IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.33808 of 2024
and
W.M.P.No.36622 of 2024
in
W.P.No.33808 of 2024

K.Rajendren
S/o.Kailasa Gounder ... Petitioner

Vs.

1. The District Collector
Cuddalore District
Manjakuppam
Cuddalore - 607 001.

2. The Revenue Divisional Officer
Cuddalore District
Manjakuppam,
Cuddalore - 607 001.

3. The Tahsildar
Veppur Taluk Office
Near Bus Stand, Veppur
Cuddalore - 606 304. ... Respondents

Prayer :

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 impugned order in Na.Ka.V9/171020/2024 dated 20.08.2024 passed by the first respondent and quash the same and consequently, direct the respondents to mutate the revenue records and issue patta to the petitioner for the property situated in Survey Nos.136/1 and 136/2 admeasuring a total extent of 10 acres and 2 cents situated at Kolavoi Village, Veppur Taluk, Cuddalore District.

For Petitioner : Ms.N.Fidelia
For Respondents : Mr.M.S.Arasakumar
Government Advocate

ORDER

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

This is the third round of litigation in this Court on the same subject matter.

2. Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to 'land admeasuring 10 acres and 2 cents or thereabouts (together with a residential house thereon) in Survey Nos.136/1 and 136/2, Kolavai Village, Veppur Taluk, Cuddalore District' [hereinafter 'said Property' for the

sake of brevity].

3. Ms.N.Fidelia, learned counsel on record for writ petitioner, who is before us submits that said property was purchased in auction on 20.02.1969 by one Mr.Vellappa Goundar, son of Mr.Palaniappa Goundar, who is writ petitioner's paternal uncle.

4. Short facts are, post such purported auction purchase on 20.02.1969, auction purchaser was in possession and enjoyment of said property; that auction was cancelled by jurisdictional 'Revenue Divisional Officer' ['RDO'], Virudhachalam in and by an order dated 31.01.1973 bearing reference D.Dis.No.232/73; that thereafter on 13.11.1992, a notice was issued by R3 [The Tahsildar, Veppur] i.e., jurisdictional Tahsildar *inter alia* saying that noticee is an encroacher qua said property and calling upon the noticee to apply for lease, if so advised and if so desired; that neither this cancellation of auction on 31.01.1973 nor this notice dated 13.11.1992 were challenged and both have attained finality; that thereafter there was a lull for nearly two decades; that after a lull for nearly two decades on 18.05.2022 a

notice under Section 7 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} was issued; that Section 7 of said Act is in the nature of 'Show Cause Notice' {'SCN'}; that noticee (writ petitioner) responded through his lawyer; that thereafter, an order was made by R3 under Section 6 of said Act and this order is dated 21.06.2023; that this order under Section 6 of said Act came to be made by R3 after giving an opportunity to writ petitioner and after taking statements from writ petitioner; that this order dated 21.06.2023 under Section 6 of said Act was assailed by writ petitioner obviously, under Section 10 of said Act; that in the *interregnum,* writ petitioner filed W.P.No.12142 of 2023 in this Court assailing Section 7 notice dated 18.05.2022; that this writ petition was disposed of on 20.04.2023 *inter alia* directing the third respondent to consider the writ petitioner's response; that it is to be noted that this W.P.No.12142 of 2023 is the first round of litigation; that thereafter, writ petitioner filed another writ petition in W.P.No.34572 of 2023 with a prayer to quash Section 6 order namely, order dated 21.06.2023 but another Division Bench by an order dated 12.03.2024 disposed of the writ petition saying that the appeal has to be heard out; that the appeal (obviously appeal under Section 10 of said Act) has since been heard out and an order dated 20.08.2024 bearing reference No.Na.Ka.V9/171020/2024 has been made; that this '20.08.2024 order' made by R1 shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity; that captioned WP has been filed assailing the impugned order.

5. This Court having set out the factual matrix and the trajectory the matter has taken in this Court, including the earlier two rounds of litigation, now proceeds to capture arguments of learned counsel for writ petitioner.

6. Notwithstanding myriad grounds and avements in the support affidavit, learned counsel predicated her argument on following points:

(i) Cancellation of auction proceedings has not been served on the writ petitioner;

(ii) In making impugned order, personal hearing has not been held;

7. Issue notice to respondents.

8. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for all three respondents.

