

M.Krishna Kishore vs State Of Tamil Nadu on 7 February, 2024

Author: S.S. Sundar

Bench: S.S. Sundar

W.P.No.
Rev.Appl.(

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2024

Pronounced on : 07.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND
THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.33561 of 2023 & Rev.Appl.(Writ) No.229 of 2023
and
W.M.P.Nos.33373 to 33376, 34491 & 34492 of 2023

W.P.No.33561 of 2023 :

1.M.Krishna Kishore
2.M.Vijayakumar
3.M.Malleswari

... P

Vs.

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

2.The District Collector,
Office of the District Collector,
Chengalpet.

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<https://www.mhc.tn.gov.in/judis>

W.P.No.3
Rev.Appl.(W)

3.The Tahsildar,
Pallavaram Taluk,
Chennai – 600 043.

4.The Revenue Inspector,
Pallavaram Taluk,
Chennai – 600 043.

5.The Assistant Engineer,
Tamil Nadu Electricity Board,
West Pallavaram,
Chennai – 600 043.

6.The Chennai Metro Rail Limited,
Represented by its Managing Director,
METROS:327, Anna Salai,
Nandanam,
Chennai – 600 034.

7.The Executive Officer,
Office of Cantonment Board,
St. Thomas Mount cum Pallavaram Cantonment,
Chennai – 600 016.

8.M.M.Gupta

... R

[pro-forma respondent – no relief
sought for against 8th respondent]

Prayer : Writ Petition filed under Article 226 of the Constitution
for issuance of a Writ of Declaration declaring that the action of
respondents 1 to 5 in locking and sealing the premises of the petit

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<https://www.mhc.tn.gov.in/judis>

W.P.No.3
Rev.Appl.(W)

S.No.166/2, Pallavaram, Chennai – 43, and disconnecting the power s
and the alleged symbolic handing over possession to the 6th respond
way of the Land Delivery Receipt dated 31.10.2023 without any notic
the petitioners and without following any due process of law are to
illegal, invalid and contrary to law.

For Petitioners

: Mr.N.L.Rajah
Senior Counsel
for Mr.Ambili Menon P.

For R1 to R4	:	Mr.R.Raman Lal Additional Advocate Gen assisted by Mr.T.Arun K Additional Government P
For R5	:	Mr.L.Jai Venkatesh
For R6	:	Mr.P.S.Raman Senior Counsel for Mrs.Rita Chandrasek
For R7	:	Mr.C.Mohan for M/s.King and Partri

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W.P.No.33561 o
Rev.Appl.(W) No.229

Rev.Appl.(Writ) No.229 of 2023 :

M.M.Gupta

... Peti

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Revenue Department,
Fort St. George, Chennai – 600 009.
- 2.The District Collector,
Office of the District Collector,
Chengalpet.
- 3.The Tahsildar,
Pallavaram Taluk,
Chennai – 600 043.
- 4.The Assistant Engineer,
Tamil Nadu Electricity Board,
West Pallavaram,
Chennai – 600 043.
- 5.Chennai Metro Rail Limited,
Represented by its Managing Director,

METROS:327, Anna Salai,
Nandanam,
Chennai – 600 034.

6.The Executive Officer,
Office of Cantonment Board,
St. Thomas Mount, Chennai – 600 016.

... Responde

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<https://www.mhc.tn.gov.in/judis>

W.P.No
Rev.Appl.(W

Prayer : Review Application filed under Order 47 Rule 1 read with S
114 of Code of Civil Procedure to review the order dated 01.11.2023
in W.P.No.29275 of 2023.

For Petitioner	:	Mr.N.L.Rajah Senior Counsel for Mr.T.Sai Krishnan
For R1 to R3	:	Mr.R.Raman Lal Additional Advocate G assisted by Mr.T.Arun Additional Government
For R4	:	Mr.L.Jai Venkatesh
For R5	:	Mr.P.S.Raman Senior Counsel for Mrs.Rita Chandras
For R6	:	Mr.C.Mohan for M/s.King and Part

COMMON ORDER

S.S. SUNDAR, J.

The present writ petition in W.P.No.33561 of 2023 is filed for issuance of a Writ of Declaration declaring that the action of the respondents 1 to 5 in locking and sealing the premises of the petitioners in <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & S.No.166/2, Pallavaram, Chennai – 43, and disconnecting the power supply and the alleged symbolic handing over possession to the 6th respondent by way of the Land Delivery Receipt dated 31.10.2023 without any notice to the petitioners and without following any due process of law, are totally illegal, invalid and

contrary to law.

2.The Review Application in Rev.Appl.(Writ) No.229 of 2023 is filed to review the order dated 01.11.2023 made in W.P.No.29275 of 2023.

3.Since the petitioners in the writ petition and the review application are the members of same family and the subject matter is same and there are common issues and the parties are litigating under the same documents, both the cases are disposed of by this common order.

4.The petitioners in the writ petition are the two sons and the wife of the 8th respondent in the writ petition, who is the petitioner in the review application.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

5.The respondents 1 to 3 are common in W.P.No.33561 of 2023 and the review application in Rev.Appl.(W).No.229 of 2023. The 4th respondent in the writ petition is the Revenue Inspector, Pallavaram Taluk. The 4 th respondent in the review application is the Assistant Engineer, Tamil Nadu Electricity Board, who is the 5th respondent in the writ petition. M/s.CMRL is the 5th respondent in the Review Application and 6th respondent in the writ petition. The Executive Officer of Cantonment Board, St. Thomas Mount, is the 6th respondent in the review application and 7th respondent in the writ petition.

6.The dispute relates to a parcel of land measuring an extent of 1.54 Acres in S.No.166/2, situated in Pallavaram Cantonment Village. The petitioner in the review application, who is the 8th respondent in the writ petition, filed a writ petition in W.P.No.29275 of 2023 to quash the impugned order passed by the District Collector, dated 29.09.2023, as an Appellate Authority under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as “Encroachment Act” for <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & brevity), rejecting the petitioner's appeal as against the order passed by the 3rd respondent, the Tahsildar, Pallavaram, under Section 6 of the Encroachment Act, directing eviction of the petitioner in the review application and calling upon the petitioner in the review application to vacate and hand over possession of the entire land of 1 Acre and 19602 sq.ft. in S.No.166/2, dated 22.08.2023.

7.This Court, by order dated 01.11.2023, after recording the fact that possession of the land had already been taken over by the Government on 05.10.2023 and that the petitioner is no more in possession of the land in question, dismissed the writ petition in W.P.No.29275 of 2023. Aggrieved by the same, the petitioner in W.P.No.29275 of 2023, namely, the 8th respondent in the present writ petition in W.P.No.33561 of 2023, has preferred the above review application.

8.After the dismissal of the writ petition in W.P.No.29275 of 2023 by order dated 01.11.2023, the two sons and the wife of the petitioner in the review application have filed the present writ petition in W.P.No.33561 of <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & 2023 on 27.11.2023 for issuing a Writ of Declaration declaring that the action of the respondents 1 to 5 in the writ petition in locking and sealing the premises of the petitioners in S.No.166/2, Pallavaram

Cantonment Village, and discontinuing the power supply and alleged symbolic handing over possession to the 6th respondent by way of Land Delivery Receipt dated 31.10.2023 without any notice to the petitioners and without following any due process of law, are totally illegal, invalid and contrary to law.

9.The facts leading to the writ petition as well the review application as borne out from the records can be summarised as follows :

9.1.The land which is subject matter of this lis, namely an extent of 1 Acre and 54 Cents, was leased out in favour of one Mr.C.Hussain Sahib by the Secretary of State for India in Council by a registered Document of Lease, dated 18.12.1915, subject to terms and conditions. The power of transfer of lessee's interest was reserved to the lessor and the right of local Government to resume the land on compensation of buildings was reserved as per the terms of the Lease Deed. From the Lease Deed, it is seen that the same property was earlier leased out in favour of one Mrs.Louisa Gore by <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & the East India Company for a period of 50 years by an Indenture dated 09.02.1861 for a period upto 08.02.1911.

9.2.During the subsistence of lease, the lessee by name Mr.C.Hussain Sahib, constituted a partnership firm consisting of himself and his family members under the name and style of "M/s.C.H.Kizar Mohammed and Co." and the said partnership firm, along with its partners, executed a registered Sale Deed, dated 02.04.1957, in respect of the entire extent of 1.54 Acres, including the leasehold and other rights together with building, erections, fixtures, etc., in favour of one Mrs.Maimoona Ammal. The vendors claim right under the deed dated 18.12.1915 (Lease Deed). However, the vendors had professed to dispose of the property as absolute owners even though they specifically refer to the leasehold rights in the said document.

9.3.Thereafter, the said Maimoona Ammal, who purchased the property in 1957, sold the leasehold right and superstructure by a registered Sale Deed dated 16.02.1992 in favour of four persons namely, K.G.Krishnaswamy, his wife by name K.Nirmala, one C.Arumugam and one <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & V.Gnanapoongothai.

