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W.P.No.36942 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM

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

W.P.No.36942 of 2024
and
W.M.P.Nos.39888 & 39889 of 2024
in
W.P.No.36942 of 2024

Paramasivam
S/o.Gowndappan

... Petitioner

Vs.

1. The District Collector
Salem District Collectorate
Salem District - 01.
2. The Tasildhar
Mettur Tahsildhar Office
Mettur Taluk
Salem District.
3. The Revenue Inspector
Office of the Revenue Inspector
Pottaneri Revenue Village
Mettur Taluk
Salem District.

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4. The Block Development Officer
Mecheri Panchayat Union
Koonandiyur Village
Mettur Taluk
Salem District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the impugned letter in Letter No.24/2024 dated 18.10.2024 on the file of the 4th respondent and quash the same.

For Petitioner : Mr.K.Vasanthanayagan
For Respondents : Mr.M.S.Arasakumar
Government Advocate
for R1 to R4

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed assailing a 'letter dated 18.10.2024 bearing Letter No.24/2024 made by R4 [Block Development Officer]' {hereinafter 'impugned letter' for the sake of brevity}.

2. Impugned letter pertains to 'land comprised in S.Nos.93, 94 and 95 in Koonandiyur Village, Mecheri Panchayat Union, Salem District' {hereinafter 'said land' for the sake of brevity}.

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3. One Mr.M.Viswanathan, filed a writ petition in W.P.No.23037 of 2023 in this Court and another Hon'ble Division Bench disposed of the same by an order dated 23.02.2024. A scanned reproduction of the order dated 23.02.2024 in W.P.No.23037 of 2023 is as follows:





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For the Petitioner : Mr.D.Lakshmiipathy

For the Respondents : Mr.C.Kathiravan
Spl. Government Pleader

ORDER
(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.D.Lakshmiipathy, learned counsel for the petitioner and, Mr.C.Kathiravan, learned Special Government Pleader for the respondents.

2. Learned Special Government Pleader submits that the encroachment exists on the public pathway in S.F.Nos.93, 94 and 95 in Koonandiur village, Mettur Taluk, Salem District. The authorities would take necessary steps for removal of the encroachment. The authorities shall initiate the process for removal of encroachment in accordance with law within two months from today and shall take the proceedings to the logical end.

The writ petition is disposed of accordingly. There shall be no

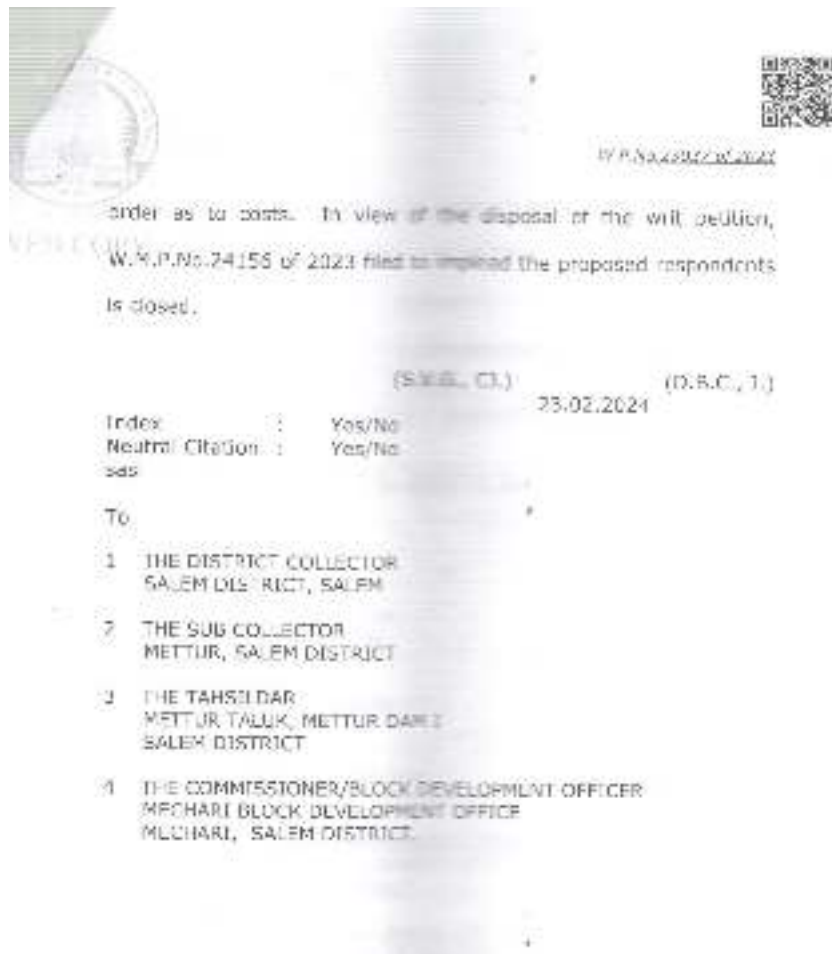
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4. A scanned reproduction of impugned letter is as follows:



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5. Mr.K.Vasanthanayagan, learned counsel on record for the writ

petitioner submits that writ petitioner was not a party to earlier writ petition namely, W.P.No.23037 of 2023 and writ petitioner has not been given any opportunity. Learned counsel also points out that writ petitioner has sent a detailed representation dated 23.10.2024. A scanned reproduction of the representation dated 23.10.2024 is as follows:





25
அய்யா, வணக்கம்!

