



W.P.No.35058 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.35058 of 2024

Parthiban
S/o.Periyathambi

... Petitioner

Vs.

1. The District Collector
Villupuram District - 605 602.
2. The Sub-Collector
Tindivanam
Villupuram District - 604 001.
3. The Tahsildar
Tindivanam Taluk
Villupuram District - 604 001.
4. The Block Development Officer
Olakkur Block Panchayat,
Olakkur
Villupuram District - 604 305.
5. Kathirvel
S/o.Chinna Thambi Gounder

... Respondents

Page Nos.1/9



W.P.No.35058 of 2024

Prayer :

WEB COPY

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the 4th respondent to take appropriate action as instructed by the 3rd respondent vide his communication dated 11.09.2021 and to remove the encroachment made in Survey No.62 of Nallathur Village, Tindivanam.

For Petitioner : Mr.P.Sesubalan Raja
For Respondents : Mr.M.S.Arasakumar
Government Advocate
for R1 to R3
Mr.E.Sundaram, for R4

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to 'land comprised in S.No.62 admeasuring 0.11.5 Ares in Nallathur Village, Olakkur Panchayat, Tindivanam District' {hereinafter 'said land' for the sake of brevity}.



W.P.No.35058 of 2024

2. The case of the writ petitioner is that the said land has been classified as 'Government Poromboke' and it is a road which vests in Panchayat Union.

3. Learned counsel draws our attention to a letter dated 11.09.2021 bearing reference Na.Ka.A4/3148/2021 from R3 [The Tahsildar, Tindivanam Taluk, Villupuram District] to R4 [The Block Development Officer, Olakkur Block Panchayat, Olakkur, Villupuram District]. Learned counsel submits that there has been no further action in spite of aforementioned 11.09.2021 letter.

4. Issue notice to official respondents.

5. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1 to R3 and Mr.E.Sundaram, learned counsel accepts notice for R4.

6. Mr.M.S.Arasakumar, learned State Counsel, on instructions submits that action will now be taken 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].

7. Considering the limited scope of the captioned WP, main WP was taken up in the Admission Board with the consent of both sides.



W.P.No.35058 of 2024

8. Section 131 of said Act is a provision which vests the Executive Authority with power to prohibit obstruction over public roads etc., To be noted, the term 'Executive Authority' is a defined term under said Act, it has been defined in Section 2(11) and going by Section 2(11), there is little difficulty (no difficulty) in discerning that R4 is the Executive Authority. Section 131(2) of said Act reads as follows:

"131. Prohibition against obstructions in or over public roads, etc., (1)

(a)

(b)

(c)

(d)

(f)

(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 motto 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 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.'

9. A careful perusal of Section 131 of said Act makes it clear that a communication has to be sent to the persons concerned (alleged encroachers) if there is any encroachment in public road and if the noticees do not remove the encroachments within the time specified in the communication, the Revenue Department shall institute proceedings under 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity, convenience and clarity}.

10. This Court has repeatedly held that 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' which is being referred to as 'said 1905 Act' is a self contained Code. The reason *inter-alia* is that there is a provision to have the alleged encroacher show caused under section 7 of said 1905 Act followed by an order (considering the cause shown). The order under section 6 is appealable under section 10 [District



W.P.No.35058 of 2024

Collector is the appellate authority] and there is a provision for further revision to the Government under Section 10-A [Section 10-A(3) to be precise] of said 1905 Act. Pending appeal / revision, there is a provision for making interim prayer vide Section 10-B of said 1905 Act. Therefore, said 1905 Act is a self contained Code in every sense of the expression.

11. A careful perusal of statutory scheme of said 1905 Act makes it clear that it provides for the alleged encroachers being show-caused under Section 7 of said 1905 Act and an order being made by the jurisdictional Tahsildar i.e., jurisdictional Revenue Authority under Section 6 which in turn is appealable under Section 10 and provision for further revision under Section 10-A. There is also a provision for interim order i.e., interim stay pending appeal/ revision vide Section 10-B of said 1905 Act. This in sum and substance is the reason that this Court has repeatedly held that said 1905 Act is a self-contained code.

12. Reverting to the case on hand, in the captioned WP, R4 [Block Development Officer] is the Executive Authority. It is seen from the averments in the support affidavit that a Field Survey has already been



W.P.No.35058 of 2024

conducted by the Revenue Inspector and he submitted his report on 11.09.2021 stating that there is an encroachment in said land. Based on the report, R3 has sent a letter dated 11.09.2021 to R4 to take appropriate action to remove the encroachment and to send a report. R4 [Block Development Officer] is directed to act upon the letter dated 11.09.2021 by due process of law and by putting R5 (private respondent) and all other concerned on notice. This means that all rights and contentions of R5 are preserved / protected.

In the light of the narrative thus far, captioned WP is disposed of. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

02.12.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

To

Page Nos.7/9



WEB COPY



W.P.No.35058 of 2024

1. The District Collector
Villupuram District - 605 602.
2. The Sub-Collector
Tindivanam
Villupuram District - 604 001.
3. The Tahsildar
Tindivanum Taluk
Villupuram District - 604 001.
4. The Block Development Officer
Olakkur Block Panchayat,
Olakkur
Villupuram District - 604 305.



WEB COPY



W.P.No.35058 of 2024

M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

mk

W.P.No.35058 of 2024

02.12.2024

Page Nos.9/9