9.4.All the four persons who purchased the property under the sale deed dated 16.02.1992 from Tmt.Maimoona Ammal transferred their leasehold rights jointly by way of four Sale Deeds dated 09.02.1995 which are registered as Doc.Nos.444 to 447 of 1996 in favour of the three petitioners in the present writ petition as well the 8th respondent in the writ petition who is the father of the petitioners 1 and 2 and the husband of the 3rd petitioner in the writ petition. It is pertinent to mention that the four Sale Deeds were in respect of the undivided $\frac{1}{4}$ share of each of the vendors and it is specifically mentioned in every sale deed that the sale is only in respect of the leasehold interest in the land with a specific recital that the land is not conveyed and

superstructure alone is sold under the document. All the four documents were executed on the same day by all the four vendors expressly conveying their ¼ share in favour of the writ petitioners as well as the petitioner in the review application.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & 9.5.After the execution of the sale deeds, the three petitioners in the writ petition as well as the petitioner in the review application submitted a representation on 16.12.1995 with a request for assignment of lands in favour of the petitioners. They expressed their willingness to pay cost for the land as may be fixed by the Government. From 1995, several representations have been submitted either by the review petitioner or jointly along with his family members before the District Collector or the Government for assignment of land on payment of cost in respect of entire 1.54 Acres. From the communications between the petitioners and the Revenue officials, it is seen that the proposal for assignment of land upon collection of market value was under consideration before the Revenue officials.

9.6.The petitioners have also applied for mutation of all assessments in their names before the Executive Officer of Cantonment Board, St. Thomas Mount, Pallavaram. However, ultimately, the representation of the petitioner in the review application was turned down as the Government has <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & taken a policy decision not to assign lands which are in enjoyment of tenants on expiry of lease.

9.7.The petitioner in the review application as well the petitioners in the writ petition have been remitting Property Tax and Water Tax in respect of the subject lands and it is seen that the assessment is in the name of the vendors of the writ petitioners from 1997.

9.8.Property Tax was levied and collected from the petitioners and the receipt is issued jointly in the name of father and sons. The petitioners have paid all the statutory charges and obtained electricity service connection in their name. The fact that the Property Tax and other dues are collected by the Cantonment Board, is not in dispute.

9.9.All the petitioners in the writ petition as well as the petitioner in the review application, who are the co-owners of the property pursuant to their joint acquisition under the four documents of sale above referred to dated 09.02.1995, have jointly applied for assignment of land and issuance <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & of patta. Several applications submitted by the petitioner in the review application show that they have established an industry under the name and style of “M/s.Gupta Swabs Ltd.”, which is incorporated under the Companies Act, 1956, showing the review petitioner as Managing Director, for manufacturing cotton swabs, band aids and other products. The petitioner in the review application has applied for power supply for the industrial project. The petitioner in the review application has applied before all the statutory authorities the establishing an industrial concern and simultaneously applied for assignment of land. The petitioner in the review application has obtained a Certificate of Registration from the Commercial Department of State of Tamil Nadu and has also obtained Provisional Certificate from the Industrial Department. All the correspondences and representations were submitted by the petitioner in the review application as the Chief Executive of their industrial establishment either for assignment or for other purposes for himself and for other co-owners who have acquired ¼ share

each in the entire land.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & 9.10.From the correspondences, it is seen that the District Collector, Kancheepuram District, while considering the application for assignment of land and the request of the petitioner in the review application, has recorded the fact that the subject land has been classified as B-2 land by the Cantonment Board. From the records, it is also seen that the land has been classified as Government Poramboke and has been treated as “time expired lease land”. However, by proceedings of the District Collector dated 18.11.2020, the request of the petitioner in the review application for assignment of land was rejected on the ground that the District Collector, Chengalpattu, had been advised to take over the time expired lease lands.

9.11.Thereafter, the petitioner and one of his sons, on behalf of all the co-owners, submitted a representation before the Commissioner of Land Administration on 22.06.2021, aggrieved by the order of the District Collector and with a prayer to set aside the order of the District Collector, Chengalpattu, and to reconsider the issue based on the recommendations of the District Collector, Kancheepuram, earlier. <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & 9.12.The petitioner in the review application filed a writ petition in W.P.No.14264 of 2021 for issuance of a Writ of Mandamus forbearing the Revenue officials from taking action or possession of the property without following due process. This Court, by order dated 08.07.2021, recording the fact that the petitioner in the review application is in possession from 1995, granted an order of injunction against the Revenue officials from evicting the petitioner from the premises in question till 26.07.2021.

9.13.Thereafter, the Tahsildar, Pallavaram, issued a notice, dated 22.07.2021, under Section 7 of the Encroachment Act to show cause why the petitioner in the review application cannot be evicted. An explanation was submitted by the petitioner in the review application to this notice, stating that the petitioner is not an encroacher and is in possession of the property under registered sale deeds. He also referred to the writ petition filed by him in W.P.No.14264 of 2021 and the pendency of an appeal before the Commissioner of Land Administration against the rejection of request for assignment. However, by proceedings dated 04.04.2022, a <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & communication was addressed by the office of the Commissioner of Land Administration to the petitioner about the rejection of his appeal before the Commissioner of Land Administration, challenging the order of the District Collector rejecting the petitioner's request for assignment.

9.14.Thereafter, the petitioner in the review application submitted a representation before the Secretary to Government, Revenue Department, on 16.06.2022, to review the order passed by the Commissioner of Land Administration dated 04.04.2022 and to reconsider the issue.

9.15.Since the petitioner in the review application and other co- owners are in possession of the property, the petitioners have expressed their willingness to pay market value. It was thereafter, the Revenue Inspector, Pallavaram Taluk, issued a notice dated 28.11.2022, once again, under Section 7 of the Encroachment Act, calling upon the petitioner to show cause why an order of eviction cannot be passed and why the properties including buildings cannot be forfeited. The said notice dated

28.11.2022 was served on the petitioner in the review application and he <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & submitted an explanation referring to the pendency of the appeal before the Government regarding assignment of land. Since the request for assignment and grant of patta is pending consideration before the Government of Tamil Nadu, the petitioner requested that no further action should be taken till a final decision is taken by the Government. The petitioner, in his representation, has in particular reiterated that he is not an unauthorised occupant and that he is paying taxes to the Cantonment Board. It is seen from all the communications that the petitioners have never claimed title under any other source except as transferees of leasehold right nor tried to set up title in the name of Cantonment Board.

9.16.The earlier writ petition filed by the petitioner in the review application in W.P.No.14264 of 2021 was disposed of by a learned Single Judge of this Court on 22.08.2023 in the following lines, even though the petitioner had chosen to withdraw the said writ petition :

“2.However, the learned Additional Advocate General appearing on behalf of the State made a submission that Section 7 notice under the Land Encroachment Act, 1905 was <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & issued to the encroachers and served on the writ petitioner on 28.11.2022 and similar such notices issued to other persons by the District Collector have been kept in cold storage. Learned Additional Advocate General made a submission that all such actions are imminent in the interest of public.

3.The learned counsel for the petitioner states that the petitioner has received notice on 24.07.2021 and due process of law is to be followed.

4.Considering the submission, the respondents are directed to accelerate the actions and complete the same as expeditiously as possible as the in-actions or lackadaisical approach of the authorities are visible in the cases of eviction of encroachers.

5.With the above direction, the writ petition is dismissed as withdrawn. No costs. Consequently, connected miscellaneous petitions are closed.” 9.17.After the disposal of the writ petition, a final order was passed under Section 6 of the Encroachment Act directing eviction of petitioner in <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & the review petition from the subject property measuring an extent of 1 Acre and 19602 sq.ft. Earlier a notice under Section 7 was issued. After considering the explanation and objection of review petitioner, final order under Section 6 of Encroachment Act was passed. The nature of encroachment is noted as by establishing a company and by constructing a compound wall. This order under Section 6 of the Encroachment Act was passed by the Tahsildar on 22.08.2023. In the Typed Set of Papers, the petitioner has enclosed two independent orders under Section 6 of the Encroachment Act issued by the Tahsildar concerned.

9.18.Aggrieved by the order of the Tahsildar directing eviction, the petitioner preferred an appeal under Section 10 of the Encroachment Act before the District

Collector. Strangely, for the first time, the petitioner in the review application has claimed title to the property by stating that he is in continuous and uninterrupted legal possession for more than 28 years and he had perfected title to the land in question by virtue of such possession.

In the appeal petition before the District Collector, the petitioner claimed right under the Sale Deeds executed in favour of the petitioner in the review <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & application and his two sons and his wife, on the basis of the lease and other documents in favour of his predecessors-in-interest. Without disclosing the basic facts to claim title, the petitioner has represented that title vests in him by virtue of operation of law and continuous and uninterrupted legal possession to the knowledge of the Government. It was by claiming title to the property, the petitioner challenged the order of eviction under Section 6 of the Encroachment Act issued by the Tahsildar.

