



W.P(MD)No.26967 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.11.2023

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THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

W.P(MD)No.26967 of 2023
and
W.M.P(MD)Nos.23161 & 23162 of 2023

J.Amala Pushpam Selvarani

.. Petitioner

VS

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Tahsildar,
Srivaikundam Taluk,
Srivaikundam,
Thoothukudi District.
- 3.The Block Development Officer (Village Panchayats),
Karunkulam Panchayat Union @ Seithunganallur,
Thoothukudi District – 628 809.
- 4.The Deputy Development Officer (Village Panchayats),
Karunkulam Panchayat Union @ Seithunganallur,
Thoothukudi District – 628 809.



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5.Village Administrative Officer,
Manakkarai Village,
Srivaikundam Taluk,
Thoothukudi District – 628 252.

6.Naanalkadu Panchayat,
Represented by its President,
Karunkulam Panchayat Union,
Srivaikundam Taluk,
Thoothukudi District.

7.J.Jebakumar

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the proceedings Na.Ka.A5/6833/2022 dated 20.12.2022 issued by the second respondent and quash the same and consequently direct the respondents 1 to 6 to remove the encroachment made by the seventh respondent on the Village Public Place i.e., 2000 sq. ft including the house (Door No.4/143) constructed on the encroached land in Survey No.499/1AE, Sivasubramaniapuram, Manakkarai Village, Naanalkadu Village Panchayat, Karunkulam Panchayat Union, Srivaikundam Taluk, Thoothukudi District within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy

For Respondent Nos.1 to 5 : Mr.P.Thilak Kumar
Government Pleader



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ORDER

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

This order will now draw the curtains on the captioned main Writ Petition and the captioned 'two Writ Miscellaneous Petitions' (hereinafter 'WMPs' for the sake of brevity) thereat.

2.Short facts are that the captioned matter has been filed as a 'Public Interest Litigation' (hereinafter 'PIL' for the sake of brevity); that it is the case of the PIL petitioner that sixth respondent has encroached upon 'land comprised in Survey No.499/1AE in Sivasubramaniapuram, Manakkarai Village Panchayat, Karunkulam Panchayat Union, Srivaikundam Taluk, Thoothukudi District' [hereinafter 'said land' for the sake of convenience and clarity]; that it is the further case of the PIL petitioner that sixth respondent has constructed a house; that the writ petitioner filed an earlier Writ Petition in this regard in this Bench vide 'W.P(MD)No.23351 of 2022 together with W.M.P(MD)No.17430 of 2022 thereat' [hereinafter 'I WP' for the sake of convenience and clarity]; that I WP came to be disposed of by a Coordinate Hon'ble



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Division Bench in and by an order dated 18.10.2022 *inter alia* saying that the PIL petitioner's representation dated 22.07.2022 shall be considered on merits and in accordance with law; that 22.07.2022 representation of the PIL petitioner was regarding alleged encroachment in said land and a plea for removal of alleged encroachment; that pursuant to this order in I WP, second respondent before us i.e., jurisdictional Tahsildar conducted an enquiry and passed 'an order dated 20.12.2022 bearing reference Na.Ka.No.A5/6833/2022' [hereinafter 'impugned order' for the sake of brevity and clarity] *inter alia* concluding that construction put up by sixth respondent has not been put up in Government land and that it has been put up in patta land. To be noted, second respondent had concluded that there is no ground for taking any proceedings under 'the Tamil Nadu Land Encroachment Act, 1905 [Act 3 of 1905]' [hereinafter 'said Act' for the sake of convenience and clarity]; that *inter alia* assailing the impugned order, captioned PIL has been filed.



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3.Mr.A.Thirumurthy, learned counsel on record for PIL petitioner, is before us. Learned counsel adverting to the aforesaid facts submitted that the impugned order is erroneous and it is liable to be interfered with. We make it clear that we are not expressing any view or opinion on this submission, as we are now going to relegate the PIL petitioner to statutory appeal remedy provided under said Act.

4.Section 10 of the said Act provides for an appeal to the first respondent. To be noted, Section 10 of the said Act also says that the appeal will lie to such officer as may be specified by the State Government (if there is such a specification by State Government). Nonetheless, statutory appeal under said Act qua impugned order of the second respondent is available and Appellate Authority would be the first respondent or such officer as may be specified by the State Government in this regard. We find that the grounds on which the impugned order is assailed turns largely on facts. The bone of contention is whether said land is Government land or patta land. We also find that under said Act it is not just one appeal, but multiple tiers have been provided as a further revision has also been provided.



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5. We are acutely conscious that the captioned matter is being disposed of in the Admission Board and therefore though obvious we make it clear that all the rights and contentions of seventh respondent also are preserved for contesting the matter before the Appellate Authority and or with regard to any other proceedings which are collateral or connected.

6. Captioned WP is disposed of as closed, albeit preserving all the rights and contentions of the PIL petitioner to seek appeal remedy under Section 10 of the said Act. If the writ petitioner chooses to seek appeal remedy, the Appellate Authority under Section 10 of the said Act shall consider the matter on its own merits and in accordance with law untrammelled by this order, which is for the limited purpose of closure of captioned Writ Petition which has been filed as a PIL.

7. At this juncture, learned counsel for petitioner requested for return of original impugned order for pursuing appeal remedy. The



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original impugned order filed along with captioned Writ Petition shall be returned by the Registry to the learned counsel on record for PIL petitioner under due acknowledgment forthwith to enable the PIL petitioner to prefer an appeal and seek statutory appeal remedy under said Act before the first respondent/Appellate Authority if so advised and if so desired.

8.Captioned WP is disposed of as closed, albeit with aforementioned observations and preservation of rights. Consequently, captioned WMPs are also disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
09.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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