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W.P.Nos.14326 & 15208 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.Nos.14326 & 15208 of 2024
and
W.M.P.Nos.15559 & 16541 of 2024

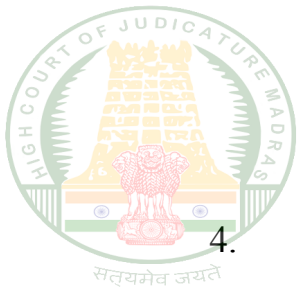
Masjid-E-Khuba Muslim
Sunnath Jamath Athanoor
Rep. by its Secretary
TTC Nagar, 1st Street,
Athanoor, Guduvanchery - 603 202.

...Petitioner
in both WPs

Vs

1. The District Collector
Kancheepuram District.
2. The Tahsildar
Sriperumbudur Taluk
Kanchipuram District.
3. The Revenue Inspector
Serapanjeri Firka
Kundrathur Taluk
Sriperumbudur.
Kanchipuram District.

Page Nos.1/10



W.P.Nos.14326 & 15208 of 2024

WEB COPY

4. Aathanoor Panchayat Union
Rep. by its President
No.1, MGR Nagar, VII
Aathanoor Main Road,
Kundrathur, Kancheepuram District.

5. Tamil Nadu Wakf Board
Rep. by Chief Executive Officer
No.1, Jaffer Syrang Street
Vallal Seethakathi Nagar
Chennai.

...Respondents
in both WPs

Writ Petition No.14326 of 2024 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records of the 3rd respondent dated 23.04.2024 issued under Section 7 of the Land Encroachment Act, 1905 and quash the same.

Writ Petition No.15208 of 2024 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records of the 2nd respondent dated 25.05.2024 in Na.Ka.No.1874/2022/Aa2 and quash the same.

For Petitioner in both WPs	: Mr.N.A.Nissar Ahmed Senior Counsel for Mr.N.A.Nasir Hussain
For Respondents in both WPs	: Mr.M.S.Arasakumar Government Advocate, for R1 to R3 Mr.T.K.Saravanan Additional Government Pleader for R4 Mr.Mohammed Fayaz Ali, for R5



W.P.Nos.14326 & 15208 of 2024

WEB COPY

COMMON ORDER

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

This common order will now govern the captioned two 'Writ Petitions' {'WPs' for the sake of brevity, convenience and clarity} and captioned two 'Writ Miscellaneous Petitions' {'WMPs' for the sake of brevity, convenience and clarity} thereat.

2. 'W.P.No.14326 of 2024' shall hereinafter be referred to as 'I WP' for the sake of brevity, convenience and clarity. 'W.P.No.15208 of 2024' shall hereinafter be referred to as 'II WP' for the sake of brevity, convenience and clarity.

3. Subject matter of captioned WPs is 'land comprised in S.No.405/14 in Athanoor Village, Kundrathur Taluk, Kanchipuram District' {'said land' for the sake of brevity, convenience and clarity}.

4. Mr.N.A.Nissar Ahmed, learned Senior Counsel, instructed by Mr.N.A.Nasir Hussain, counsel on record for writ petitioner, Mr.T.K.Saravanan, learned Additional Government Pleader for R1 to R4 and Mr.Mohammed Fayaz Ali, learned Standing Counsel for the Tamil Nadu

Page Nos.3/10



W.P.Nos.14326 & 15208 of 2024

WEB COPY

Wakf Board (R5) are before us. To be noted, writ petitioner and

respondents are the same in I WP as well as II WP.

5. Genesis of the matter at hand is a writ petition being W.P.No.24987 of 2017 filed by one Mr.T.Tamilamuthan, seeking demolition of alleged illegal constructions at two parks in TTC Nagar, 6th Cross Street, Aathanoor Village, Madambakkam Post, Sriperumbudur Taluk, Kancheepuram District. To be noted, structures sought to be demolished stand in said land. This writ petition came to be disposed of by another Hon'ble Division Bench in and by an order dated 08.02.2023 directing the jurisdictional Tahsildar to remove the encroachments in said land but by following due procedures contemplated under law. To be noted, this order came to be made by other Hon'ble Division Bench after taking judicial cognizance of a status report filed by the jurisdictional Tahsildar.