9.19.During the pendency of the appeal before the District Collector, the petitioner filed another writ petition in W.P.No.25279 of 2023 challenging the order passed by the Tahsildar, under Section 6 of the Encroachment Act and for consequential reliefs. The said writ petition was disposed of by the Division Bench of this Court by order dated 25.08.2023, with a direction to the District Collector to hear the petitioner on the stay petition. The Division Bench further observed that no action pursuant to the order under Section 6 of the Encroachment Act shall be undertaken till the stay petition is decided on merits.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & 9.20.Thereafter, the District Collector, by proceedings dated 29.09.2023, rejected the appeal filed by the petitioner under Section 10 of the Encroachment Act, as there is no scope for assignment of land in view of the policy decision taken by the Government. The District Collector specifically referred to the fact that the disputed land has been classified and recorded as Government Poramboke land in all the Statutory Registers maintained by the Cantonment Board. Since the appeal regarding assignment filed by the petitioner in the review application before the Commissioner of Land Administration had already been rejected, the order of eviction was confirmed by the District Collector. A further direction was issued to the Revenue Divisional Officer, Tambaram, and the Tahsildar, Pallavaram, to remove all the encroachments in S.No.166/2 and to submit a report.

9.21.The petitioner in the review application, thereafter, filed a revision petition before the State Government in terms of Section 10-A of the Encroachment Act. When the revision before the Government is <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & pending, the petitioner has filed a writ petition in W.P.No.29275 of 2023 to quash the order passed by the District Collector dated 29.09.2023 under Section 6 of the Encroachment Act. The prayer in the writ petition is also to issue directions forbearing the respondents 1 to 3 from interfering with the possession of the petitioner in respect of the whole premises comprised in S.No.166/2 in Pallavaram Cantonment Village. A Division Bench of this Court, considering the fact that the request for assignment had already been turned down and that the land in question had already been taken and handed over to M/s.Chennai Metro Rail Limited ("M/s.CMRL" for brevity), dismissed the said writ petition by order dated 01.11.2023. It is to be noted that the Division Bench observed that the question whether

the land in question belongs to Cantonment Board or State Government, need not be gone into in the writ petition.

9.22.It is against the said order, the petitioner in W.P.No.29275 of 2023 has preferred the above Review Application. It was after the disposal of the writ petition in W.P.No.29275 of 2023 by order dated 01.11.2023, the two sons and the wife of the petitioner in W.P.No.29275 of 2023 have filed <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & the above writ petition in W.P.No.33561 of 2023.

10.The 2nd respondent has filed a common counter affidavit both in the review application as well in the writ petition on behalf of respondents 1, 3 and 4. A reply affidavit is also filed by the petitioner to the counter affidavit by the 2nd respondent. An additional affidavit is also filed by the petitioner in the writ petition specifically stating that the petitioners are paying the House Tax, Water Tax, Scavenge Tax, Lighting and Drainage Tax and Education Tax to the Cantonment Board since 1996 and that the land within the limits of Cantonment Board vest with the Cantonment Board and that therefore, the Revenue officials/respondents 1 to 4 in the writ petition have no jurisdiction to initiate proceedings under the Encroachment Act. The petitioners have further referred to the Minutes of the Meeting conducted by the Cantonment Board dated 30.04.2022, wherein, they have dealt with the request of the State Government to get approval for building plan for the proposed construction of the Village Administrative Officer and Revenue Inspector Office under Section 235 of the Cantonments Act, 2006. <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

11.Heard Mr.N.L.Rajah, learned Senior Counsel appearing for the petitioner in the review application as well the petitioners in the writ petition, Mr.R.Raman Lal, learned Additional Advocate General, appearing for the respondents 1 to 4 in the writ petition and respondents 1 to 3 in the review application, Mr.P.S.Raman, learned Senior Counsel, appearing for M/s.CMRL, Mr.C.Mohan, learned counsel, appearing for the Cantonment Board, and Mr.L.Jai Venkatesh, learned Standing Counsel, appearing for the Tamil Nadu Electricity Board.

12.Mr.N.L.Rajah, learned Senior Counsel appearing for the petitioners both in the review application as well in the writ petition, made the following submissions :

- i. The right, title and interest in the property is held by the petitioners pursuant to the perpetual lease executed in favour of the petitioners' predecessor-in-interest on 18.02.1915. Since the name of the petitioners had been mutated in the records of the Cantonment Board and the petitioners have been paying Property Tax to the Cantonment <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & Board, the State Government has no right, title or interest to initiate any proceedings under the provisions of the Encroachment Act or under any legislation. Therefore, there is error apparent in the order passed in the writ petition to hold that the issue whether the land in question belongs to Cantonment Board or State Government need not be gone into in the writ petition.

ii. The Cantonment Board alone has the right, title and interest over the property. Since the Cantonment Board has recognised the petitioners as lawful occupants of the property in question, the State Government or the official respondents of the State have no power or jurisdiction or authority to initiate proceedings to remove the alleged encroachment. In other words, the eviction proceedings can be initiated only by the Cantonment Board under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, and not by the State under the Encroachment Act.

iii. As per the Cantonment Land Administration Rules, 1937, framed under the Cantonments Act, 1910, the lands within the Cantonment area are classified into three categories, namely, Class A, B and C. <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & The subject land is classified as Class B-3 land which is held by any private person under the provisions of the Rules Therefore, except the Central Government which reserves itself the proprietary rights in the soil or the Cantonment Board which can initiate action for removal of encroachment in respect of the property which is not the property of State, the State Government has no jurisdiction.

iv. The petitioners are in possession of the property for more than 26 years and they are not encroachers of Government property. The lease in favour of the petitioners' predecessor-in-interest was a perpetual lease and not a lease for a restricted period. Even after the expiry of lease, unauthorised occupants from the Cantonment land can be evicted only by following the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, and not under any State law.

v. The petitioners are tenants holding over even after the expiry of the lease in terms of Section 116 of the Transfer of Property Act and that therefore, no proceedings for eviction can be initiated without termination of lease. The request of the petitioner for assignment of <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & land is pending consideration before the Government (Revenue Department) and the representation of the petitioner is yet to be decided by the State. Similarly, the petitioner has also filed a revision petition in terms of Section 10-A of the Encroachment Act before the State Government. Therefore, the eviction of petitioners during pendency of the Statutory revision before the Government and the application for assignment is improper and against settled principles of law.

vi. Even assuming that the respondents are entitled to proceed under the Encroachment Act, the Tahsildar and the District Collector have not applied their mind as to the nature of enjoyment and the various facts which are required to be considered by the officials while exercising their powers under the Encroachment Act.

vii. Further, the proceedings and the order of eviction is vitiated as the petitioners in the writ petition are not issued with any show cause notice. Since none of the petitioners in the writ petition, who are also the co-owners, were given any show cause notice or an opportunity before passing an order under Section 6 of the

Encroachment Act, the <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & whole proceedings initiated under Section 6 of the Act is vitiated. viii. Learned Senior Counsel then relied upon several precedents to support his argument that every property within the Cantonment area vests with the Cantonment Board and the State has no right or title nor can exercise the power under the Encroachment Act to remove the encroachments in the lands that are within the Cantonment area. ix. Learned Senior Counsel, relying upon the judgment of the Division Bench of this Court in the case of Vanniyar Sangam v. The State of Tamil Nadu and others [W.P.No.24693 of 2023 dated 07.11.2023], reiterated that, when there is a bona fide dispute regarding title between the Cantonment Board and the State Government, who are claiming right and interest over the property, the State Government cannot be permitted to proceed under the Encroachment Act. x. Learned Senior Counsel then relied upon a judgment of the three Member Bench of Hon'ble Supreme Court in M/s.Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi reported in (1980) 2 SCC 167 for the proposition that the Court may also reopen its judgment if a manifest wrong has been done and it is necessary to <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & pass an order to do full and effective justice. He also submitted that the writ petition under review was disposed of without considering the judgment of this Court in Vanniyar Sangam's case (supra), where, this Court has laid down the law to the effect that State cannot be permitted to initiate proceedings under Encroachment Act when title between the State and the Cantonment Board is seriously in dispute.

13.Mr.P.S.Raman, learned Senior Counsel appearing for M/s.CMRL, submitted that the scope of review is limited and that no review is maintainable in this case as the petitioner has not raised any ground that falls within the scope of Order 47 Rule 1 of Code of Civil Procedure. Referring to the settled position of law on the scope of review petition, as settled by several precedents, the learned Senior Counsel submitted that the petitioners cannot maintain a review application even if the order is erroneous as his right is only to file an appeal before the Hon'ble Supreme Court when there is no error apparent on the face of the record. Learned Senior Counsel, referring to the facts in the Vanniyar Sangam's case (supra), where a Temple has obtained a Civil Court's decree, submitted that <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & the said judgment cannot be cited as a precedent in the present case, where facts as borne out from records are entirely different. Referring to the arguments advanced by the learned counsel appearing for the Cantonment Board, the learned Senior Counsel reiterated that the arguments of Senior Counsel for all the petitioners cannot be countenanced in view of admitted facts. He further submitted that the judgment in Vanniyar Sangam's case has been considered by the previous Bench while dismissing the writ petition, by referring to Para 9 of the order and that therefore, the judgment in Vanniyar Sangam's case cannot be a ground to seek review. Learned Senior Counsel, referring to the fact that possession had already been taken by Government and handed over to M/s.CMRL, submitted that the ongoing project, if struck in the middle, will have adverse implications which will not only affect the public interest but also result in irreparable and irretrievable damages to M/s.CMRL and therefore, prayed for dismissal of the review application.

