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W.P.Nos.18256, 18259 & 18263 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.Nos.18256, 18259 & 18263 of 2024

and

W.M.P.Nos.20039, 20042 & 20043 of 2024
in W.P.Nos.18256, 18259 & 18263 of 2024

1.N.Suresh	... Petitioner in W.P.No.18256 of 2024
2.T.Ramachandran	... Petitioner in W.P.No.18259 of 2024
3.S.Selvi	... Petitioner in W.P.No.18263 of 2024

Vs.

1.The District Collector
Tirupattur, Tirupattur District.

2.The Tahsildar
Ambur, Tirupattur Taluk.

3.The Block Development Officer
Madhanur Union
Tirupattur District.

4.K.Jaganathan	... Respondents in all WPs
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Common Prayer : Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari calling for the records on the file of the 3rd respondent in proceedings No.Nil dated 25/10/2022, signed and served on the petitioners on 22.01.2024 and the consequent proceedings No.Nil dated 13.12.2023 and quash the same as illegal, incompetent and without jurisdiction and for consequential orders.

For Petitioner (in all WPs)	:	Ms.K.Abhirame for Ms.V.Srimathi
For Respondents (in all WPs)	:	Mr.P.Balathandayutham Special Government Pleader for R1,R2 Mr.B.Vijay Additional Government Pleader for R3

COMMON ORDER

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

This common order will now dispose of the captioned three 'Writ Petitions' ['WPs' for the sake of brevity and convenience] and 'Writ Miscellaneous Petitions' ['WMPs' for the sake of brevity and convenience] thereat.



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2. Captioned WPs pertain to land comprised in 'Survey No.50/98 in Nacharkuppam Village, Ambur Taluk, Tirupattur District' [hereinafter 'said land' for the sake of brevity]. The said land is situate in Madhanur Panchayat Union in Tirupattur District.

3. Ms.K.Abhirame, learned counsel representing the counsel on record for writ petitioners in captioned WPs submitted that each of the three writ petitioners have been visited with two notices each issued by R3, the Block Development Officer, Madhanur Panchayat Union, Tirupattur; that one is signed by R3 on 13.12.2023 [hereinafter 'I impugned notice'] and another is dated 25.10.2022 but signed by R3 on 22.01.2024 [hereinafter 'II impugned notice']. Learned counsel very fairly submitted that I impugned notice and II impugned notice *inter alia* alleging encroachment and calling upon removal of same were served on each of the writ petitioners on 13.12.2023 and 22.01.2024 respectively.

4. The kernel or otherwise the crux and gravamen of captioned WPs is I and II impugned notices being assailed on the point that said land is not a



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road poromboke but grama natham.

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5. Issue notice to official respondents.

6. Mr.P.Balathandayutham, learned Special Government Pleader accepts notice for R1 and R2. Mr.B.Vijay, learned Additional Government Pleader accepts notice for R3.

7. We find that the legal perimeter or to put it contextually, the legal scope within which the impugned WPs perambulate is very limited and therefore, with the consent of counsel for writ petitioners and State counsel, main WPs were taken up. We are acutely conscious that the fourth respondent [R4] who is a private respondent is not before us and we will be putting in a safety valve as regards R4.

8. We find that I and II impugned notices have been issued under Section 131(2) of 'The Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' [hereinafter 'said Act'] read with Section 222 thereat. Owing to the



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nature of submission before us, we deem it appropriate to test if impugned notices have been issued by a competent authority and we do so. We find that Section 131(2) notice under said Act can be issued by two authorities namely 'Executive Authority' or 'Commissioner' and both these terms are defined under said Act, while *Executive Authority* is defined vide Section 2(11) of the said Act, *Commissioner* is defined vide Section 2(6) of the said Act. Section 2(11) takes us to Section 83 of the said Act and Section 2(6) takes us to Section 85 of the said Act.

9. Section 131(2) reads as below :

'131. Prohibition against obstructions in or over public roads etc.

(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the officer of the Revenue Department, and it shall be the duty of the Executive Authority or the Commissioner concerned either suo motu or on obtaining a report from the Village Administrative Officer in this regard to institute proceedings under this Act and secure the removal of the encroachments within such



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time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal.'

10. Section 222 reads as below :

'222. Time for complying with notice, order etc., and power to enforce in default :

(1) Whenever by any notice, requisition or order under this Act, or under any rule, bye-law or regulation made thereunder, any person is required to execute any work, to take any measures or to do anything, a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measure taken or the thing done.

(2) If such notice, requisition or order is not complied with within the time so named :-

(a) the Executive Authority of the Village Panchayat or the Commissioner or the Secretary or the Collector, as the case may be, may cause such work to be executed, or may take any measure or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order,



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and

(b) if no penalty has been specially provided in this Act for failure to comply with such notice, requisition or order, the said person shall be punishable with fine not exceeding fifty rupees for every such offence.'