9. Mr.M.S.Arasakumar, learned State Counsel submitted that the impugned order has been made after thoroughly examining records and after thoroughly analyzing the facts and circumstances of the case.

10. Owing to the limited legal perimeter within which the captioned WP perambulates, with the consent of both sides, main WP was taken up in the Admission Board itself.

11. We carefully considered two points (notwithstanding very many averments in the support affidavit) on which learned counsel for writ petitioner predicated her challenge to the impugned order.

12. The first point turns on cancellation of auction by jurisdictional

RDO in the year 1973 not being served on the writ petitioner. As already alluded to supra, in capturing factual matrix, this cancellation order was thereafter followed by a notice dated 13.11.1992 and that 13.11.1992 notice was neither challenged nor put to test. This means that way back in 1972 itself the matter has attained legal quietus. In any event, it is to be noted that learned State Counsel contended that it is only after communicating the cancellation of auction proceedings, notice dated 13.11.1992 was issued. It is also to be noted that the writ petitioner's predecessor or writ petitioner has not taken any steps for allotment or any other form of confirmation of auction or auction purchase which is said to have been made on 20.02.1969. This also buttresses the position that cancellation of auction has been given legal quietus.

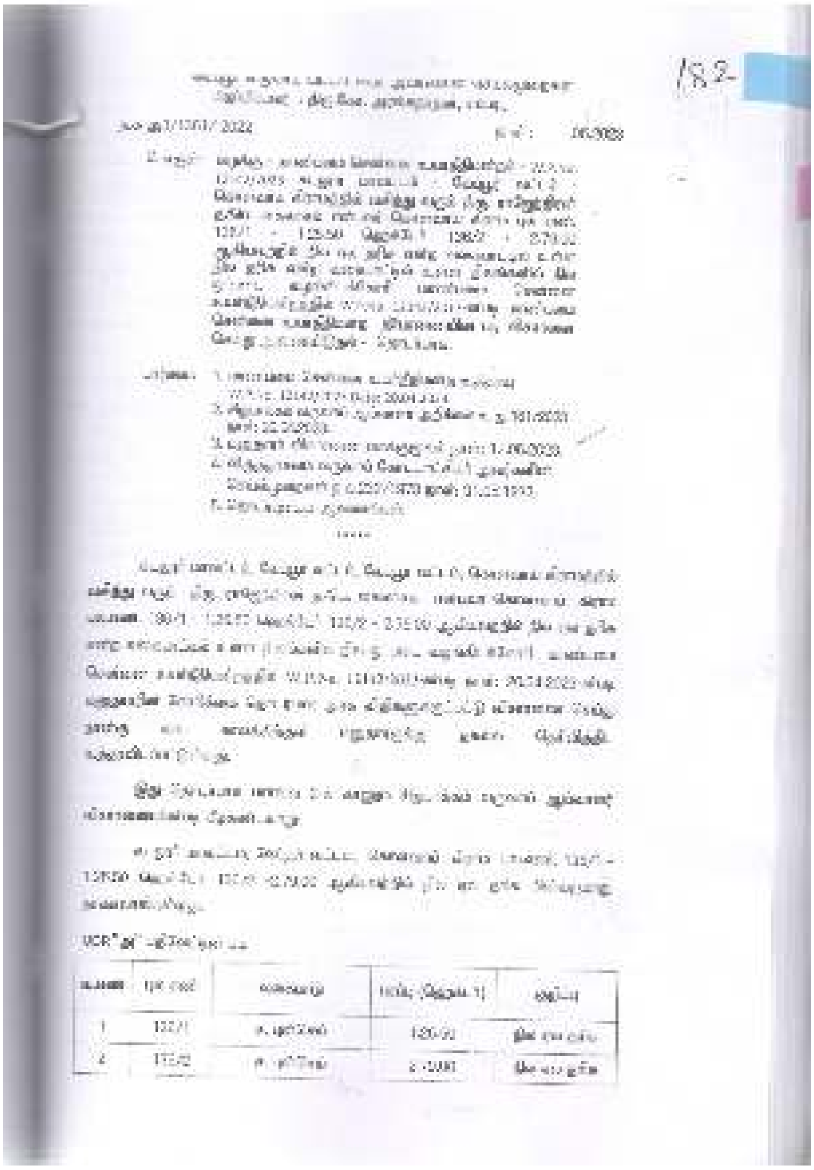
13. This takes us to the second point urged by learned counsel for writ petitioner i.e., the point that personal hearing was not held in hearing the appeal which culminated in the impugned order. The appeal legal drill is one under Section 10 of said Act and Section 10 of said Act reads as follows:

