
Tuticorin.

3.The District Revenue Officer
Tuticorin District, Tuticorin

4.The Revenue Divisional Officer,



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Kovilpatti, Tuticorin District

5.The Tahsildar
Vilathikulam
Tuticorin District

6.Chief Executive Engineer
Tamil Nadu Wakf Board
No.1 Jaffer Sirang Street
Vallal Seethakathi Nagar
Chennai 600 001.

7.Senthilkumar
President
Hindu Munnani
Vilathikulam Union
Vilathikulam
Tuticorin District

... Respondents

(R7 impleaded vide order dated 08.03.2017
in WMP(MD) No.360/2017)

PRAYER :- Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue of Writ of Certiorarified Mandamus to call for the records relating to the notice issued by the 5th respondent dated 25.09.2009 in his notice No.A6-22629-08 and quash the same insofar as the portion relating to the prior permission for using the burial ground in S.No.36B/1A of Vilathikulam Village is concerned and to direct the 2nd respondent.

For Petitioner : Mr.K.Vadivelu

For Respondents : Mr.M.Sarangan for R1 to R5

Addl. Government Pleader

Mr.M.Karthikeya Venkitachalapathy for R7



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Mr.K.K.Senthil for R6

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K.Buhari Sherif Basha

... Petitioner

Vs

1. The Tahsildar
Vilathikulam Taluk
Vilathikulam
Thoothukudi District

2.The Vilathikulam Jumma Kudba Pallivasal Waqf
Rep. by its Secretary
Vilathikulam
Thoothukudi District

... Respondents

PRAYER :- Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue of Writ of Certiorari to call for the records relating to the impugned order of eviction in the proceedings in A7/3399/2021 dated 09.08.2021 made by the 1st respondent and quash the same as illegal.

For Petitioner	: Mrs.Jasima Yasmin for M/s.Ajmal Associates
For Respondents	: Mr.M.Sarangan for R1 Addl. Government Pleader Mr.K.Vadivelu for R2



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COMMON ORDER

(Order of the Court was made by S.SRIMATHY, J.)

These writ petitions were filed challenging the impugned notice dated 25.09.2009 and the impugned eviction order dated 09.08.2021 respectively.

2. Both the writ petitions claim rights in S.No.36B/1A situated at Vilathikulam Village, Tuticorin District.

3. WP(MD) No.1014 of 2010 was filed challenging the impugned order dated 25.09.2009. In the impugned order, it is stated that in S.No. 36-B-1A admeasuring 0.34.0 hectares, only 3 cents land is given to light the lamp and conduct prayers as per the peace committee meeting dated 18.12.2008, but it is prohibited to bury dead body. Contrary to the same, a dead body was buried on 12.09.2009. Hence the impugned order had called for explanation.



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4. WP(MD) No.14632 of 2021 is filed challenging the notice issued under Section 6 of the Land Encroachment Act. The respondents had already issued notice under section 7 of the Land Encroachment Act (hereinafter referred to as 'the Act'), wherein, it is alleged that the petitioner had encroached the land in S.No.36-B-1A to an extent of 46.4 square meter by keeping meat stall. The petitioner had submitted explanation. Not being satisfied with the said explanation/reply, eviction notice under Section 6 of the said Act has been issued and the same is challenged.

5. It is the contention of the learned counsel appearing for the petitioners that the petitioner in WP(MD) No.14632/2021 is running a shop in the land in question. Initially the land in question has been given in favour of Waqf and the Gazette notification is also showing the said land belongs to Waqf. But in the revenue records, the said land has been erroneously registered as Odai. However, contrary to the same, the impugned orders have been passed. Hence, the learned counsels pray for interference.



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6. The respondents had filed counter, wherein it is stated that the petitioner is using the land as timber depot but the respondent had permitted to use the place for religious purpose. Further only 3 cents were allowed to put up mosque and for lighting lamp. The said place was never granted to bury dead body and the same is not notified as a burial ground. When the petitioner buried dead body, disputes arose, a peace committee meeting was arranged, wherein, it was decided that the said place would be used for prayer and lighting lamp. After such decision, again the petitioner buried a dead body. It is pertinent to state that the said place is situated near main bus stand and located in the heart of the city. Hence, the respondents issued notice, which is challenged in the writ petition.

