



W.P.No.36412 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.36412 of 2024

and

W.M.P.No.39278 of 2024

in

W.P.No.36412 of 2024

M/s. Association of Greenwoods' Community

Represented by its President

Mr.R.Chakaravarthy Rajagopal

Thazhambur Road, Navalur,

Thiruporur Taluk,

Chengalpet District - 600 130.

... Petitioner

Vs.

1. The District Collector
Chengalpet District
Chengalpet.

2. The Tahsildar
Thiruporur Taluk
Thiruporur
Chengalpet District.

... Respondents



W.P.No.36412 of 2024

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records relating to impugned eviction notice issued by the 2nd respondent in Na.Ka.No.992/2022/Aa2 dated 16.11.2024 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same.

For Petitioner : Mr.B.Manoharan

ORDER

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

This is the second round of litigation in this Court i.e., litigation by writ petitioner.

2. Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed with a Certiorari prayer.

3. Writ petitioner has assailed an 'order / Notice Namuna made by R2 [The Tahsildar, Thiruporur] (signed by R2 on 16.11.2024) bearing reference



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Na.Ka.No.992/2022/Aa2' {hereinafter 'impugned order' for the sake of brevity, convenience and clarity}.

4. A careful perusal of impugned order brings to light that it has been made under Section 6 of 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity}.

5. Learned counsel for writ petitioner drew our attention to first round of litigation in this Court which is vide W.P.No.33703 of 2023. This writ petition was also filed by the same writ petitioner and it came to be disposed of by another Hon'ble Division Bench in and by an order dated 14.12.2023. In this earlier round of litigation, writ petitioner assailed a 'notice dated 14.11.2023 made by the Panchayat President, Navalur Panchayat, Thiruporur Taluk, Chengalpet District' {hereinafter 'earlier impugned order' for the sake of brevity}.

6. In the first round, another Hon'ble Division Bench disposed of the W.P.No.33703 of 2023 by a simple order which is as follows:



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W.P.No.33703 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM :

THE HON'BLE MR. SANJAY V. GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE D. BHARATHA CHAKRAVARTHY

W.P.No.33703 of 2023

M/s. Association of Greenwoods' Community,
rep. by its President R.Chakaravathy Rajagopal,
Thazhambur Road,
Navalur, Thiruporur Taluk,
Chengalpet District-600 130. .. Petitioner

vs

1. The District Collector,
Chengalpet District,
Chengalpet.
2. The Tahsildar,
Thiruporur Taluk, Thiruporur,
Chengalpet District.
3. The Block Development Officer,
Thiruporur Panchayat Union, Thiruporur,
Chengalpet District.
4. The Panchayat President,
Navalur Panchayat, Thiruporur Taluk,
Chengalpet District. .. Respondents

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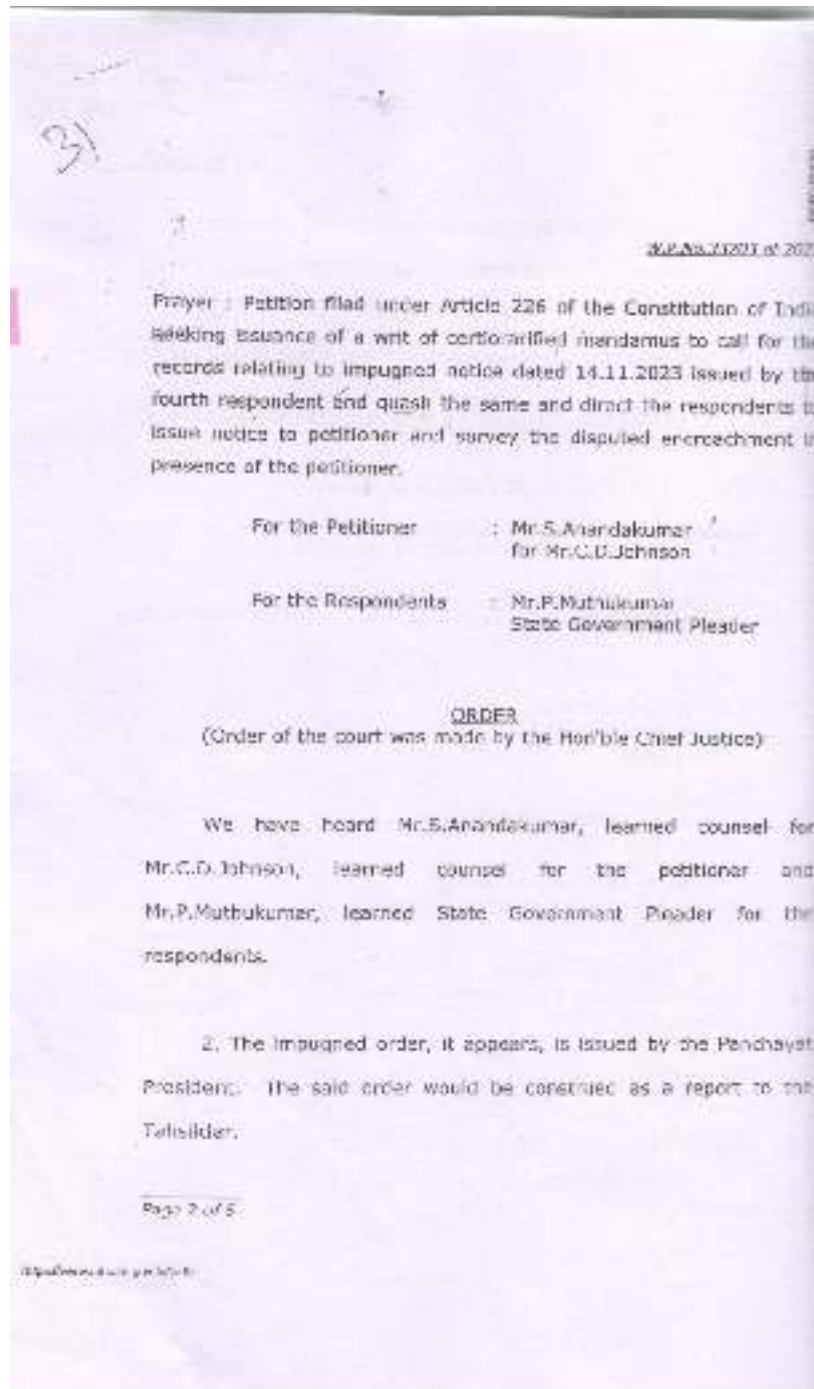
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3. It is submitted by learned State Government Pleader that the Tahsildar, Thiruporur Taluk, would take up proceedings under the Tamil Nadu Land Encroachment Act, 1905.