14.Mr.C.Mohan, learned counsel appearing for the Cantonment Board, produced before this Court the extract of the General Land Register <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & (GLR) maintained under the Cantonment Land Administration Rules to show that the land under dispute is classified as B-2 land and submitted that the land comes within the control and administration of the State Government. Referring to Section 122 of the Cantonments Act and other provisions, the learned counsel appearing for the Cantonment Board explained the fact that the land comes within the jurisdiction of Cantonment Board and it is the Cantonment Board which acts as local body for all purposes. He also submitted that the Property Tax and Professional Tax, etc., collected by the Cantonment Board is only for the purpose of administration of property as a local body in providing civic amenities for the residents within the Cantonment area. The learned counsel specifically admitted the position that the property is the property of State Government and it is well within the jurisdiction or authority of the State machinery to initiate proceedings under the provisions of the Tamil Nadu Land Encroachment Act.

15.Mr.R.Raman Lal, learned Additional Advocate General appearing for the respondents 1 to 4 in the writ petition and respondents 1 to 3 in the <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & review application, referred to almost all the documents filed by the petitioner himself in his Typed Set of Papers in four Volumes and made the following submissions :

i. All along, the petitioner in the review application has represented on his own behalf as well as on behalf of all the petitioners in the writ petition. The petitioner in the review application, being the father of the petitioners 1 and 2 in the writ petition and the husband of the 3rd petitioner in the writ petition, jointly established the company under the name “M/s.Gupta Swabs Ltd” where the petitioner in review application is the Managing Director. He referred to the various communications by which one of the petitioners in the writ petition made a representation along with the father as against the proceedings initiated by the Revenue officials under the Encroachment Act as against the petitioners in the writ petition and submitted that the petitioners, who have not raised any objection at the relevant point of time knowing that the proceedings initiated by the Revenue are in respect of the whole land and allowed the father to participate in the proceedings by representing the interest of all the petitioners in the <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & writ petition, are estopped by their conduct to come forward with an independent writ petition and from claiming independent right as if they are deprived of their fundamental right. ii. Learned Additional Advocate General then referred to the representation submitted by the petitioner in the review application as father and head of the family seeking patta and assignment of land in his favour.

iii. Learned Additional Advocate General then referred to the Lease Deed and the subsequent sale deeds and contended that the petitioners are just trespassers after the expiry of lease and that the official respondents are within their right to evict the petitioners from the public land which is required for a public purpose, i.e., to expand the Metro Rail project.

iv. Referring to the documents and its contents, the learned Additional Advocate General submitted that the petitioners have acknowledged the fact that the property vests with the Government right from 1995 when the petitioners purchased the property and that for the first time, the petitioners have raised in the writ petition about the vesting of the <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & land in Cantonment Board for the purpose of this litigation.

16.After hearing the learned counsel on either side and after referring to the documents and pleadings, this Court is inclined to consider the following issues :

i. Whether the review application filed by the petitioner in W.P.No.29275 of 2023 is maintainable ?

ii. Whether the review can be allowed having regard to the peculiar facts and circumstances of the case ?

iii. Whether the property which is the subject matter of this lis vest with the Cantonment Board in terms of the provisions of the Cantonments Act, 2006 or under any other legislation or the Government Poramboke in respect of which respondents 1 to 3 are entitled to take action under the Encroachment Act ?

iv. Whether the petitioners have any right either as a land owner or holding leasehold right to continue in possession ? v. Whether the proceedings for eviction under Encroachment Act is permissible without a formal determination or termination of lease ? <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & vi. Whether the proceedings for eviction as against the petitioners in the writ petition is liable to be quashed for want of individual notice to the petitioners in the writ petition ?

vii. Whether proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, or its corresponding State Act has to be invoked to remove encroachment ?

Issue Nos.(i) and (ii) :

17.The judgment of the Hon'ble Supreme Court relied upon by the learned Senior Counsel appearing for the petitioner in M/s.Northern India Caterers (India) Ltd.'s case (supra) has to be understood in its context and hence, it is relevant to extract Para No.8 of the judgment which reads as follows :

“8.It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & make it necessary to do so. Sajjan Singh v. State of Rajasthan. (AIR 1965 SC 845). For

instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment. *G. L. Gupta v. D. N. Mehta* [(1971) 3 SCC 189]. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. *O. N. Mahindroo v. Distt. Judge Delhi & Anr.* [(1971) 3 SCC 5]. Power to review its judgments has been conferred on the Supreme Court by Art. 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Art. 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in XLVII rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility." *Chandra Kanta v. Sheikh Habib* [(1975) 1 SCC https://www.mhc.tn.gov.in/judis W.P.No.33561 of 2023 & 674].

18.However, as pointed out by Mr.P.S.Raman, learned Senior Counsel, it will be worthwhile and useful to refer to the following judgments of the Hon'ble Supreme Court to understand better the scope and ambit of review. In *S.Madhusudhan Reddy v. V. Narayana Reddy and others* reported in 2022 SCC Online SC 1034, the grounds available for filing a review application have been considered in the light of several precedents of the Hon'ble Supreme Court. Recently, again, the Hon'ble Supreme Court in the case of *Sanjay Kumar Agarwal v. State Tax Officer* and another reported in 2023 SCC Online SC 1406 has reiterated the position that an error on the face of the record must be such an error which, mere looking at the record should strike and it should not require any long- drawn process of reasoning on the points where there may conceivably be two opinions. Again, in the case of *S.Murali Sundaram v. Jothibai Kannan and others* reported in 2023 SCC Online SC 185, the Hon'ble Supreme Court summed up the scope of review under Order 47 Rule 1 of CPC as under :

<https://www.mhc.tn.gov.in/judis W.P.No.33561 of 2023> & "15.While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of *Perry Kansagra* (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had

summed upon as under:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

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(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.”

19. From the principles laid down by Hon'ble Supreme Court in various decisions, we summarise the following aspects :

(a) It has been consistently held by Courts that a review has to be strictly confined to the grounds available under Order 47 Rule 1 of CPC.

(b) The scope of Order 47 Rule 1 of CPC has been considered in a plethora of judgments and it has been consistently held that the power <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & of review cannot be compared with the appellate power which enables only the superior Court to correct even if the judgment of the subordinate Court is erroneous. A review cannot be entertained to rehear the proceedings. In other words, review cannot be treated as an appeal in disguise.

(c) Under Order 47 Rule 1 of CPC, a judgment can be reviewed if there is mistake or error apparent on the face of the record. It is also reiterated by Courts that it is essential that the error must be one which is manifest on the face of record. Even if a statement in the judgment is wrong, it would not follow that there is an error apparent on the face of the record, as Courts have drawn distinction between an erroneous decision and a decision which could be characterised as vitiated by error apparent. In other words, the error contemplated under the Rule must be as apparent from the face of the record and not an error which has to be detected by a process of reasoning.

(d) It is true that, what is an error apparent on the face of the record cannot be defined precisely or exhaustively and it must be left to be determined consciously on the facts of each case.

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(e) A mere possibility of two views of subject is not a ground for review.

(f) In a review application it is not open to the Court to re-appreciate the evidence and reach a different conclusion even if that conclusion is possible. There cannot be an argument on appreciation of evidence which amount to converting the review petition into an appeal. Repetition of old or overruled argument cannot be entertained to reopen the decision on merits. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

(g) Mere discovery of new or important matter of evidence is not sufficient ground for review and the party seeking review has to establish that the new matter or evidence was not within his knowledge even after the exercise of due diligence. Unless it is shown that the evidence which is discovered could not be produced before the Court earlier even after the exercise of due diligence, the Court will not entertain a review.

(h) Though the power of review can be exercised where there is some mistake or error apparent on the face or any analogous ground, it <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & cannot be exercised on the ground that the decision was erroneous on merits.

(i) While applying the principles in writ jurisdiction, when the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error.

20.From the principles reiterated by the Hon'ble Supreme Court and this Court repeatedly on the interpretation of Order 47 Rule 1 of CPC as stated above and its applicability in writ jurisdiction, this Court is unable to find any ground for review in the present case. Therefore, the review application is not maintainable.

