



W.P.No.32917 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2024

Coram

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

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.32917 of 2024

&

W.M.P.No.35735 of 2024 in W.P.No.32917 of 2024

Ali Kutty

S/o.Pappu

.. Petitioner

VS

1. The District Collector

Collectorate

Udhagamandalam

The Nilgiris

2. The District Revenue Officer

Office of the DRO

Udhagamandalam

The Nilgiris

3. The Thasildar

Taluk Office, Pandalur

The Nilgiris



W.P.No.32917 of 2024

4. The Revenue Inspector
Taluk Office, Pandalur Taluk
The Nilgiris

5. The Municipal Commissioner
Nelliyalam Municipality
Pandalur Taluk
The Nilgiris

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the first respondent to consider and pass orders in the petitioner's appeal filed under Section 10 of the Tamil Nadu Encroachment Act, 1905 dated 10.06.2024, consequently restrain the respondents 3 to 5 from interfering with the peaceful possession of the petitioner's property categorised as Grama Natham as per revenue records.

For Petitioner : Ms.Thanga Vadhana Balakrishann

For Respondents : Mr.T.K.Saravanan
Government Advocate

ORDER

(Order of the Court was made by M.SUNDAR, J.)

Captioned writ petition has been filed with a mandamus prayer qua
a statutory appeal dated 10.06.2024.



W.P.No.32917 of 2024

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2. Ms.Thanga Vadhana Balakrishnan, learned counsel on record for writ petitioner submits that said appeal is one under Section 10 of '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} assailing an order dated 09.05.2024 made by R3 (jurisdictional Tahsildar).

3. Learned counsel submits that compound wall has already been demolished and requests for a mandamus to R1 to dispose of said appeal.

4. Issue notice to respondents.

5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for all five respondents.

6. Learned State counsel, on instructions, submits that the appeal is pending.

7. The point is, there is a provision under said 1905 Act vide Section 10-B to pray for stay pending decision in an appeal. Section 10-



W.P.No.32917 of 2024

B of said Act reads as follows:

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'10-B. Stay pending decision in appeal or revision. _ Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, [the appellate authority] [the Commissioner of Land Administration] or the State Government, as the case may be, may, by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised.'

8. Learned counsel for writ petitioner submits that a stay petition under Section 10-B has been filed but learned counsel for writ petitioner submits that a copy of the stay petition said to have been filed has not been placed before us. However, learned counsel draws our attention to paragraph 8 of the support affidavit and submits that there is an averment that an interim stay petition under Section 10-B of said 1905 Act has been filed.

9. If there is a stay petition under Section 10-B of said 1905 Act, R1 shall consider the same as expeditiously as his business would permit.

To be noted, we make it clear that if a copy of the interim stay petition



W.P.No.32917 of 2024

under Section 10-B of said 1905 Act had been placed before us, we might have taken a slightly different view. Nonetheless, we take this view as a one off case in which 10-B petition though said to have been filed has not been placed before us.

10. Considering the short legal perimeter within which the captioned matter perambulates, the main writ petition was taken up with the consent of both sides and the same is disposed of by writing that there is no compelling reason for issue of mandamus but there will only be a simple observation (as a one off case) that it is open to R1(Collector) to take up interim stay petition under Section 10-B of said Act (if there is one) and dispose of the same as expeditiously as the business of R1 would permit.

11. Though obvious, we make it clear that this Court not issuing mandamus shall not be construed as there being no need for R1 to dispose of said appeal. We make it clear that R1 can dispose of said appeal on its own merits and in accordance with law in usual course of



W.P.No.32917 of 2024

business of R1.

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12. Captioned writ petition is disposed of in the aforesaid manner.

Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

[M.S.,J] [K.R.S.,J]

11.11.2024

Index: Yes/No

Neutral Citation: Yes/No

gpa



W.P.No.32917 of 2024

To

WEB COPY

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WEB COPY



W.P.No.32917 of 2024

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gpa

W.P.No.32917 of 2024

11.11.2024