



WEB COPY

W.P.No.19740 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.19740 of 2024

V.Muniyan
S/o.Velan

... Petitioner

Vs.

1. The District Collector
District Collectorate
Kallakurichi District
2. The Revenue Divisional Officer
Thirukovilur & Taluk
Kallakurichi District
3. The Tahsildar
Vanapuram Taluk
Kallakurichi District
4. The Block Development Officer
Block Development Office
Rshivandhiyam Block

Page Nos.1/8



WP.No.19740 of 2024

Kallakurichi District
Govindan

... Respondents

WEB COPY

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing respondents 1 to 4 to remove the encroachment in Survey No.145/17 at Pearaal Village, Noorolai Post, Vanapuram Taluk, Kallakurichi District.

For Petitioner : Mr.V.Gunasekar

For Respondents : Mr.P.Balathandayutham
Spl.Govt.Pleader for R1 to R3

Mr.S.Premkumar
Government Advocate for R4

ORDER

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

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed with a mandamus prayer qua R1 to R4 seeking removal of alleged encroachment in 'S.No.145/17, 140 Pearaal Village, Vanapuram Taluk, Kallakurichi District' [hereinafter 'said land' for the sake of brevity and convenience].

2. Mr.V.Gunasekar, learned counsel for writ petitioner is before us.



WP.No.19740 of 2024

3. Learned counsel for writ petitioner submits that R3 has already written a undated communication to R4 in December of 2023 [the rubber stamp shows date as 20.12.2023] and this communication has been obtained by the writ petitioner by taking the 'Right to Information Act, 2005' ['RTI' for the sake of brevity] route regarding alleged encroachment in said land. Learned counsel submits that said land is a public road.

4. Issue notice regarding admission to official respondents.

5. Mr.P.Balathndayutham, learned Special Government Pleader accepts notice for R1 to R3 and Mr.S.Premkumar, learned Government Advocate accepts notice for R4.

6. Learned State counsel submits on instructions that annexure to aforementioned December of 2023 communication from R3 to R4 is Form 1, which is a generic notification that there is encroachment in said land. At this juncture, learned counsel for writ petitioner submitted that he has obtained a copy of this notification also by taking the RTI route and a scanned reproduction of the same, as placed before us is as follows:



W.P.No.19740 of 2024

பெரிய
பெரிய பள்ளி இரண்டு
பெரிய பள்ளி இரண்டு

பிரதேசத்தின் பெயர் : டி.டி. - சிவநாமம்
 கட்டிடத்தின் பெயர் : அண்ணாபுரம் அருங்காட்சியகம்
 முக்கியமான அம்சங்கள் : புகைப்படம், புகைப்படம், புகைப்படம்

[illegible]

TANJILUR
MARAPURAM.

சென்னை: தமிழக அரசு தனது பணியை நிறைவேற்றி வருவதாக தெரிவித்துள்ளது.

191. *Chrysomelidae*, 34 Sp. 1, 12 Pers.
Chrysomelidae, 34 Sp. 1, 12 Pers.

7. In the light of the narrative thus far, we find that the legal perimeter within which the captioned WP should now perambulate has dwindled vastly and in this view of the matter and also taking into account the facts and circumstances and nature of the case, with the consent of learned counsel for writ petitioner and learned State counsel, main WP is taken up.

8. We are acutely conscious that R5 (private respondent) is not before this Court and therefore, we shall be putting in a safety valve *infra* elsewhere



WP.No.19740 of 2024

in this order qua R5 as captioned WP is being disposed of in the Admission Board.

9. Reverting to the stated position of learned State counsel, learned State counsel has submitted on instruction that pursuant to the aforementioned generic form, the Village Administration Officer would now initiate proceedings under Section 131(2) of 'the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' [hereinafter 'said Act' for the sake of brevity]. Section 131 (2) of said Act reads as follows:

'131(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] [Substituted for the words 'it shall be the duty of the Executive Authority or the Commissioner concerned to institute proceedings under this Act' by Tamil Nadu Panchayats (Third Amendment) Act, 1999 (Tamil Nadu Act 29 of 1999).] and secure the removal of the encroachments within such



WP.No.19740 of 2024

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. Learned State counsel elaborating on the aforementioned submission made it clear that if removal of encroachment is not secured within the period specified, the Revenue Department will resort to 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of brevity and convenience]. This means that R5 will be show-caused vide Section 7 of said 1905 Act is learned State counsel's say.

11. The stated position of the learned State counsel that R5 will be show-caused vide Section 7 of said Act is the safety valve qua R5 which had been alluded to supra. In this regard, we leave open all questions and we preserve all the rights and contentions of R5 to raise the same when R5 is show-caused under Section 7 of said 1905 Act.



WP.No.19740 of 2024

12. Let the proceedings go on on their own merits and in accordance with law. Let the Revenue Department take a call on merits of the matter in accordance with law untrammelled by this order.

Captioned WP is disposed of recording the stated position of learned State counsel *inter alia* saying that the Statute itself provides adequate safety valve qua rights and contentions of the R5 who is the alleged encroacher. Though obvious, we make it clear that we have not expressed any view or opinion on merits of the matter and we have preserved all the rights and contentions of R5 in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
22.07.2024

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



WP.No.19740 of 2024

M.SUNDAR, J.,
and

K.GOVINDARAJAN THILAKAVADI, J.,

gpa

To

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W.P.No.19740 of 2024

22.07.2024

Page Nos.8/8