21.Learned Senior Counsel appearing for the petitioner relied upon the judgment of this Court in Vanniyar Sangam's case (supra), wherein, this Court had occasion to set aside the order passed under Section 6 of the <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & Encroachment Act, where, three parties, namely, the Cantonment Board, a Temple and the State Government were claiming title and interest over the property. However, it was brought to the notice of the Court that a decree was passed in favour of the Temple. The stand taken by the Cantonment Board therein was that the property is classified as B2 land, i.e., the land of the Cantonment, but under the management of the State Government. The Division Bench presumed that the Cantonment Board is also a rival claimant. Since there was a decree passed in favour of the Temple, the Division Bench

held that it would be inappropriate for the State to proceed under Section 6 of the Land Encroachment Act, more particularly, when a decree declaring title has been passed in favour of the Temple. The said judgment has no application to the facts of the present case. Secondly, this judgment appears to have been considered by this Court while dismissing the writ petition by order dated 01.11.2023. This Court, while dismissing the writ petition, at Para No.9 of the order, has observed that this Court would have interfered with the order impugned and remitted the matter to the authorities concerned for fresh consideration if there were a Civil Court's decree. It is obvious that the reference to the absence of Civil <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & Court's decree is to reject the argument of counsel appearing for the writ petitioner relying upon the judgment of this Court in Vanniyar Sangam's case.

22. Therefore, this Court is unable to find any ground for review in the present case.

23. However, while entertaining the review application, a different Bench of this Court before whom the matter was listed earlier, granted an order of status quo after recording the following facts :

“8. It is an admitted fact that the land originally belongs to Cantonment Board and hence, the Tahsildar is not the competent authority to issue notice under Section 6 of the Land Encroachment Act to vacate the review applicant. Further, the Government have not produced any materials before this Court to show that they took steps as per law to take possession of the subject property in question. Therefore, this court is of the considered view that a prima facie has been made out by the review applicant for granting an order of status quo. Accordingly, there shall be an order of status quo as on date <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & till 04.01.2024.” Though this Court, from the records, can see that the contention that the land originally belonged to the Cantonment Board is neither admitted nor borne out from any records and there is no order granting review, to avoid a technical objection later, this Court is inclined to hear the whole case in terms of Order 47 Rule 8 of CPC, especially when the parties have produced several documents which were not produced at the time of deciding the writ petition filed by the petitioner in the review petition, and the writ petition is also heard along with this review application. Issue No.(iii) :

24. Learned Senior Counsel appearing for the petitioner referred to some of the judgments of the Hon'ble Supreme Court and this Court and submitted that the land which comes within the jurisdiction of Cantonment Board vest with the Cantonment Board under the provisions of the Cantonments Act. He also submitted that the lease deed executed in favour of petitioner's predecessor-in-interest in 1915 is a perpetual lease. It is admitted before this Court that, originally, the land was leased out to an <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & individual by the then Secretary of State for India in Council. The Lease Deed specifically refers to certain rights and obligations of tenants and lessees. The Lease Deed dated 18.12.1915 specifically refers to the right of the Government to resume the land on payment of compensation to the buildings. In that regard, it has been recited as follows :

“The Local Government may resume the land or any portion thereof at any time after giving one month's notice and on payment of compensation for such buildings standing on the land or portion thereof as shall have ordered under proper authority. If there shall be any dispute as to the amount of such compensation the same shall be referred to Committee of Arbitration which shall be constituted as provided in Condition XXII and the lessee shall be bound by the decision of the Committee of Arbitration.” Therefore, power given to the local Government to resume the land indicates the authority of the State to take control over the land.

25.The very first clause in the lease deed reads as follows :

“1.The Secretary of State doth hereby agree unto the Lessee, liberty and licence to occupy the place or parcel of <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & land delineated in the plan hereto appended and henceforth to hold and enjoy the same and any buildings now or hereafter to be erected thereon subject to the payment of such yearly land-tax or quit-rent and cesses as may from time to time be imposed by the Government of Madras thereon and subject to the conditions set forth in the annexure thereto.” Further, under the lease deed, Cantonment Authority with the concurrence of the local Government can set apart the house occupied by the lessee or the entire land for occupation by civil officer who is either a Gazetted Officer of Government of India or an officer who is placed on the same footing by local Government. The power of local Government to fix rent, revise rent, collect rent and to resume the land as seen from the terms of lease gives a clear indication as to the title of State Government as acknowledged by the Cantonment Board. Even in the lease deed, the authority granting lease did not describe itself as a lessor. Therefore, the paramount title of local Government is admitted in the lease deed. Subject to the title of local Government, a lease is granted in favour of petitioner's predecessor-in-interest with the condition to pay rent as fixed by local Government without reserving any right as holder of title. <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

26.Originally, the Cantonment Acts, 1889, was enacted in the year 1889 by the British Government. Thereafter, the Cantonments Act, 1897 was also enacted. Later, the Cantonments Act, 1910, by Act No.XV of 1910 was enacted to consolidate and amend certain Acts relating to Cantonments. Now, the Cantonments Act, 2006, is enacted to consolidate and amend the law relating to administration of Cantonments. Cantonments are central territories under the Constitution. The management of properties within its jurisdiction including the defence lands is dealt with under Section 122 of the Cantonments Act, 2006, which reads as follows :

“122. Property.—Subject to any special reservation made by the Central Government all property of the nature hereinafter in this section specified which has been acquired or provided or is maintained by a Board shall vest in and belong to that Board, and shall be under its direction, management and control, that is to say,—

- (a) all markets, slaughter-houses, manure and night-soil depots, and buildings of every description;
- (b) all water-works for the supply, storage or distribution of water for public purposes and all bridges, <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & buildings, engines, materials, and things connected there with or appertaining thereto;
- (c) all sewers, drains, culverts and water-courses, and all works, materials and things appertaining thereto;
- (d) all dust, dirt, dung, ashes, refuse, animal matter, filth and rubbish of every kind, and dead bodies of animals collected by the Board from the streets, houses, privies, sewers, cesspools or elsewhere, or deposited in places appointed by the Board for such purposes;
- (e) all lamps and lamp-posts and apparatus connected therewith or appertaining thereto;
- (f) all lands or other property transferred to the Board by the Central or a State Government, or by gift, purchase or otherwise for local public purposes; and
- (g) all streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements, and things existing on or appertaining to streets.”

27. Therefore, only the property which had been acquired or provided or maintained by a Board vest in the Board for management and control. We need not go into all other provisions of the Act. It is admitted before this Court that, the Cantonment Land Administration Rules, 2021, framed in <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & exercise of powers conferred by Section 346 of the Cantonments Act, 2006, refers to classification and jurisdiction of the land under Chapter-II of the said Act. A General Land Register and General Land Register Plan prescribed by the Central Government from time to time has to be maintained by the Defence Estates Officer, inside Civil Areas and outside Civil Areas. No addition or alteration can be made in the General Land Register except with previous sanction of the Central Government. As per Section 4 of the Rules, which relates to the classification of land for the purpose of General Land Register, the land in the Cantonment which is vested in the Government is classified as Class “A” and Class “B” land and the land which is vested in the Board under Section 122 of the Act is classified as Class “C” land. Class “B” land has been divided as Class “B- 1” and “B-2” land. Class “B-2” land is actually occupied or used by or is under the control of any Department of a State Government. Rule 7 of the Cantonment Land Administration Rules, 2021, reads as follows :

“7.Management of Land.-

(1) The management of Class “A-1” land, except for such areas or classes of areas as may from time to time be <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & declared by the Central Government to be under the immediate management of the Military authorities or the Defence Establishments themselves, shall continue to be entrusted to the Defence Estates Officer. (2) The management of Class “A-2” land shall vest in the Defence Estates Officer.

(3) The management of Class “B-1” land shall vest in the Ministry or Department in occupation of or having control over the land.

(4) The management of Class “B-2” land shall vest in the State Government in occupation or having control over the land.

(5) The management of all Class “B-3” land, B-3(a) land and Class “B-4” land shall be entrusted to the Defence Estates Officer;

Provided that the management of all Class “B-3” land, B-3(a) land and Class “B-4” land in the notified Civil Area shall be entrusted to the Board.

(6) The management of Class “C” land shall vest in the Board under section 122 of the Act.

(7) The authorities to whom management of Defence Land has been entrusted as mentioned at sub-rule (1),(2),(5) and (6) of rule 7 shall carry out inspection of all such <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & Defence Land as entrusted to their management and shall, as soon as possible, may be, after the 1st April of each year and not later than 1st July, shall submit a certificate of inspection alongwith a report providing the details pertaining to encroachment on Defence Land under their management alongwith the action taken to remove such encroachment, in such formats as may be laid down by the Central Government.”

28.Mr.C.Mohan, learned counsel appearing for the Cantonment Board produced before this Court the Extract of the Land General Register (GLR) indicating that the subject land falls under the Class B-2 lands. As per Sub-Rule (4) of Rule 7 of the Cantonment Land Administration Rules, 2021, the management of Class B-2 land vest in the State Government in occupation or having control over the land. In respect of the lands which vest in the State Government and classified as Class B-2 land, the Cantonment Board has no control over the management or administration of the property as evident from the reading of Sub-Rule (4) of Rule (7) of the Cantonment Land Administration Rules, 2021.

