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W.P.No.16220 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.16220 of 2024

&

W.M.P.No.17879 of 2024

in

W.P.No.16220 of 2024

1.Subadra

2. Santhosh

... Petitioners

Vs.

1. State of Tamilnadu by the Secretary to Government
Forest Department
Chennai – 600 009

2. The Forest Range Officer
Bitherkad Range
Bitherkad Post, The Nilgiris
Pin: 643 240

3. The District Forest Officer, Gudalur Division
Gudalur Bazaar Post
The Nilgiris
Pin: 643 212

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,



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praying for issuance of Writ of Certiorarified Mandamus to call for the records and quash the eviction notices issued by 2nd respondent dated 24.04.2024 under Section 68A of the Tamil Nadu Forest Act, 1882 and further direct the respondents to forbear from interfering with or otherwise disturbing petitioners possession and not to evict the petitioners tea shop bearing No.3/332D, Munnanad Village, near Pattavayal Check Post, Pandalur Taluk, Nilgiris District, Pin: 643 240 except taking resort to passing a reasoned orders on 68A(2) of the Tamilnadu Forest Act.

For Petitioner : Mr.P.Prakash Paul
For Respondents : Dr.T.Seenivasan
Spl. Govt. Pleader for R1 to R3
(Forest)

ORDER

(Order of the Court was made by M.SUNDAR, J.,)

In the captioned writ petition which has been filed in this Court on 19.06.2024, a 'notice dated 24.04.2024 issued by R2 [The Forest Range Officer, Bitherkad Range, Bitherkad Post, The Nilgiris] being a 'show-cause notice' ['SCN' for the sake of brevity] under Section 68-A of 'the Tamil Nadu Forest Act, 1882 [Tamil Nadu Act V of 1882]' [hereinafter 'TN Forest Act' for the sake of convenience and clarity] has been assailed and a further prayer to restrain the respondents from interfering with



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petitioner's possession of a Tea shop in 'No.3/332D, Munnanad Village, near Pattavayal Check Post, Pandalur Taluk, Nilgiris District, Pin: 643 240' [hereinafter 'said land' for the sake of clarity and convenience] has also been sought.

2. Mr. P.Prakash Paul, learned counsel on record for the writ petitioners is before us. The aforementioned 24.04.2024 SCN issued by R2 under Section 68-A of TN Forest Act shall hereinafter be referred to as 'impugned notice' for the sake of convenience and clarity. A careful perusal of the impugned notice makes it clear that it is a SCN as the notice which is issued to the writ petitioner No.1 directs the writ petitioners to show-cause within 15 days as regards forfeiture of said land on the ground that it is encroachment of land which vests in Government of Tamil Nadu (Forest Land).

3. Learned counsel pointed out that the writ petitioners have responded to the impugned notice in and by a detailed response dated 16.05.2024. Learned counsel by adverting to the postal track report pointed out that this 16.05.2024 response has been duly received by R2 on 18.05.2024.

4. Issue notice.



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5. Dr.T.Seenivasan, learned Special Government Pleader accepts notice for all three respondents and submits on instructions that the impugned notice is an SCN and that it has been issued in accordance with clause (a) of Section 68-A of TN Forest Act, which provides for notice to a person who is likely to be adversely affected before eviction or adjudication.

6. We find that clause (b) of Section 68-A of TN Forest Act makes it clear that representation, if any in response / pursuant to a notice under Section 68-A(a) has to be duly considered by the officer concerned. We also find that sub-clauses (a) and (b) of Section 68-A of TN Forest Act are conjunctive as the same is connected by the conjunction 'and'. This means that the aforementioned response of the writ petitioner i.e., response to the SCN being response dated 16.05.2024 received by R2 on 18.05.2024 has to be considered by R2.