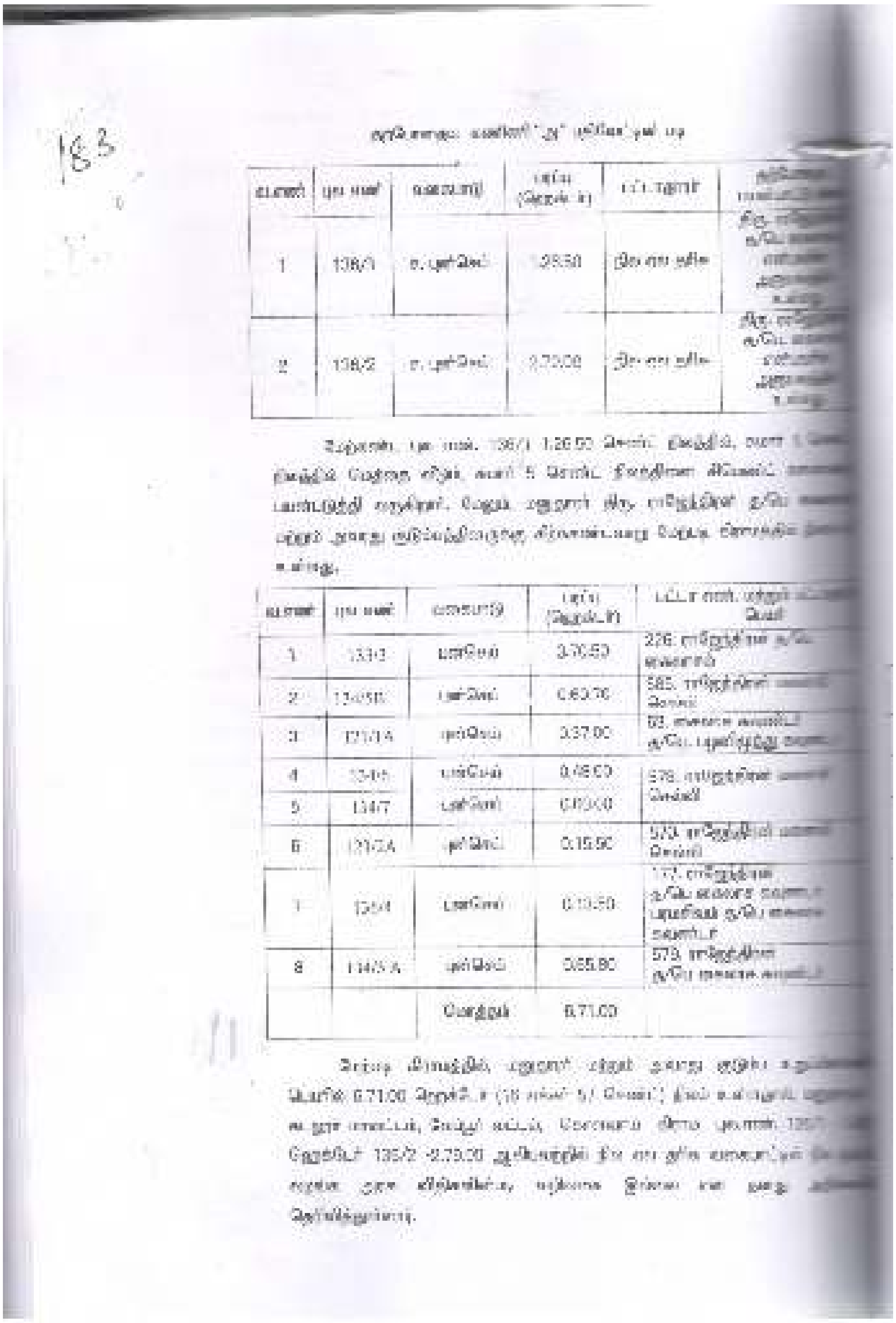
'10. Appeal - An appeal shall lie

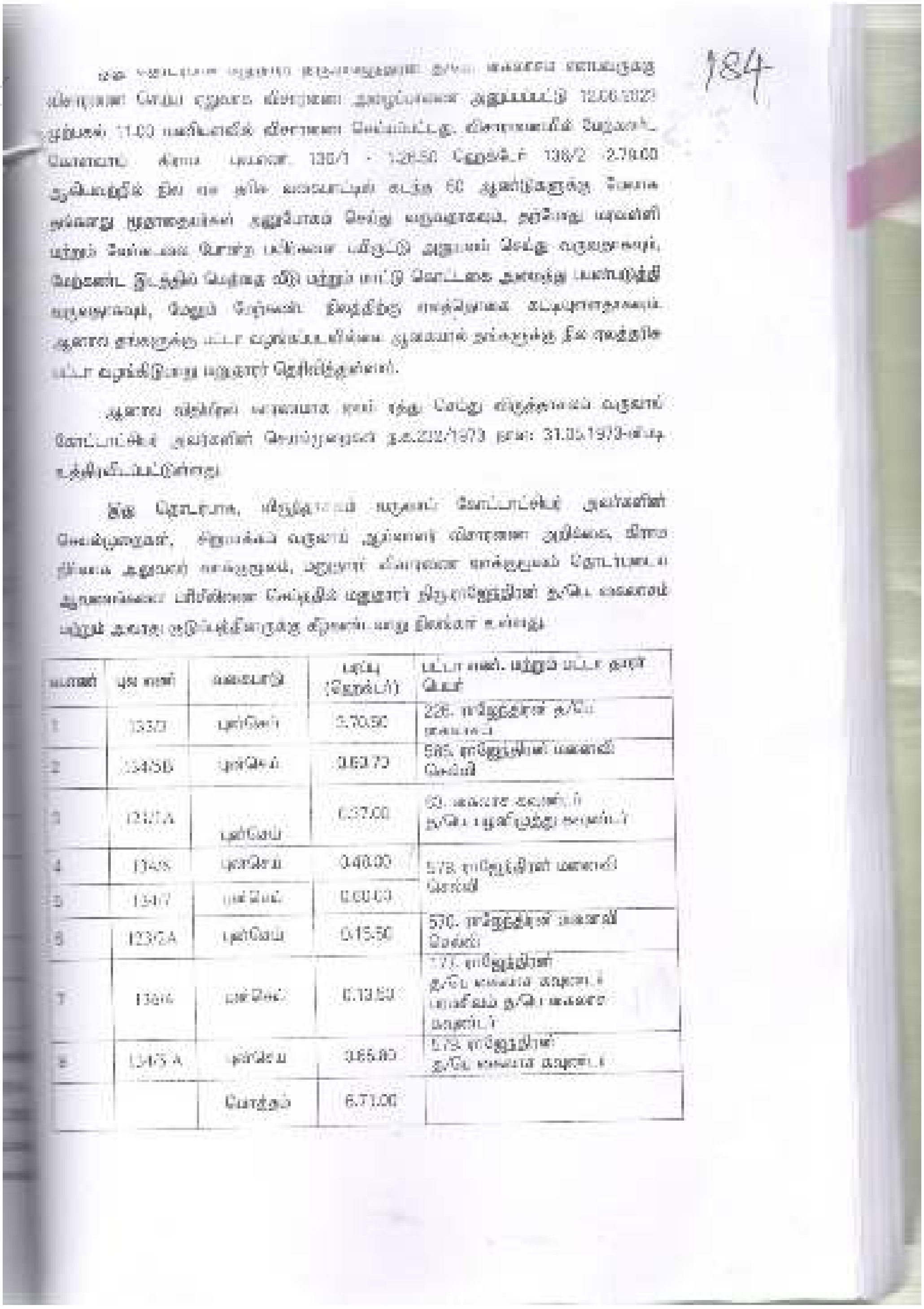
> *(a) to the Collector from any decision or order passed by a Thasildar or Deputy Tahsildar under this this Act, and*
>
> *to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and*
>
> *(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and*
>
> *(c) to the Commissioner of Land Administration from any decision or order of a District Collector passed otherwise than on appeal.'*