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29.Learned Senior Counsel appearing for the petitioner himself has produced before this Court the judgment of the Hon'ble Supreme Court in Union of India and others v. Robert Zomawia Street reported in (2014) 6 SCC 707, wherein, the Hon'ble Supreme Court has specifically held that the entry in General Land Register under the Cantonment Land Administration Rules, 2021, is the

conclusive evidence of title of land. The Hon'ble Supreme Court, in the said case, considered the right of the plaintiff in a suit who claimed title against the Ministry of Defence and Cantonment Board in a title suit and for a declaration against the order of resumption. Though the plaintiff therein produced a series of title documents tracing his title on the basis of a grant in the year 1880 as an "old grant" in favour of the predecessor-in-title of the plaintiff therein, the defendant therein raised a plea that the old grants are resumable and that the occupancy holder is required to admit the title of the Government. It was also stated in defence that the defendants required the land for bona fide defence use and that the resumption order dated 23.03.1993 was also served on the plaintiff. Though the trial Court held that the suit land forms part of an old grant and <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & hence, can be legally resumed, the appeal preferred by the plaintiff against the dismissal of the suit was allowed on the ground that the defendants had not produced any other evidence to prove that the suit land comes under old grant which give the right to defendants to resume the land at their pleasure. Referring to the previous judgment of the Hon'ble Supreme Court in Union of India v. Ibrahim Uddin reported in (2012) 8 SCC 148, the Hon'ble Supreme Court reiterated that the entries made in the General Land Register maintained under the Cantonment Land Administration Rules, 2021, is conclusive evidence of title. From the said judgment, it is seen that the law has been settled in several judgments of the Hon'ble Supreme Court to the effect that the entries made in the General Land Register maintained under the Cantonment Land Administration Rules, 2021, are conclusive evidence of title. After finding that the lands have been classified as B-3 lands in the General Land Register in respect of the property in question and the fact that the nature of holder's right is registered as old grant, the Hon'ble Supreme Court held therein that Class B-3 land is one which is held by any private person subject to the conditions that the Central Government has proprietary rights over it and that therefore, the land that is classified as B-3 <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & land does not mean to own with legal title. The tenure under which permission is given to civilians to occupy Government land in Cantonment for construction of bungalows on the condition of right of resumption, is held to be known as "old grant tenures". Therefore, the Hon'ble Supreme Court, holding that the Class B-3 land does not confer any legal title with the holder, allowed the appeal and dismissed the suit filed by the plaintiff in entirety. The said judgment of Hon'ble Supreme Court relied upon by the learned Senior Counsel for petitioners, if understood properly, leads to the conclusion that the case of petitioners setting up title in themselves in or in favour of Cantonment Board, is unsustainable.

30.Learned Additional Advocate General produced before this Court a Typed Set of Papers containing the records pursuant to the Resettlement Survey in 1911 indicating that the property in S.No.166/1 and 2 has been shown as Government Poramboke lands. Learned counsel appearing for the Cantonment Board, referring to the Extract from the General Land Register, pointed out that the entire area of 1 Acre and 54 cents has been classified as B-2 land.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

31.The lands comprised in the Cantonments throughout the country were originally acquired by the British Government in India (predecessor of Government of India) for military purposes either by right of conquest or by treaty or by payment of compensation. After classification of lands and

inception of Cantonments, the lands comprised in the Cantonment area were held vest in the Government of India in few precedents. However, the leasehold lands with a right reserved to the local Government to resume the lands may not be treated as the land vest with the Cantonment Board, especially when the land which is under the control and administration of the State within the Cantonment area is permissible. It is to be noted that under Section 3 of the Cantonments Act, 2006, the Central Government, may, by notification in the Official Gazette, declare any place or places along with boundaries in which any part of the forces is quartered or which being in the vicinity of any such place or places, is or are required for the service of such forces to be a cantonment, declare that any cantonment shall cease to be a cantonment. It will be unconstitutional to declare any land of a third party to become a land of cantonment without paying any <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & compensation. The provisions of the Cantonments Act has to be understood in the context and therefore, the general submission of the learned Senior Counsel appearing for the petitioner that every land that comes within the Cantonment area vests with the Central Government or the Cantonment Board for any purpose, cannot be countenanced. It is to be noted that the object of the Cantonments Act is to quarter the defence and to serve in the nation's interest. Hence, at no stretch of imagination, the subject matter of lease can be treated as a land belongs to Cantonment Board.

32.Learned Senior Counsel appearing for the petitioner relied upon the judgment of a learned Single Judge of Allahabad High Court in Cantonment Board Agra Cantonment and others v. Pushpa Rani Gupta and others reported in 2020 (143) ALR 19 : 2020 (5) AWC 4194 All, for the proposition that, after the classification of land and inception of Cantonments, the lands comprised in the Cantonment areas were vested in the Government of India and no right of title or ownership of such land situated within the Cantonment exist. This Court is unable to accept the view expressed by the Allahabad High Court in view of the facts and <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & reasons stated above. When the Cantonment Board has no claim over the land, the petitioners who had acknowledged the land as the land belonged to the State have raised their plea only for the purpose of this case.

33.In view of the discussion and conclusion reached above, this Court has no hesitation to hold that the disputed land falls under the classification “B-2 land” and is the property of the State. As a consequence, the State Government is well within its competence and authority to initiate proceedings through its machinery provided under the Encroachment Act. Issue Nos.(iv) & (v) :

34.From the registered Lease Deed dated 18.12.1915, it is seen that the local Government has absolute right to resume the land subject to payment of compensation for the building subject to provisions of Cantonments (House Accommodation) Act, 1902. Despite the original lease was subject to payment of yearly land tax or quit rent and cesses as may from time to time be imposed by the Government of Madras thereon and subject to other conditions, the subsequent documents of conveyance <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & by the original lessee do not confirm to the original lease deed. After obtaining the lease, the lessee constituted a partnership firm and executed a sale deed in favour of one Mrs.Maimoona Ammal for a consideration of Rs.15,000/- by a registered sale deed dated 02.04.1957. The property has been described as one belonged to the vendors pursuant to the acquisition of the same in the name of the original lessee,

who was the senior partner of the firm, when it was conveyed. The documents refers to a simple mortgage which goes against the nature of right transferred in favour of the lessee under the 1915 document. The document of sale dated 02.04.1957 conveys the purchaser the absolute title and absolute power to dispose of the property without any impediment. It is settled that a person cannot convey a right more than what he has.

35.However, though the original lessee had fraudulently sold the property in favour of Tmt.Maimoona Ammal, the said Maimoona Ammal, in turn, conveyed the property in favour of four other persons, specifically referring to the fact that what is conveyed is the leasehold right in respect of the land. Again, the petitioners have also purchased only the superstructure. <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & It is specifically mentioned in the Schedule that the land is not conveyed through the document, indicating that only the superstructure is sold. After taking the property on lease with a right reserved in favour of the local Government, i.e., the Government of Madras, as indicated in the 1915 document, neither the lessee under the 1915 document nor any one claiming under him can dispute the title of State Government.

36.It is in this regard, Section 116 of the Evidence Act can be referred to usefully :

“116. Estoppel of tenant; and of licensee of person in possession :

No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.”
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37.Law is settled that a tenant or a licensee is estopped from questioning the title of the landlord or the person who gave permission to the licensee to be in occupation. The Rule of Estoppel is held to operate continuously so long as the tenant or licensee has not restored possession of the property by surrendering it to the landlord. In the present case, the petitioners, who got the right under 1915 document and the title in respect of the superstructure, are estopped from disputing the right of paramount title holder.

38.The learned counsels appearing for all parties with reference to the query raised by this Court during hearing, brought to the notice of this Court that Government Grants Act, 1895 had now been repealed by the Repealing and Amending (Second) Act, 2017, namely, Act 4 of 2018. By the said Act, several enactments shown in the First Schedule, including the Government Grants Act, 1895, are repealed. Though the repeal was not to affect any other enactments in which the repealed enactment has been applied, incorporated or referred to, by virtue of Government Grants Act, <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & 1895, being repealed, the applicability of Transfer of Property Act, 1882, cannot be avoided now. Under Section 111 of the Transfer of Property Act, in case a lessee renounces his character as such by setting up title in a third party or

claiming title in himself, he loses his right by forfeiture. As a consequence, the termination of lease in this case by forfeiture is inevitable. Therefore, the contention of the learned Senior Counsel for the petitioner that the petitioners should be treated as tenants holding over and that they cannot be evicted without terminating the lease, cannot be countenanced.

39.It is true that a person who remains in possession after determination of lease by efflux of time can be construed as a tenant holding over only if the lessor accepts rent from the lessee or assents to the lessee continuing in possession. In this case, not even a single document is produced to prove either payment of rent or acceptance of rent by Government at any point of time. During the subsistence of lease, the lessee, who took the property on lease in 1915, had conveyed the property as an absolute owner in favour of third parties conveying his absolute title with a specific recital therein that there is no encumbrance over the <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & property. Therefore, even the original lessee had set up title in himself and thereby, lost his right as a tenant. No rent is paid by the petitioners also. Therefore, this Court is unable to accept the argument of the learned Senior Counsel appearing for the petitioner that his client should enjoy the right as a tenant and that he cannot be evicted without determination of tenancy.