நான் மேற்படி மசூரிகளில் கையு இருப்பதுடன் அய்யா 60
ஆவதுகாலம் கைத்துவருகிறேன், மேற்படி பரிசுவையில் உள்ள
விவரங்கள்படியான சொத்தானது எனது அறையத்தில் சுமார் 5.1.
வருடங்கள் இருந்து வருகிறது. இதன்மூலம் நான் அந்த 15.10.2024
அன்று மேற்படி விவரங்கள்படியான சொத்தின் உள்ள எனது வீட்டில் வந்து
நான் ஆக்கிரமிப்பு செய்துள்ளதாகவும் அதனால் நீங்கள் விடையாகச் செய்து
சொன்ன வேண்டும் என்று ஒர் மாதிரியில் உத்தரவிடங்கள். நான் அப்போது
தங்கியிருந்தேன் நான் இந்த இடத்தில் 5.2 வருடமாக விரிசுடன், விட்டுவிட்டு
TB பில் எல்லாம் தொடர்ச்சியாகவும் சரிசாகவும் செய்து வந்தேன்.
மேலும் தங்கள் உரிய சட்டமுறைகளை கடைபிடித்து அறிவிப்பும் மற்றும்
கால அளவாகவும் மற்றும் எனக்கு ஒர் வாய்ப்பும் வழங்கவேண்டும்.
அப்போதுதான் நான் எனது அய்யா நிபந்தனை எடுத்துள்ளதாக முடிவு.

ஆகவே அய்யா அளவின் கையு போர்க்கை மறுவை அய்யா மேற்படி
உரிய நடைமுறைகளை கடைபிடிக்கும்மாதும் மற்றும் அதுமாதிரியில் எனக்கு
மாத்திரப்பட்ட விடையாக எடுத்திடுவான சொத்துவரும் செயல்படவாது என்ற ஒர்
உத்தரவை வழங்குமாறு தங்களை அன்பிட்டு வேண்டுகிறேன்.

குடும்பம் : கண்ணைய்யார்
நாள் : 23/10/24

இப்படிக்கு,
பரமசிவம்

6. Issue notice to respondents.

7. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1 to R4.

8. Learned State Counsel submits that the impugned letter has been issued by R4 in strict compliance with earlier judicial order being order dated 23.02.2024 made in W.P.No.23037 of 2023.



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

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

11. The earlier judicial order directs respondents to take necessary steps 'in accordance with law'. Impugned letter refers to Section 236 of 'the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' {hereinafter 'said Act' for the sake of brevity, convenience and clarity} which deals with public roads, markets, wells, tanks etc., to be open to all. As regards said Act, 'Executive Authority' has been defined in sub-section 11 of Section 2 of said Act and Executive Authority is a person notified as such by the Government under Section 83 of said Act. In the case on hand, we are informed that R4 is the Executive Authority. This submission is recorded.

12. This means that the impugned letter is essentially a letter under Section 236 read with Section 131 of said Act more particularly Section 131(2) of said Act. Therefore, Section 131 of said Act provides for prohibition against obstructions in or over public roads etc., In the impugned letter, the aforementioned survey numbers have been referred to as 'Paathai' (பாறை). Therefore, it is only appropriate that the writ



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petitioner is given an opportunity to respond. In any event, writ petitioner has already sent a representation dated 23.10.2024 after the impugned letter.

In this view of the matter, we deem it appropriate to make the following order:

(a) Impugned letter being letter dated 18.10.2024 bearing Letter No.24/2024 made by R4 [Block Development Officer] is sustained. In other words, certiorari prayer is not acceded to but with a rider that the impugned letter shall be treated as a 'Show Cause Notice' {'SCN'} and the representation sent by writ petitioner being representation dated 23.10.2024 shall be treated as writ petitioner's response;

(b) The Executive Authority (R4) shall consider the representation dated 23.10.2024. Thereafter, if the Executive Authority is not satisfied with the representation, the Executive Authority himself or through the Village Administrative Officer shall report the matter to Village Panchayat or Panchayat Union Council and proceedings under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)'



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{hereinafter 'said 1905 Act' for the sake of brevity} shall be commenced. However, if the Executive Authority is satisfied with the representation, that will be the end of the matter;

(c) We make it clear that if proceedings under said 1905 Act are commenced, all rights and contentions of the writ petitioner including the contentions raised in the captioned WP are left open for being canvassed in those proceedings.

Captioned WP disposed of in the aforesaid manner. Consequently, two Writ Miscellaneous Petitions are disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

10.12.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk



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To

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Salem District Collectorate
Salem District-01.
2. The Tashildhar
Mettur Tashildhar Office
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M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

mk

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