



W.P. No.15929 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P. No.15929 of 2024

Madhalaimuthu
S/o.Late Jacob

.. Petitioner

Vs.

1. The District Collector
Krishnagiri District.
2. The Block Development Officer
Thalli, Krishnagiri District.
3. The Tahsildhar
Denkanikottai, Krishnagiri District.
4. The Assistant Director of Surveyor
Krishnagiri District.

.. Respondents

* R4 suo-motu impleaded
vide order dated 20.06.2024 in W.P.No.15929 of 2024

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records on the file of 2nd respondent in proceedings Na.Ka.No.1124/2020/A2 dated 15.05.2023 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to remove the encroachment in embankment and canal of Choolai Lake in



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Survey Nos.548, 648, 574, 575, 576 and 632 of Kuppatti Village,
Denkanikottai Taluk, Krishnagiri District.

For Petitioner : Ms.R.Poornima
For Respondents : Mr.A.Selvendran
Special Government Pleader
For R1 & R3
Mr.T.Venkatesh Kumar
Mr.P.Sanjay Gandhi, for R2

ORDER

(Order of the Court was made by **M.Sundar, J.**)

In the captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} an 'order dated 15.05.2023 bearing reference Na.Ka.No.1124/2020/A2 made by R2 [Block Development Officer, Thalli, Krishnagiri District]' {hereinafter 'impugned order' for the sake of brevity, convenience and clarity} has been called in question.

2. Impugned order pertains to alleged encroachment in 'six survey numbers viz., 548, 648, 574, 575, 576 and 632, all in Dasiripalli Village, Kuppatti Panchayat, Thalli Panchayat Union, Denkanikottai, Krishnagiri District' {hereinafter 'said lands' for the sake of brevity, convenience and clarity}.

3. It is a case of writ petitioner that he owns 'agricultural lands admeasuring 0.15.5 Hectares in S.No.575/1, Dasiripalli Village, Kuppatti



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Panchayat, Thalli Panchayat Union, Denkanikottai, Krishnagiri District'

{hereinafter 'writ petitioner's lands' for the sake of brevity, convenience and clarity}.

4. Ms.R.Poornima, learned counsel on record for writ petitioner submitted that way back in 2019, one Prakash filed a writ petition in W.P.No.29443 of 2019 with a prayer to direct three respondents to remove alleged encroachment in said lands. This writ petition was disposed of by a Hon'ble Division Bench in and by an order dated 16.10.2019 giving a set of directions. Thereafter, on 20.06.2020, third respondent made proceedings bearing reference Na.Ka.227/2020(B1) *inter alia* saying that based on surveyor's report, the water channel is not as per FMB sketch and has also referred to said lands. Thereafter, R2 has made proceedings dated 02.03.2022 bearing reference Na.Ka.No.1124/2020/A2 *inter alia* holding that water channel is in patta land and if the course of water channel is changed it would affect farmers / agriculturists and their livelihood. Thereafter, writ petitioner herein has filed a writ petition in W.P.No.29789 of 2022 assailing this 02.03.2022 order made by R2 and this writ petition was disposed of by another Hon'ble Division bench on 10.11.2022 *inter alia* based on submission of



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learned State Counsel that eight weeks time is required qua exercise of removal of encroachment.

5. In the aforementioned circumstances, R2 has made the impugned order saying that water channel in the patta land is natural and is not causing hindrance to anyone. In and vide impugned order, R2 has held that there is no ground to change the course of water channel.

6. Notwithstanding very many averments and grounds in the support writ affidavit, learned counsel before us projected her submissions on the point that aforementioned 20.06.2020 order of R3 and impugned order of R2 run into each other. Though we can return a verdict on this submission based on material before us, we refrain from doing so as we will now be relegating the matter to a Statutory appeal remedy and as the matter does not rest on this one point and other points qua facts do arise.

7. Issue notice to respondents.

8. Mr.A.Selvendran, learned Special Government Pleader



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accepts notice for respondents 1 & 3. Mr.T.Venkatesh Kumar, learned counsel accepts notice for second respondent.

9. Mr.A.Selvendran, learned State counsel submits that the impugned order is an order made under Section 10 of 'The Tamil Nadu Survey and Boundaries Act, 1923 (VIII of 1923)' {hereinafter 'said Act' for the sake of convenience and clarity} therefore, an appeal under Section 11 of said Act lies and Appellate Authority is Assistant Director of Surveyor, Krishnagiri District.

10. We, therefore suo-motu implead Assistant Director of Surveyor, Krishnagiri District {Appellate Authority} as fourth respondent.

11. Registry is directed to carry out necessary and consequential amendments in the case file and in the order before uploading / before issuing certified copy of this order.

12. We also find that under the said Act, there is a Subordinate



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Legislation i.e., set of rules which goes by name 'The Tamil Nadu Survey and Boundaries Rules, 1925' {hereinafter 'said Rules' for the sake of brevity}.

13. We find that captioned WP cannot be decided by answering the sole point that 20.06.2020 order of R3 and impugned order of R2 run into each other as there are other factual aspects which cannot be decided based on affidavits (as already alluded to supra) and it is necessary to look at certain factual aspects prevailing on the ground and therefore, we dispose of captioned WP holding that it is open to writ petitioner to prefer an appeal under Section 11 of said Act to Appellate Authority (R4) within prescribed time (if any) in accordance with said Act and said Rules. As regards prescribed time, writ petitioner will be entitled to claim the benefit of Section 14 of Limitation Act, 1963 with regard to time spent in captioned WP. If an appeal to R4 is preferred by writ petitioner, we direct R4 to consider the appeal on its own merits and in accordance with law, as expeditiously as the official business of R4 would permit.

14. Proceedings / orders of R4 disposing of appeal shall be communicated to writ petitioner and all concerned within seven working



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days under due acknowledgment.

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15. Captioned WP disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
20.06.2024

Index: Yes/No
Neutral Citation: Yes/No
Speaking/Non-speaking

mk

P.S:

Learned counsel on record for writ petitioner requested for return of original impugned order of R2 for pursuing statutory appeal remedy.

Registry is directed to return the original impugned order of R2 i.e., order dated 15.05.2023 bearing reference Na.Ka.No.1124/2020/A2 to learned counsel on record for writ petitioner forthwith under due acknowledgment.

M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,
mk

To



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