40.Learned Senior Counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court in *Anamallai Club v. Government of Tamil Nadu and others* reported in (1997) II CTC 307, wherein, it is held as follows :

“5.The question is whether the resumption of possession unilaterally, after determination of the grant in the manner provided under the grant itself, is valid in law as was held by the High Court? We think that the view taken by the High Court is not correct in law. In *Bishan Das & Ors. vs. State of Punjab & Ors.* [(1962 2 SCR 69)], a Constitution Bench of this Court had considered the question whether the Government would unilaterally take possession of the land after termination of the lease. One Ramjidas had built a dharamasala, a temple and shops appurtenant thereto, after having a licence of land from <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & the State Government. The lease was terminated and thereafter when the persons in possession were sought to be dispossessed, without taking any recourse to law, they filed writ petition under Article 226 but remained unsuccessful. When writ petition under Article 32 was filed, this Court had considered the question whether the Government is entitled to resume the land with a minimum use of force for ejection without recourse to law. It was contended therein that there was no dispute as the question of the fact between the parties that the petitioners therein had no right and title to the subject matter in dispute. The writ petition under Article 226 was dismissed on the ground of the disputed question of fact which was upheld in appeal by the Division Bench. A writ petition under Article 32 was filed. The right to possession of land was a fundamental right at that time. It was contended that the Government terminated the lease, as thereafter they were trespassers and so they had no right to resist the Government's power to resume the land. This Court had repelled both the contentions as unsound and had held that the Government violated the fundamental right to possession of land since the petitioners

therein were not trespassers. They remained in possession for long time. Pursuant to the lease, they had constructed dharamasala, temple and shops and managed them <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & during the life time of the licensee. After his death, the petitioner and members of the family continued in possession of and in management of the properties which was an admitted possession. Therefore, they were not mere trespassers in respect of the said properties. It was held that on the admitted facts of the case, the petitioners therein could not be said to be trespassers in respect of the dharamasala, temple and shops not could the State be said to be the owner of the property, irrespective of whether it was a trust, public or private having taken the possession unilaterally. It was open to the State to take appropriate legal action for the purpose. It was also held that the State could not remove them from possession except under the authority of law. The same view was reiterated by this Court in *State of U.P. & Ors. vs. Maharaja Dharmander Pd. Singh & Ors.* [(1989) 2 SCC 505 at

516) thus:

"A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression 're- entry' in the lease deed does not authorise extra-judicial possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal' pedigree'. In *Bishan Das vs. State of Punjab* [(1962) 2 SCR 69] this Court said: "We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order..."

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle. Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra- judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.'" <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

41.The above judgment has to be read in the context in which the issue was raised before the Hon'ble Supreme Court. It is a case where the appellant was granted licence in respect of the vast extent of Government land in Anamalai, Valparai Taluk, Coimbatore District, for sports and recreation purposes. Notice was issued terminating the licence under Section 3 of the Government

Grants Act, 1895. Thereafter, the land was resumed and possession thereof was taken with the assistance of Police personnel. Though the writ petition filed by the appellant before this Court was allowed, the writ appeal before the Division Bench of this Court was allowed upholding termination of licence under the Government Grants Act, and holding that there is no legal impediment at all for resumption of land by the Government without seeking any aid under the Public Premises (Eviction of Unauthorised Occupants) Act. It is only by termination of lease, the possession of lessee of licensee becomes unlawful. Even when a person is in possession after expiry of a lease or after revocation of licence, the possession of such unauthorised occupant can be recovered only by due process of law by resorting to Public Premises (Eviction of Unauthorised Occupants) Act, if the land falls within the definition of public premises. It is only in the factual context, the Hon'ble Supreme Court has observed that the State Government cannot resume possession otherwise than in accordance with law. However, in the present case, the lease had expired long back and the petitioner, by setting up title in favour of third party and himself, has lost his right as a lessee. Therefore, there is no subsisting lease. In the said circumstances, the proceedings initiated under the Tamil Nadu Land Encroachment Act for removal of encroachment by unauthorised occupants, namely, the petitioner in the review application as well as his family members, is appropriate.

42.Learned Senior Counsel appearing for the petitioners relied upon a judgment of Hon'ble Supreme Court in Express Newspapers Pvt. Ltd. and others v. Union of India and others reported in (1986) 1 SCC 133, wherein, the right of re-entry of Union of India under the terms of lease deed granting permanent lease was the issue. Holding that impugned notice of re-entry upon forfeiture of lease by an officer purporting to be on behalf of Union of India under Clause 5 of lease is invalid by referring to Clause 6 <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & of the lease deed and for other reasons, the Hon'ble Supreme Court held that the Union of India must enforce its right of re-entry upon forfeiture of lease under the contract by filing of suit if there is breach of terms of the lease. It is to be noted that the Hon'ble Supreme Court held that question whether there has been a breach of contract can be properly decided by taking detailed evidence by examination and cross examination of witnesses. Hence, the said judgment cannot be applied to facts. Again, the judgment of Hon'ble Supreme Court in Kaikhosrou (chick) Kavasji Framji v. Union of India and another reported in (2019) 20 SCC 705 relied upon by learned Senior Counsel appearing for the petitioners has no application. Hon'ble Supreme Court considered the maintainability of a writ petition and held that the writ petition challenging the summary proceedings of Estate Officer under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, is maintainable, since the appellant had raised bona fide dispute regarding his right to remain in occupation of the premises. The petitioners have raised disputes without any bona fides and hence, the judgment has no application to the facts.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

43.In view of the conclusions reached above, this Court is unable to find any merit in the review application. Hence, even after hearing and reconsidering the entire documents on record, there is no scope for reviewing the judgment and this Court is of the view that the review is liable to be dismissed.

Issue Nos.(vi) and (vii) :

44.The petitioners in the writ petition in W.P.No.33561 of 2023, who are none other than the two sons and wife of the petitioner in the review application, have filed the present writ petition for the same purpose for which the petitioner in the review application had filed the writ petition earlier. Though the prayer in the two writ petitions are different, the petitioners have now come forward with the present writ petition for a declaration invalidating the whole proceedings initiated under the Encroachment Act on the only ground that the writ petitioners were not given a show cause notice and there was no opportunity to the petitioners to put forth their case.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

45.The question in the present case is one of bona fides. It is true that the petitioners in the writ petition have acquired the leasehold right in respect of the undivided ¼ share in favour of each of them. However, the property is joint always. From the photographs and other documents, it is seen that all the petitioners have jointly established a company and running an industry, namely, the manufacturing unit under the name and style of M/s.Gupta Swabs Ltd. The petitioner in the review application, namely, the father, who is the head of the family, is the man who appears to be the person establishing the industry for himself and on behalf of all the petitioners. The statutory records produced before this Court show the leading role taken by the father in obtaining licence/certificate or permission from various authorities on behalf of all the four :

i. The Certificate of Registration for the purpose of Central Sales Tax and Tamil Nadu Sales Tax and other statutes are obtained by the petitioner in the review application on behalf of all. ii. The applications for electricity service connection and for obtaining Provisional Registration Certificate from the Industrial Department of <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & the State were by the petitioner in the review application. iii. It is the petitioner in the review application who gave representation before the Revenue Minister and Revenue officials right from 1995 for assignment of land in favour of the petitioner. In most of the representations, the petitioner seeks assignment in his favour. iv. When the petitioner in the review application received a notice under Section 7 of the Encroachment Act, he gave his reply for himself and as a representative on behalf of the writ petitioners by specifically referring to their right under the four sale deeds conveying the leasehold right.

v. When the representation of the petitioner in the review application for assignment of land was rejected by the District Collector, an appeal was preferred by the petitioner for himself and on behalf of the three writ petitioners before the Commissioner of Land Administration.

vi. A writ petition was filed by the petitioner in the review application in W.P.No.14264 of 2021 for issuance of a Writ of Mandamus forbearing the Revenue officials from taking any action or possession <https://www.mhc.tn.gov.in/judis>

W.P.No.33561 of 2023 & without following due process. In the affidavit filed in support of the writ petition, the petitioner has specifically referred to the four documents under which the petitioner in the review application purchased along with his sons and his wife. Even though the petitioners in the present writ petition in W.P.No.33561 of 2023 are not parties to the previous writ petition in W.P.No.14264 of 2021, the prayer was to protect the interest of all the co-owners. vii.It is on the basis of the four sale deeds in favour of the petitioner in the review application, his sons and wife, the petitioner in the review application have been making representations to the Minister of Revenue and Revenue officials and the Commissioner of Land Administration for assignment of land originally. viii.After receipt of previous show cause notice under Section 7 of the Encroachment Act in the year 2021, the petitioner sent a reply specifically referring to the pendency of the writ petition in W.P.No.14264 of 2021.

ix. Again, the petitioner in the review application preferred an appeal before the Government after the rejection of his representation for <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & assignment by the Commissioner of Land Administration on 16.06.2022. In this representation, the petitioner again pursued his prayer for assignment on the basis of sale deed obtained by him as well the sale deeds obtained by his sons and his wife. The petitioner in the review application has referred to the fact that the petitioner and three others are in possession by establishing an industry and that therefore, the assignment should be in his favour.

x. The representation that was submitted before the Government was also to the effect that all the four are willing to pay the market value.

