



W.P. No.15899 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM

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

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P. No.15899 of 2024

and

W.M.P.Nos.17352 and 17354 of 2024 in

W.P.No.15899 of 2024

Shantha

.. Petitioner

Vs.

1.The Executive Engineer,
Administration and Water Supply Department,
Vellore Municipal Corporation, Vellore.

2.The Commissioner,
Vellore Municipal Corporation,
Vellore District.

.. Respondents

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 first respondent in issuing the notice dated 06.03.2024 being Na.Ka.No.274/2024/F1 and quash the same and further direct the 1st respondent to consider petitioner's representation dated 13.03.2024 and conduct an enquiry into the matter before declaring petitioner as encroachers.

For Petitioner : Ms.Ambili Menon P.

For Respondents : Ms.R.Reganitha
for Mr.P.S.Prabu,
Standing Counsel



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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 'notice dated 06.03.2024 bearing reference Na.Ka.No.274/2024/F1' (hereinafter 'impugned notice' for the sake of convenience and clarity) issued by R1.

2. Ms.Ambili Menon P., learned counsel for writ petitioner advertng to impugned notice submits that it pertains to Survey No.159 within the jurisdiction of Vellore Municipal Corporation and this is essentially a notice under Sections 128(1)(b) and 128(2) of 'The Tamil Nadu Urban Local Bodies Act, 1998' (hereinafter 'Urban Act' for the sake of brevity) . Notwithstanding very many averments in the support affidavit and the grounds raised thereat, learned counsel submitted that the ground of attack is predicated on the sole point that the impugned notice was not preceded by a 'show cause notice' (hereinafter 'SCN' for the sake of brevity).

3. Considering the language in which Section 128(1)(b) is couched, SCN is statutorily imperative. To be noted, Section 128(1)(b) of Urban Act reads as follows:



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'128. Power to remove encroachment from public place. - (1) The Commissioner may, -

(a) remove without any notice any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching street or public place or the [land belonging to or vested with the municipality] with the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to municipality or vested with the municipality] within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.'

(underlining made by this Court for ease of reference)

4. We find from the impugned notice that according to the impugned notice, the survey number concerned is 'odai (ஓடை)' which means it may be a water body as the notice also goes on to say that it is நீர் வழித்தடம் (a water channel) but we refrain from expressing any view or opinion on the same and we deem it appropriate to write that it will suffice to say that relevant obtaining



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position of law would apply if it is a water body but in any event that will be subject to the writ petitioner being given an opportunity to show cause and the cause to be shown by the writ petitioner.

5. In the light of the narrative thus far, we make the following order:

5.1 Impugned notice dated 06.03.2024 bearing reference Na.Ka.No.274/2024/F1 shall now be treated as a SCN and though served earlier, it will be construed as having been served on the writ petitioner today (20.06.2024);

5.2 The writ petitioner shall respond to the same i.e., SCN in seven days i.e., by 28.06.2024;

5.3 Representation dated 13.03.2024 given by the writ petitioner shall also be considered before passing final orders in the light of proviso to Section 128(1)(b) of Urban Act (extracted and reproduced supra);

5.4 The final orders shall be served on the writ petitioner within three working days from the date of the order under due acknowledgement;

5.5 Though obvious we make it clear



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that we have not expressed any view or opinion on the merits of the matter and all questions are left open, rights and contentions of the petitioner are also left open as the proceedings are now at the SCN stage vide Section 128(1)(b) and proviso thereof of Urban Act.

6. To be noted, when the matter was taken up on the SCN point being projected, we issued notice and Ms.R.Reganitha representing Mr.P.S.Prabu, standing counsel, accepted notice for both respondents and considering the limited legal perimeter of captioned WP, with the consent of both sides, captioned main WP was taken up in the Admission Board.

7. Captioned WP is disposed of in the aforesaid manner. Consequently, captioned 'Writ Miscellaneous Petitions' (WMPs) thereat are closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
20.06.2024

Index:Yes/No
Neutral Citation: Yes/No
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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

mmi

To

- 1.The Executive Engineer,
Administration and Water Supply Department,
Vellore Municipal Corporation, Vellore.
- 2.The Commissioner,
Vellore Municipal Corporation,
Vellore District.

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