7. The 7th respondent was impleaded in the writ petition, who has also filed a counter affidavit, wherein it is stated that S.No.36B/1A was classified as Periyakulam Surplus Channel in resurvey and resettlement register for the year 1912-1984 and the said information is confirmed in

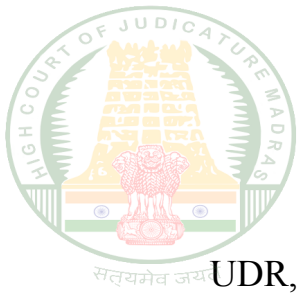


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the reply obtained under Right to Information Act. Hence it is clear that even prior to UDR, the land is classified as surplus channel and not as Pallivasal. While that being so, for the best reasons known to the 4th and 5th respondents, they have stated that in UDR survey, the entry was mistakenly made as channel and the same is false. There is no document to prove that the petitioner was using the entire 84 cents of land in S.No. 36B/1A. When disputes arose, peace committee meeting was organized, the petitioner affixed signature in the peace committee meeting but failed to follow the decision. Therefore, the petitioner is not having any right to claim the entire land and prayed to dismiss the writ petition.

8. The contention of the respondents is that the land in S.No. 36B/1A is classified as Government poramboke with remarks as Pallivasal to an extent of 3 cents. The contention of the petitioners is that 84 cents of land in S.No.36B/1A was allotted to them, the revenue entries remarks indicate Pallivasal, but during UDR the remarks of Pallivasal was mistakenly removed. But the contention of the 7th respondent is that the said land is classified as Periyakulam Surplus Channel, even prior to



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UDR, the other respondents are falsely stating the land as poramboke with Pallivasal. After considering the rival submissions and after perusing the documents produced by the 7th respondent, it is seen that the revenue records states “marukal odai”, of course, the said entry is prior to UDR.

9. This Court is of the considered opinion that when the land is water body or water channel, then the respondents are having duty to protect the same. Further it is alleged that the petitioner is burying dead bodies and there is no record to show that the said place is notified as burial ground. The High Court had already passed orders that the people are permitted to bury dead bodies only in the notified burial ground and if violated, it is offence.

10. Further, it is settled proposition of law that if there is any change of classification of land then the Government alone is empowered to change the classification and not any other authorities.



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11. The petitioners submitted that the respondents are trying to evict them when the Pallivasal and burial ground was in existence from time immemorial. Therefore, the respondents cannot disturb their possession of the said land.

12. It is seen that the respondents had issued notice calling for explanation. Therefore, petitioner is directed to submit objections along with documents within a period of four weeks from the date of receipt of the copy of the order. The 7th respondent is also permitted to submit objections along with documents within a period of four weeks from the date of receipt of the copy of the order. After receipt of such objections from either side, the respondents shall fix a date of enquiry granting personal opportunity to the parties. Thereafter, based on the objections and personal hearing and based on the above observations of this Court, the respondents shall pass orders within a period of four months therefrom.



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13. With the above direction, the writ petitions are disposed of.

No costs. Consequently, connected Miscellaneous Petitions are closed.

[J.N.B.,J]

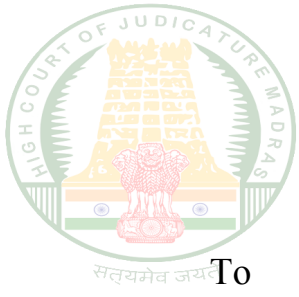
[S.S.Y.,J]

28.03.2025

NCC : Yes/No

Index : Yes/No

RR



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To

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Tuticorin.

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Tuticorin District



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J.NISHA BANU, J
AND
S.SRIMATHY, J.

RR

ORDER
IN
WP(MD) No.1014 of 2010 and 14632 of 2021

Date : 28/03/2025