7. The proceedings kick started vide Section 68-A of TN Forest Act has to necessarily go on as our considered view.

8. The reason is, the grounds on which an SCN can be challenged are extremely narrow / limited and the law in this regard has been laid down elucidatively by Hon'ble Supreme Court in **Kunisetty**



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Satyanarayana case [*Union of India and another Vs. Kunisetty Satyanarayana* reported in (2006) 12 SCC 28] dated 22.11.2006, followed by *Siemens* case [*Siemens Ltd. vs. State of Maharashtra* reported in (2006) 12 SCC 33] dated 01.12.2006 and *Oryx Fisheries* case [*Oryx Fisheries Private Ltd. vs. Union of India and others* reported in (2010) 13 SCC 427] dated 29.10.2010. The relevant paragraphs in **Kunisetty Satyanarayana** case are Paragraphs 13 to 16 and the same read as follows:

'13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghose [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless



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the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.'

Relevant paragraph in **Siemens** case is paragraph 9 and the same reads as follows:

'9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm



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Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2006) 12 Scale 262] , but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] .) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.'

Relevant paragraphs in **Oryx Fisheries** case are paragraphs 31 to 33 and the same read as follows:

"31. It is of course true that the show-cause notice cannot be read hyper technically and it is well-settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show- cause notice and prove his innocence. If on a reasonable reading of a



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show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."



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9. We find that in the captioned matter, the writ petitioners' challenge to SCN does not fall into any of the grounds on which an SCN can be challenged as (a) it is nobody's case that R2 does not have jurisdiction to issue SCN under 68-A of TN Forest Act, b) it is not a case where R2 has pre-determined the matter and c) it is not a case where a matter already concluded is being revisited. Any other incidental ground on which an SCN can be assailed is also completely absent in the case on hand.

10. Be that as it may, learned counsel for writ petitioners pressed into service an order made by a Hon'ble single Judge of this Court dated 10.02.2000 in W.P.No.10463 of 1992 [**K.K.Satheesh @ Sali's** case] which has been reiterated in M.A Appu's case being W.P.No.10315 of 1992 vide order dated 28.08.2000 by same Hon'ble single Judge. We find that writ petitioner No.2 in W.P.No.10315 of 1992 which was disposed of on 28.08.2000 is writ petitioner No.1 here.

11. We carefully and respectfully perused the **Sali / K.K.Satheesh's** case. We find that **Sali / K.K.Satheesh** case does not come to the aid of writ petitioners in the case on hand and the reasons are



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as follows:

i) In Sali's case, an order which was made post issue of notice under Section 68-A of TN Forest Act has been called in question. This is evident from the prayer paragraph and paragraph 3 thereof which read as follows:

'This writ petition is for the issue of writ of certiorari to call for the records connected with the proceedings Na.Ka.No.306/92 dated 6.7.1992 on the file of the second respondent and quash the same.

'3.A reading of the impugned order also shows that the respondents have not considered the representation made by the petitioner. There is no dispute that as per Section 68-A(b) of the Tamil Nadu Forest Act, a representation if any made should be duly considered by the officer concerned.'

12. Therefore, the same being reiterated in subsequent order by Hon'ble single Judge is in complete contradistinction qua the case on hand as a SCN under Section 68-A(a) itself has been challenged in instant case and we have held that no ground for challenge to an SCN are present or in other words completely absent in the case on hand. In this regard, as regards citing of case laws, we deem it appropriate to remind ourselves of the celebrated judgment of the Constitution Bench of



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Hon'ble Supreme Court in ***Padma Sundara Rao*** case [***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in (2002) 3 SCC 533: 2002 SCC OnLine SC 334] . Relevant paragraph is paragraph 9 and the same reads as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

13. We have no hesitation in saying that ***Sali @ Satheesh*** and Appu's case rendered by Hon'ble single Judge does not come to the aid of the writ petitioner in the case on hand.

14. Suffice to say that Section 68-A(a) TN Forest Act SCN that



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has now been issued to which the noticees have responded vide response dated 16.05.2024 will proceed as per law, on its own merits and shall be concluded as expeditiously as the business of R2 would permit and in any event, within four weeks from today i.e., by 22.07.2024.

15. In the light of the narrative thus far, captioned writ petition fails and the same is dismissed. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

M.S.J.,]

[K.G.T.J.,]

**24.06.2024
(3/3)**

gpa

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

P.S. I: Upload forthwith

P.S.II : All concerned including Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.



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To

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