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W.P.No.17859 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.17859 of 2024
and
W.M.P. No.19595 of 2024 in W.P. No.17859 of 2024

M.Rajendran

... Petitioner

Vs.

1.The District Collector,
Collectorate, Thiruvallur District.

2.The Tahsildar,
Thiruvottriyur Taluk Office,
Tiruvallur Taluk, Tiruvallur District,
Chennai – 19.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the notice under Section 6 of Tamil Nadu Land Encroachment Act III of 1905 on 13.06.2024 and to quash the same and further direct the respondents to grant long term annual lease in S.No.10, No.44, Sadayankuppam Village.

For Petitioner : Mr.V.Ramamurthy

For Respondents : Mr.P.Balathandayutham,
Spl. Govt. Pleader

Page Nos.1/10



WEB COPY



W.P.No.17859 of 2024

ORDER

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

This order will now dispose of captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) and captioned 'Writ Miscellaneous Petition' (hereinafter 'WMP' for the sake of brevity) thereat.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 05.07.2024 which reads as follows:

'W.P.No.17859 of 2024
and
W.M.P.No.19595 of 2024
in
W.P.No.17859 of 2024

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

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed assailing a 'notice under Section 6 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of



W.P.No.17859 of 2024

1905)' {hereinafter 'said 1905 Act' for the sake of brevity} dated 13.06.2024' [hereinafter 'impugned notice' for the sake of brevity, convenience and clarity] qua '29 Ares or thereabouts land comprised in S.Nos.10 and 11 part in Sadayakuppam Village, Tiruvallur Taluk, Tiruvallur District' {hereinafter 'said land' for the sake of brevity}.

2. Mr.V.Ramamurthy, learned counsel on record for petitioner submits that prior to impugned notice, no notice under Section 7 of said 1905 Act was issued calling upon the writ petitioner to show cause. In other words, writ petitioner was not show caused prior to impugned notice is learned counsel's say.

3. Issue notice i.e., notice regarding admission to respondents.

4. Mr.C.Selvaraj, learned Additional Government Pleader accepts notice for respondents and requests for a short accommodation to get instructions and revert to this Court.

5. In the interregnum i.e., till next listing, there shall be an order of interim stay as prayed for in the captioned 'Writ Miscellaneous Petition' {hereinafter 'WMP' for the sake of brevity} i.e., W.M.P.No.19595 of 2024.

6. List the captioned WP and captioned WMP a fortnight hence under the cause list caption 'NOTICE REGARDING ADMISSION'. List on 19.07.2024.'



W.P.No.17859 of 2024

3. The aforementioned proceedings captures the crux and gravamen of the issue before us and therefore we are not setting out the same again. We deem it appropriate to write that it will suffice to say that the aforementioned earlier proceedings dated 05.07.2024 shall now be read as an integral part and parcel of this order.

4. Today, Mr.V.Ramamurthy, learned counsel for writ petitioner and Mr.P.Balathandayutham, learned Special Government Pleader for the two respondents are before us.

5. Adverting to the aforementioned earlier proceedings made in the previous listing on 05.07.2024, learned State counsel submits that Section 7 notice has infact been served on the writ petitioner, elaborating on this, learned State counsel submits that when the Village Assistant (கிராம உதவியாளர்) one Thiru.S.Sekar went over to said land for serving the Section 7 notice on the writ petitioner, the writ petitioner refused to receive the same and therefore it was affixed thereat. Learned State counsel placed before us a copy of the Section 7 notice that was affixed and a scanned reproduction of the same is as follows:



W.P.No.17859 of 2024

UIC 5110-7

(76) சதுரது தீமன லெது (பதித்)

1905 ம் ஆண்டு கொண்டு 3-வது நிலை ஆதாரப்படி சட்டத்தின் 7-வது பிரிவில் கீழ்
அறிவிப்பு

[illegible][illegible]

Copyright ©

திரு. ம. இராஜகமலாட்சு
14194 புதுநகர் போர்ட்
சென்னை - 10. தொழில்நுட்ப
பொருள்கள் - 600 003.

O/C [Signature]
28-05-2024
GALLIUM
SOLUBLE IN WATER AND ALKALIS.
Cadmium - GXX 119

[illegible]

தமிழ்நாட்டின்
பெரிய நகரம்

DMG 22 Jun
Seri

SCA
28/5/24



W.P.No.17859 of 2024

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6. As regards the aforementioned Section 7 notice, learned counsel for writ petitioner submits that the writ petitioner has not refused to receive the same. In this regard, the procedure to be followed in serving notices under Section 7, proceedings under Section 6 are left open and we deem it appropriate to say that these questions can be raised by the writ petitioner in a statutory appeal under Section 10 of said 1905 Act. To be noted an appeal under Section 10 of said 1905 Act will now be assailing the impugned order i.e., order dated 13.06.2024 made under Section 6 of said 1905 Act qua said land.

7. We also notice that it is open to the writ petitioner to seek stay under Section 10-B of said 1905 Act pending appeal. In this regard, we deem it appropriate to write that this Court has repeatedly held that said 1905 Act is a self contained Code as it provides for a noticee/alleged encroacher being show caused under Section 7 followed by proceedings/order under Section 6, taking into account the response of the noticee to the Section 7 notice which in turn can be assailed by way of a statutory appeal under Section 10 with provision



W.P.No.17859 of 2024

for further revision under Section 10-A and a provision for stay under Section 10-B pending appeal/revision qua a noticee to assail Section 6 proceedings/order.

8. In the case on hand, we leave open the question as to the procedure to be followed in serving notices under said 1905 Act. We may examine the same in another case where it becomes necessary, in other words, we are not expressing any opinion on the same in this matter and we relegate it to an appeal under Section 10. Section 7 of said 1905 Act makes it clear that the notice shall be served in such manner prescribed in Section 25 of The Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864) or in such other manner as the State Government may direct vide rules or orders. In the case on hand, this turns on factual disputation and therefore, we deem it appropriate to relegate it to the statutory appeal before R1 (District Collector, Tiruvallur District).

9. In the case on hand, if the writ petitioner files an appeal under Section 10 with a stay petition under Section 10-B therein, R1 which is the appellate authority shall consider the appeal on its own merits and in accordance with law *dehors* any observation made in this order i.e.,



W.P.No.17859 of 2024

untrammelled by this order.

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10. To enable the writ petitioner to prefer an appeal, the impugned order will now be kept in abeyance for a fortnight from today i.e., till 28.07.2024.

11. Thereafter, the impugned order and further course will depend on the appeal and prayer for interim order thereat under Sections 10 and 10-B of said 1905 Act respectively. All the rights and contentions of both sides are preserved and all questions are left open for being canvassed in the statutory appeal.

12. Captioned WP is disposed of in the aforesaid manner with the aforementioned directive/observation and preservation of rights. Consequently, captioned WMP thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
19.07.2024

Index : Yes / No
Neutral Citation : Yes / No
mmi

P.S. I: Upload forthwith

P.S.II : All concerned including the Revenue Authorities concerned to act forthwith on the uploaded soft copy of this proceedings as

Page Nos.8/10



W.P.No.17859 of 2024

uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.

To

- 1.The District Collector,
Collectorate,
Thiruvallur District.
- 2.The Tahsildar,
Thiruvottriyur Taluk Office,
Tiruvallur Taluk,
Tiruvallur District,
Chennai – 19.



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W.P.No.17859 of 2024

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

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W.P.No.17859 of 2024

19.07.2024

Page Nos.10/10