14. A careful perusal of Section 10 of said Act makes it clear that there is no provision for personal hearing. However, a further careful perusal of the impugned order makes it clear that there is thorough examination of all aspects of the matter. There is one other perspective to this point. As already alluded to supra, while making Section 6 order, (against which the appeal has been preferred) i.e., order dated 21.06.2023 R3 has afforded an

opportunity to the writ petitioner and R3 has also recorded statements of writ petitioner. This is clear from the order itself which is as follows:







184

வ.எண்	புல எண்	வகைபாடு	பரப்பு (ஹெக்டேர்)	பட்டா எண். மற்றும் பட்டா தாரர் பெயர்
1	133/3	புன்செய்	3.70.50	226. ராஜேந்திரன் த/பெ [illegible]
2	234/5B	புன்செய்	0.63.70	585. ராஜேந்திரன் மனைவி செல்வி
3	123/1A	புன்செய்	0.37.00	63. [illegible]
4	134/8	புன்செய்	0.40.00	578. ராஜேந்திரன் மனைவி செல்வி
5	134/7	புன்செய்	0.60.00	
6	123/2A	புன்செய்	0.15.50	570. ராஜேந்திரன் மனைவி செல்வி
7	134/6	புன்செய்	0.13.50	177. ராஜேந்திரன் [illegible]
8	134/5A	புன்செய்	0.65.80	578. ராஜேந்திரன் [illegible]
		மொத்தம்	6.71.00	

15. To be noted, Serial No.3 in reference clearly refers to an enquiry and statements of writ petitioner on 12.06.2023. Therefore, sufficient opportunities have been given to the writ petitioner even while making the original order by Original Authority i.e., R3. Therefore, in this perspective also, the argument of no personal hearing in Appeal pales into insignificance. In any event, there is no provision for personal hearing under Section 10 of said Act (as already alluded to supra) but we find that Section 10 legal drill has been made by R1 well within requirements and well in accordance with

legal drill parameters of Section 10 of said Act. We also find the order to be sound and clear besides being well reasoned. The Revenue outgoing which the writ petitioner has relied on really does not aid the writ petitioner in writ petitioner's campaign against the impugned order as Section 3 of said Act provides for levy of assessment on land unauthorizedly occupied. In other words, even with regard to land which encroached upon, the State has adequate Statutory power to levy and collect assessments. This by itself will not confer any right on the writ petitioner. It is clear from the proviso to Section 3 of said Act. Section 3 of said Act reads as follows:

> *'3. Levy of assessment on lands unauthorisedly occupied -*
>
> *Any person who shall unauthorisedly occupy in any area other than the transferred territory any land which is the property of Government, shall be liable to pay by way of assessment*
>
> *(i) if the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period of his occupation or a part thereof proportionate to the area occupied, as the case may be, provided that, for special reasons, the Collector or subject to his control, the Tahsildar or Deputy Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied;*
>
> *(ii) if the land so occupied be unassessed, an assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry or wet rate of the village, as the case be, or when no such rates exist may, in such manner as may be prescribed in rules or orders under Section 8:*
>
> *Provided that payment of assessment under this section shall not confer any right of occupancy.'*

16. 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 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 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 Act. Pending appeal / revision, there is a provision for making interim prayer vide Section 10-B of said Act. Therefore, said Act is a self contained Code in every sense of the expression.

17. In the case on hand, there is alternative remedy available for the writ petitioner and that is by way of a revision to the State Government under Section 10-A(1)(c) of said Act. Pending revision, there is also a provision for stay and that is under Section 10-B of said Act. Therefore, we find that there is a clear alternative remedy. Alternative Remedy rule is no doubt not a absolute rule and it is a rule of discretion. In the case on hand, considering the facts and circumstances and the narrative thus far, we find

that this is a fit case to impose self-restraint qua alternative remedy and hold that alternative remedy rule which is a rule of discretion also goes against the writ petitioner.

18. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that writ petition lacks merits and the same deserves to be dismissed.

19. Ergo, the sequitur is, captioned WP is dismissed. Consequently, WMP thereat also perishes with the captioned WP and the same is also dismissed. Owing to the fair nature of submissions made, we refrain ourselves from imposing costs though this is the third round of litigation.

(M.S.,J.) **(K.R.S.,J.)**
14.11.2024

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

mk

M.SUNDAR, J.,
and

K.RAJASEKAR, J.,

mk

To

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   Cuddalore District
   Manjakuppam
   Cuddalore - 607 001.

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