11. Section 2(11) reads as below:

'2(11) "Executive Authority" means a person notified as such by the Government under Section 83;'

12. Section 2(6) reads as below:

'2(6) "Commissioner" means the Commissioner of a Panchayat Union;'

13. Section 83 reads as below :

'83. Executive Authority of Village Panchayat:- The Government may, by notification, appoint any person, who shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the Executive Authority of a Village Panchayat.'



14. Section 85 reads as below :

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'85. Commissioner:- (1) *A Commissioner shall be appointed by the Government in the case of each Panchayat Union Council. Such Commissioner shall ordinarily be the Development Officer appointed in pursuance of the National Extension Service Scheme of Community Development for the Panchayat Development Block.*

(2) *No recovery shall be made from the Panchayat Union Council towards the salary and allowances paid to any Commissioner or towards his leave allowances, pension and Provident Fund.*

(3) *The Government shall have power to regulate the method of recruitment, conditions of service, pay and allowances and discipline and conduct of the Commissioner appointed under sub-section (1).*

(4) *The Commissioner shall :-*

(a) *have the right to attend the meetings of the Panchayat Union Council or of any committee thereof and take part in the discussions thereat, but without the right to move any resolution or to vote;*

(b) *attend any meeting of the Panchayat Union Council or of any Committee thereof if required to do so by the Chairman;*

(c) *carry into effect the resolutions of the Panchayat Union Council;*



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(d) furnish to the Panchayat Union Council such periodical reports regarding the progress made in carrying out resolutions of that body and in the collection of taxes as the council may direct;

(e) control all the officers and servants of the Panchayat Union Council;

(f) perform all the duties specifically imposed and exercise all the powers conferred on the Commissioner by this Act and subject, whenever it is hereinafter expressly so provided, to the sanction of the Panchayat Union Council and subject also to all other restrictions, limitations and conditions hereinafter imposed, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfilment of the purposes of this Act.

(5) Notwithstanding anything contained in sub-section (2) of Section 16 and subject to all other provisions of this Act and the rules made thereunder, the Panchayat Union Council shall have power to issue such specific directions as it may think fit regarding the performance by the Commissioner of any of the functions assigned to him under this Act;

Provided that where such directions relate to any National Extension Service Scheme of Community Development or any other scheme specially entrusted by the Government to the Panchayat Union Council,



the directions issued by the council shall be in conformity with the terms and conditions of such entrustment.

(6) Subject to any directions given or restrictions imposed by the Government or the Panchayat Union Council, the Commissioner may, by an order in writing, delegate any of his functions to any officer or servant of the Panchayat Union Council or to any servant of the Government. The exercise or discharge of any functions so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the Commissioner and shall also be subject to his control and revision.'

15. A careful and conjoint reading of the above provisions make it clear that the third respondent qualifies as a Commissioner, is learned State counsel's say.

16. Be that as it may, as regards the impugned notices, if the writ petitioners do not comply with the call therein, the recourse is to resort to 'The Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905)' [hereinafter 'said 1905 Act'] qua the revenue authorities. This is clear from the language



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in which Section 131(2) of said Act is couched.

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17. Learned State counsel very fairly submits that in case on hand, the State would now be resorting to proceedings under said 1905 Act.

18. It would be evident from the discussion thus far that the only disputation is whether said land is 'road poromboke' or 'grama natham'. We refrain from expressing any opinion on this disputation and also we refrain from any opinion on grama natham, as we have repeatedly held that said 1905 Act is self-contained Code as it provides for any alleged encroacher being show-caused under Section 7, followed by an order under Section 6 which is appealable under Section 10 with provision for revision under Section 10-A thereafter. To be noted show cause notice/notices shall hereinafter be referred to as 'SCNs' in plural and 'SCN' in singular for the sake of brevity and convenience.

19. As regards R4, the safety valve which would be put in, when writ petitioners are show caused under Section 7 of said 1905 Act, is R4 shall also



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be intimated/show caused if it becomes necessary.

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20. When the writ petitioner are show caused vide Section 7 of said 1905 Act, all questions are left open for the writ petitioners to raise in response to SCN. This obviously means that the revenue authorities undertaking the drill under said 1905 Act should consider the response. As regards R4, if there is any representation, the same shall be considered. We are of the considered opinion that personal hearing is not statutorily imperative but it is always open to the authority concerned if deemed appropriate and necessary (depending on response of notices to SCNs) as the writ petitioners would now be show caused.

21. We dispose of the captioned WPs recording the stated position of the learned State counsel and leaving open all questions as alluded to supra. Consequently, captioned WMPs thereat are also disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
09.07.2024

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Index : Yes

Speaking

Neutral Citation : Yes / No
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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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