



W.P.No.19110 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.19110 of 2024

and

W.M.P. No.20958 of 2024 in W.P. No.19110 of 2024

S.Sivashanmuga Balasubramaniyan,
Trustee,
Arupathu Moovar Mutt
(Moolanur Muthusamy Gounder Trust)
Opposite to Arulmighu Mahudeswarar
Veeranarayana Perumal Temple,
Kodumudi, Erode District.

... Petitioner

Vs.

- 1.The District Collector,
Erode District,
Erode.
- 2.The Tahsildar,
Kodumudi Taluk,
Erode District.
- 3.The Assistant Engineer,
PWD, Water Resources Department,
River Conservation Division,
Karur.



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4.The Executive Officer,
Kodumudi Town Panchayat (Selection Grade),
Kodumudi, Erode District.

5.The Executive Engineer,
Water Resources Department,
River Conservancy Division,
Cantonment, Trichy – 01.

... Respondents

(R5 suo motu impleaded vide order
dated 11.07.2024 in W.P.No.19110
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 of the third respondent in his Letter No.80/Koo.6/2024 dated
28.06.2024 (served in person on 04.07.2024), quash the same as
illegal and incompetent and consequently direct the 1st respondent to
dispose the statutory appeal filed by the petitioner under Section 10 of
The Tamil Nadu Land Encroachment Act, 1905.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.T.K.Saravanan,
Government Advocate
for R1 to R3 and R5
Mr.Tamilnidhi,
Addl. Govt. Pleader for R4

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ORDER

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

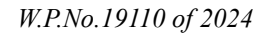
Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been presented in this Court on 08.07.2024 with a prayer for issue of a writ of certiorarified mandamus.

2. Certiorari is qua an order dated 28.06.2024 bearing reference 'கடித எண்.80/கோ.6/2024' made by R3 (The Assistant Engineer, PWD, Water Resources Department, River Conservation Division, Karur)' [hereinafter 'impugned order' for the sake of convenience and clarity]. To be noted, this is an order but the reference refers to letter number but we are really not concerned with that aspect of the matter. The mandamus limb of the prayer seeks a directive to R1 (The District Collector, Erode District, Erode) to dispose of writ petitioner's statutory appeal under Section 10 of 'The Tamil Nadu Land Encroachment Act, 1905' (hereinafter 'said 1905 Act' for the sake of brevity, convenience and clarity). Though not mentioned in the prayer, we find that Section 10 appeal is dated 04.06.2024.



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3. Short facts are that the matter pertains to 'lands comprised in Survey No.671/1 in Salaipudhur Village, Kodumudi Taluk, Erode District' (hereinafter 'said land' for the sake of convenience and clarity) and alleged encroachment in said land to an extent of 0.06.60 hectares by construction of what is described as Arubathu Moovar Mutt (to be noted, the total extent of said land is 79.70.0 hectares); that the writ petitioner was visited with a notice issued by R3 signed on 03.12.2019 and this notice is under Section 7 of said 1905 Act; that on receipt of this Section 7 notice, the writ petitioner did two things i.e., writ petitioner filed a writ petition being W.P.No.35306 of 2019 in this Court assailing the Section 7 notice and the writ petitioner also sent a reply dated 19.12.2019 to the Section 7 notice; that thereafter R3 made an order under Section 6 of said 1905 Act and this order is dated 22.05.2024; that assailing this 22.05.2024 order, writ petitioner has preferred an appeal under Section 10 of said 1905 Act and this appeal was preferred before R1; that this appeal is dated 04.06.2024 as already alluded to supra; that along with this appeal, writ petitioner has also filed stay petition under Section 10-B of said 1905 Act; that the writ petitioner was awaiting disposal of the Section 10 appeal/stay petition thereat on its own merits and in accordance with law; that it is

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<https://www.mhc.tn.gov.in/judis>



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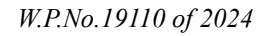
5. Issue notice.

6. Mr.T.K.Saravanan, learned Government Advocate accepts notice for R1, R2 and R3. Mr.Tamilnidhi, learned Additional Government Pleader accepts notice for R4.

7. Learned State counsel had written instructions.

8. Considering the limited legal perimeter within which the captioned WP should perambulate, with the consent of counsel on both sides, captioned main WP is taken up in the Admission Board.

9. Learned State counsel submitted that aforementioned Sections 6 and 7 notices have been issued by R3 in his capacity as 'Authorised Officer'. A careful perusal of Section 7 of said 1905 Act makes it clear that Section 7 notice can be issued by six categories of officers and they are (i) Collector, (ii) Tahsildar, (iii) Deputy Tahsildar, (iv) Revenue Inspector (v) Authorised Officers and (vi) any other Officer specified by the State Government in this behalf (not being Authorised Officer), an appeal would lie to an Officer specified by the State Government vide Section 10(aa) and not to R1. Learned State counsel also submitted that R1 has forwarded the writ petitioner's

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10. We carefully considered the submissions made on both sides.



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Before we proceed further, we record the stated position of the learned State counsel that 'Executive Engineer, Water Resources Department, River Conservancy Division, Cantonment, Trichy – 01 is the appellate authority qua Section 10(aa) of said 1905 Act' (hereinafter 'Appellate Authority under Section 10(aa)' for the sake of convenience and clarity). To be noted, Section 10(aa) was brought in by way of insertion in the said 1905 Act in 1975.

11. We find that the aforementioned communication dated 08.07.2024 (scanned and reproduced supra) coincides with the date of filing of captioned WP (as already alluded to supra, captioned WP has been filed on 08.07.2024). We deem it appropriate to leave it at that and stop with saying that we have noticed this.

12. Reverting to the legal drill on hand, we find that the impugned order has been made by R3 and not by Appellate Authority under Section 10(aa) qua this case. More importantly, we find that R3 is none other than the authority who has made the order which has been assailed in aforementioned statutory appeal. This by itself is good enough to dislodge the impugned order.



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13. We deem it appropriate to suo motu implead Executive Engineer, Water Resources Department, River Conservancy Division, Cantonment, Trichy – 01 as R5.

14. Issue notice to R5 also. Mr.T.K.Saravanan, learned Government Advocate accepts notice for R5 also.

15. Registry to carry out necessary and consequential amendments in the case file before uploading and before issuing certified copy of the order.

16. Ergo, the sequitur is as follows:

16.1 Impugned order dated 28.06.2024 bearing reference 'கடித எண்.80/கோ.6/2024 made by R3 is quashed/set aside;

16.2 We make it clear that the impugned order made by R3 has been set aside only on the ground of lack of jurisdiction. To put it differently, we make it clear that we



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have not expressed any view or opinion on the merits and that the impugned order of R3 has not been set aside on merits;

16.3 Statutory appeal and stay petition thereat made by writ petitioner being appeal dated 04.06.2024 and the stay petition thereat under Section 10-B shall now go before Appellate Authority under Section 10(aa) qua this case i.e., R5;

16.4 R5 shall now hear out aforementioned 04.06.2024 appeal of the writ petitioner construing the same as an appeal under Section 10(aa) of said 1905 Act on its own merits and in accordance with law;

16.5 The order that is made in the appeal by R5 shall be duly communicated to writ petitioner under due acknowledgement within five working days from the date on which the order is made by the Appellate Authority under Section 10(aa) i.e., R5.



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17. Captioned WP is disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
11.07.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The District Collector,
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- 2.The Tahsildar,
Kodumudi Taluk, Erode District.
- 3.The Assistant Engineer,
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River Conservation Division, Karur.



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and
K.GOVINDARAJAN THILAKAVADI, J.,**

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