46. Therefore, in all the representations the petitioner in the review application before the statutory authorities, Revenue authorities and Government on all earlier occasions, projected himself not only as the head of the family but also as a representative of all the four, namely, the petitioner in the review application, his two sons and his wife who are the petitioners in the present writ petition. Even though the first show cause notice issued in the year 2021 was in the name of the petitioner in the review application and he filed a writ petition forbearing the respondents <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & from taking any action or possession without following due process and obtained interim order, his two sons and wife enjoyed the benefit of interim order without approaching this Court. Therefore, the petitioners in the writ petition cannot plead ignorance of all the representations, communications that were from the father to protect the interest of all the family members as a whole. They made the Revenue officials believe that the petitioner in the review application alone is the karta or head of the family to represent on behalf of all. Notice under Section 6 of the Encroachment Act was issued on 22.08.2023 by the Tahsildar. Though this notice was in respect of the whole property, there was no independent appeal preferred before the District Collector by any other writ petitioners. Therefore, consciously, the petitioner in the review application and the writ petitioners made joint efforts in stalling the eviction proceedings through the father. The representation of the petitioner in the review application for

assignment was rejected by referring to the policy decision of the Government not to assign the land which are time expired lease lands and had the petitioners in the writ petition also applied for assignment, the fate would have been the same. The petitioner in the review application as well as the writ <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & petitioners belong to the same family. The fact that all the four have jointly obtained four different sale deeds in respect of 1/4 share under each document would show that they intended to use the land for their industrial activity jointly.

47.For the above reasons, the argument of the learned Senior Counsel appearing for the petitioners that the proceedings for eviction as against the petitioners in the writ petition is liable to be quashed for want of individual notice to the petitioners in the writ petition, cannot be countenanced. There is neither bona fides nor merit in the submission.

48.One of the arguments advanced by the learned Senior Counsel appearing for the petitioners is that the premises in question falls within the definition of “public premises” under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and interestingly, the learned Senior Counsel also made an alternative submission that, atleast, the respondents ought to have resorted to Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, as the property falls within the purview of <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & the State Act. We need not explain in detail, as this Court has found that the premises in respect of which action is initiated under the Encroachment Act, is a land classified as Poramboke land that vest with State. The Tamil Nadu Land Encroachment Act, 1905, was enacted to provide measures for checking unauthorised occupation of land which are the property of Government. Before 1905, there was no law regulating the rights of the Government in land. It was only by the 1905 Act, there was scope for removal of encroachment in all properties which vest with the Government and in public roads, streets, lanes, etc. Every person who is in enjoyment of Government land is liable to pay by way of assessment as provided under Section 3 of the Act. Any person who is liable to pay assessment under Section 3 of the Act is liable to pay in addition by way of penalty as contemplated under Section 5 of the Act. However, the occupant of the public property who is liable to pay assessment under Section 3 of the Act can be summarily evicted by the Collector or by the Tahsildar or any other officer authorised by the State Government. Such eviction should be after issuance of a show cause notice as contemplated under Section 7 of the Act. In this case, show cause notice under Section 7 was issued before issuing <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & notice under Section 6 of the Act. As against the order passed under Section 6, the petitioner in the review application has preferred an appeal before the District Collector under Section 10 of the Act. Though a further revision was filed before the State Government, the petitioner in the review application challenged the order passed by the District Collector before this Court simultaneously by filing a writ petition. One of the submissions of the learned Senior Counsel appearing for the petitioner in the review application is that the further revision before the State Government is yet to be disposed of and that therefore, till such time the revision is disposed of by the State, he cannot be evicted. The petitioner, knowing well that his representation is pending before the Government, has approached this Court bypassing the alternative remedy. Having filed a writ petition, it is not open to the petitioner to raise this issue, especially when the Government is a party and serious arguments are advanced on the merits of eviction proceedings. On the facts admitted, especially when the subject lands are required

for a public purpose, this Court is not inclined to give a direction to the State even to consider the revision filed by the petitioner in the review application. Since all the grounds raised by the petitioner before the <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & Government have already been considered by this Court in this batch of cases, the argument in that line cannot be countenanced.

49.Learned Senior Counsel appearing for the petitioner has also filed a Typed Set of Papers on 10th January, 2024, enclosing the following judgments and relied upon the same in support of his arguments :

i. Madhavrao Scindia v. Ramesh Jatav and others reported in (2006) 1 SCC 379 ii. T.S.Senthil Kumar v. Govt. of Tamil Nadu and others reported in 2010 SCC Online Mad 1347 iii. Kaikhosrou (Chick) Kavasji Framji v. Union of India reported in (2019) 20 SCC 705 iv. R.Chandra Sekaran v. District Collector & others reported in 2023 SCC Online Mad 5627 v. S.Rani v. District Collector and others report in MANU/TN/4205/2023 vi. V.Thiyagarajan v. S.Aneesh Sekhar and others reported in 2023 SCC Online Mad 5655 vii.Velliammal v. Assistant Divisional Engineer reported in 2019 SCC Online Mad 14349 <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 &

50.The first two judgments above referred to reiterate the position that removal of encroachment can be done only by following the procedure and by adhering to the principles of natural justice even if the legislation does not provide for an opportunity in tune with principles of natural justice. The third judgment of the Hon'ble Supreme Court is regarding the maintainability of a writ petition in appropriate case where eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, following the summary procedure is resorted to when there is a bona fide dispute regarding title. The principle expressed by the Hon'ble Supreme Court in the said judgment is reiterated in several precedents. Whenever an Act prescribes a summary procedure for eviction of a person and the person in occupation raises a bona fide dispute regarding title or by claiming an independent right to remain in occupation over the land, the bona fide claim of title cannot be dealt with by following a summary procedure prescribed under such legislations. When proceedings for eviction are initiated under Land Encroachment Act, the competent authority exercise power by assuming that the land belongs to State. When a person is in settled <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & possession under a bona fide claim of title without admitting the title of Government, the jurisdictional issue cannot be based on assumption. In suitable cases, the adjudication of complicated questions of title can only be by availing remedy before the Civil Court. Therefore, in appropriate cases, when there is a bona fide dispute on the question of ownership over the property, this Court, while exercising jurisdiction under Article 226 of the Constitution of India, may intervene. However, in the present case, having regard to the facts narrated above, this Court is unable to find any semblance of right in favour of the petitioners. From the documents relied upon by the petitioners both in the review application as well as in the writ petition, this Court finds a candid admission by the petitioners about the paramount title of the State. It is only for the purpose of this lis, the petitioners have made an attempt to dispute the title. The other judgments relied upon by the learned Senior Counsel as found in the Typed Set of Papers, have no relevance having

regard to the peculiar facts of the case on hand.

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51.For all the reasons stated above, this Court is of the view that the review application is devoid of merits and hence, the Review Application in Rev.Appl.(Writ) No.229 of 2023 is dismissed. Since this Court has already held that the petitioner in the review application, being the father and head of the family, has raised all the points before every forum for himself and on behalf of all the writ petitioners in the writ petition, this Court finds no merit in any of the contentions of the writ petitioners in the present writ petition. As a result, the writ petition in W.P.No.33561 of 2023 is also dismissed. However, no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.) 07.02.2024 mkn Internet : Yes Index : Yes / No Neutral Citation : Yes / No
<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & To

- 1.The Secretary to Government, Revenue Department, Fort St. George, Chennai – 600 009.
- 2.The District Collector, Office of the District Collector, Chengalpet.
- 3.The Tahsildar, Pallavaram Taluk, Chennai – 600 043.
- 4.The Revenue Inspector, Pallavaram Taluk, Chennai – 600 043.
- 5.The Assistant Engineer, Tamil Nadu Electricity Board, West Pallavaram, Chennai – 600 043.
- 6.The Managing Director, Chennai Metro Rail Limited, METROS:327, Anna Salai, Nandanam, Chennai – 600 034.
- 7.The Executive Officer, Office of Cantonment Board, St. Thomas Mount cum Pallavaram Cantonment, Chennai – 600 016.

<https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & <https://www.mhc.tn.gov.in/judis> W.P.No.33561 of 2023 & S.S. SUNDAR, J.

and N. SENTHILKUMAR, J.

mkn Common Order in W.P.No.33561 of 2023 & Rev.Appl.(Writ) No.229 of 2023 07.02.2024
<https://www.mhc.tn.gov.in/judis>