4. If notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 is issued to the petitioner, then the petitioner will have an opportunity to submit a reply to the same.

5. In the light of that, the writ petition stands disposed of. There will be no order as to costs. Consequently, W.M.P.No.33561 of 2023 is closed.

(S.V.G., CJ.) (D.B.C., J.)
14.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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7. Learned counsel submits that pursuant to earlier impugned order, notice under Section 7 of said 1905 Act was issued, there was a survey but Tahsildar has been changed and writ petitioner has not been given an opportunity.

8. Challenge to the impugned order in the instant case i.e., captioned WP is predicated on following points:

(i) Writ petitioner has not been given a personal hearing post Section 7 notice which is in turn pursuant to earlier impugned order;

(ii) The Surveyor has given a survey report but the Tahsildar has been changed and now Section 6 order has been passed;

(iii) Section 6 order does not say that the writ petitioner has a right of appeal.

9. We carefully considered the arguments made by learned counsel and we deal with the same one after the other.



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10. As regards personal hearing, there is no provision for personal hearing qua a notice under Section 7 of said 1905 Act. 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 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. Now that Section 6 order has been passed i.e., impugned order, writ petitioner could have challenged the same either by way of an appeal under Section 10 of said 1905 Act or by way of a revision under Section 10-A(a) of said 1905 Act as impugned order has been made by R2, who is jurisdictional Tahsildar. To be noted, as regards this revision (as opposed to post appeal revision), the appeal and revision lie to R1 -



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District Collector. The writ petitioner has not chosen to file either an appeal under Section 10 of said 1905 Act or a revision under Section 10-A(a) of said 1905 Act but has come to this Court. We will deal with this after dealing with the next two points.

11. The second point turns on survey conducted by the Tahsildar. It is well open to writ petitioner to raise this ground in the appeal or revision if the writ petitioner had filed one but the writ petitioner has not chosen to do so though this Court has repeatedly held that said 1905 Act is a complete self contained code.

12. The third point is that the impugned order does not mention that an appeal or revision lies under Section 10 / 10A(a) of said 1905 Act. We find this argument to be a non-starter. The reason is, when there is a statutory appeal / statutory revision provision, it cannot be gainsaid that the impugned order not mentioning the availability of statutory appeal or statutory revision becomes a ground to directly file a writ petition.



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13. Reverting to point No.1 dovetailed with points 2 and 3, we are of the firm view that alternate remedy is not an absolute rule and that it is a rule of discretion. In other words, alternate remedy does not denude this Court of the Constitutional powers but restraint qua interference when there is alternate remedy is a self imposed restraint. Hon'ble Supreme Court in a series of judgments starting from *Dunlop* case [*Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others* reported in (1985) 1 SCC 260] has repeatedly held that alternate remedy rule, though not an absolute rule and though a discretionary rule, is a self imposed restraint which can be applied by writ Court. We carefully considered the facts and circumstances of the case on hand. Writ petitioner came to this Court and this Court made it clear that a notice under Section 7 of said 1905 Act will be issued and if such a notice is issued, the petitioner will have an opportunity to submit a reply. This is inbuilt in Section 7 of said 1905 Act. Writ petitioner contends that writ petitioner has not been given a personal hearing. Therefore, considering the facts and circumstances of the case, nature of the matter and nature of the land which is subject



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matter of captioned WP, we are of the view that we will exercise the discretion of self-imposed restraint qua alternate remedy. This means that captioned WP fails to pass muster in the Admission Board.

Ergo, the sequitur is captioned WP is dismissed. Consequently, captioned Writ Miscellaneous Petition also perishes with the captioned WP and the same is also dismissed. We refrain from imposing costs.

(M.S.,J.)

(K.R.S.,J.)

02.12.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

1. The District Collector
Chengalpet District
Chengalpet.
2. The Tahsildar
Thiruporur Taluk
Thiruporur
Chengalpet District.

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

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