6. In the *interregnum*, in and by a plaint dated 23.04.2024, writ petitioner before us filed a suit in O.S.No.11 of 2024 on the file of the Tamil Nadu Wakf Tribunal with a prayer to declare said land as a Wakf by user. This suit is pending.



W.P.Nos.14326 & 15208 of 2024

WEB COPY

7. Pursuant to the aforementioned order dated 08.02.2023 made by another Hon'ble Division Bench, R2 has made proceedings dated 25.05.2024 bearing reference No.Na.Ka.1874/2022/Aa2 which is the impugned order in II WP. The aforementioned order shall hereinafter be referred to as 'II impugned order' for the sake of brevity, convenience and clarity'. In and by II impugned order, R2 *inter alia* directed the proceedings to be initiated under '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}. Be that as it may, even prior to this II impugned order, R3 has issued a notice under Section 7 of said 1905 Act. In Section 7 notice, writ petitioner is a noticee, writ petitioner / noticee has sent a response and thereafter, R2 has made an order under Section 6 of said 1905 Act being order signed by R2 on 25.05.2024. To be noted, in I WP, Section 7 notice dated 23.04.2024 issued by R3 has been assailed and this notice shall hereinafter be referred to as 'I impugned order' for the sake of brevity, convenience and clarity.

8. This Court has repeatedly held that 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' which is being



W.P.Nos.14326 & 15208 of 2024

WEB COPY

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 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.

9. Now that R2 has made an order under Section 6 of said 1905 Act, the same is appealable vide a statutory appeal under Section 10 of said 1905 Act.

10. Learned Senior counsel for writ petitioner submitted that certain attendant details (such as proposal to approach Wakf Tribunal) were not brought to the notice of the other Hon'ble Division Bench when 08.02.2023 order was made. This argument can be made only by way of a review petition. It is open to the writ petitioner to file a review qua 08.02.2023 order in W.P.24987 of 2017, if so advised. Technically, it may be a third



W.P.Nos.14326 & 15208 of 2024

party review but we refrain from expressing any opinion on the same and it will suffice to say that the writ petitioner is at liberty to file a third party review notwithstanding this order and if it is filed, the same shall be dealt with on its own merits and in accordance with law. At this juncture, we deem it appropriate to write that this order does not touch upon the rights and contentions of Mr.T.Tamilamuthan (writ petitioner in W.P.No.24987 of 2017) and all his rights stand preserved.

11. In the light of the narrative thus far, we find no reason much less compelling reason to interfere qua I impugned order and / or II impugned order as they will now be the subject matter of appeal i.e., statutory appeal, if the writ petitioner chooses to file one under Section 10 of said 1905 Act, assailing Section 6 order (signed on 25.05.2024) made by R2. In the statutory appeal under Section 10 of said 1905 Act, it is open to the writ petitioner to file a stay petition under Section 10-B of said 1905 Act but all this is subject to limitation. However, it is open to the writ petitioner to seek exclusion of time spent in the captioned writ petitions by resorting to Section 14 of the Limitation Act, 1963.



W.P.Nos.14326 & 15208 of 2024

12. The statutory appeal (if filed) shall be heard by R1, who is the appellate authority on its own merits and in accordance with law as this Court is not interfering with the I and II impugned orders shall not be construed as sustaining the orders on merits. This Court has only refrained from interfering leaving the self-contained code to take its course. For this purpose, all questions are left open. The suit before the Wakf Tribunal shall also proceed on its own merits and in accordance with law.

13. Captioned WPs disposed of as closed in the aforesaid manner albeit with preservation of rights and contentions of parties and liberties in the aforesaid manner. Consequently, captioned WMPs are disposed of as closed. There shall be no order as to costs.

[M.S.,J.]

[R.N.M.,J.]

07.04.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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Page Nos.8/10



W.P.Nos.14326 & 15208 of 2024

WEB COPY

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WEB COPY



W.P.Nos.14326 & 15208 of 2024

M.SUNDAR, J.,
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R.N.MANJULA, J.,

mk

W.P.Nos.14326 & 15208 of 2024

07.04.2025
(3/3)

Page Nos.10/10