



WEB COPY



W.P.No.33163 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

Coram

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

and

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

W.P.No.33163 of 2024

&

W.M.P.No.35913 of 2024

in

W.P.No.33163 of 2024

C.Kumar

S/o.Chandhran

.. Petitioner

VS

1. The District Collector

Thiruvallur District

2. The Tahsildar

Avadi Taluk (Paruthipattu Village)

Avadi, Thiruvallur District

3. The Assistant Executive Engineer

Avadi Taluk, PWD

Avadi, Thiruvallur District

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the entire records on the file of second respondent relating to the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 pasted on the wall, dated nil and quash the same as illegal, unwarranted and in-operative in law.

For Petitioner : Mr.R.Venkatesan

ORDER

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

Captioned writ petition has been filed assailing a 'notice/order' under Section 6 of 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'impugned notice/order' and 'said 1905 Act' for the sake of brevity, convenience and clarity].

2. 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 followed by an order (considering the cause



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shown). The order under section 6 is appealable under section 10

[District 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.

3. As against a notice / order under 6 of said 1905 Act, a statutory appeal is available under Section 10 of said 1905 Act and the Appellate Authority is R1 (District Collector, Thiruvallur District).

4. This Court having carefully considered the case file, the facts and circumstances of the case and the submissions made by Mr.R.Venkatesan, learned counsel for writ petitioner, finds that this is a fit case to exercise self-restraint qua alternate remedy. It is made clear that alternate remedy rule is no doubt not a absolute rule and it is a rule



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of discretion. Nonetheless, in the light of facts and circumstances of the case and in the light of the submissions made by writ petitioner, we exercise self-restraint.

5. Captioned matter does not pass muster in the Admission Board as nothing prevented the writ petitioner from filing a statutory appeal under Section 10 of said Act. This means that the captioned writ petition fails.

6. Ergo, the sequitur is captioned writ petition is dismissed. Consequently, captioned CMP thereat is also dismissed. Considering the submissions made, we refrain from imposing costs.

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

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Index: Yes/No

Neutral Citation: Yes/No

gpa



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