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W.P. No.15865 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.15865 of 2024

and W.M.P.No.17300 of 2024 in W.P.No.15865 of 2024

C.Arulsamy @ C.A.Samy

.. Petitioner

Vs.

The Coimbatore City Municipal Corporation
rep. By its Commissioner,
Big Bazaar Street,
Coimbatore – 641 001.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records pertaining to the impugned notice dated 07.05.2024 made in Na.Ka.No.5978/2013/H1(w) passed by the respondent under Section 128 of The Tamil Nadu Urban Local Bodies Act, 1998 and quash the same.

For Petitioner : Mr.N.Manokaran



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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 07.05.2024 bearing reference Na.Ka.No.5978/2013/H1(w)' (hereinafter 'impugned notice' for the sake of convenience and clarity) issued by the respondent under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998' (hereinafter 'Urban Act' for the sake of brevity and convenience). Captioned 'Writ Miscellaneous Petition' (hereinafter 'WMP' for the sake of brevity) thereat has been filed with a prayer for interim stay qua impugned notice pending WP.

2. Mr.N.Manokaran, learned counsel for writ petitioner is before us.

3. Essential facts as can be culled out from the case file and the submissions made by learned counsel for writ petitioner are that the writ petitioner purchased a piece of land from two vendors vide two sale deeds both dated 03.11.1993; that one sale deed is registered as Document No.3689 and another sale deed is registered as Document No.3696, both on the file of the office of jurisdictional Joint Sub Registrar in Coimbatore; that vide first sale



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deed, writ petitioner has purchased an extent of 2726 sq.ft. and vide second sale deed, the writ petitioner has purchased 2177 sq.ft. (totalling 4903 sq.ft.), survey numbers as regards these two sale deeds are Survey Nos.68/1B, 1C, 1D/2 Part and 70/2 in Vadavalli Village, Coimbatore District; that this total extent of 4903 sq.ft. shall hereinafter be referred to as 'said land' for the sake of convenience and clarity; that earlier, the writ petitioner along with some other individuals filed a writ of certiorari (W.P.No.26578 of 2013) assailing a notice dated 24.08.2013 issued by the same respondent under Sections 258(4) and 441 of The Coimbatore City Municipal Corporation Act, 1981; that this earlier writ petition came to be disposed of by another Hon'ble Division Bench vide a common order dated 26.02.2024 (common order in four Writ Petitions); that in this common order, Hon'ble Division Bench made it clear that as regards writ petitioner, the respondent has to scrutinise the documents and take appropriate decision qua removal; that thereafter the respondent issued a 'show cause notice dated 04.04.2024 bearing reference Na.Ka.No.5978/2013/H1(W)' (hereinafter 'SCN' for the sake of convenience, contradistinction qua 'said land' and clarity) with regard to 'Survey No.68/1D1 PT' (hereinafter 'land in question' for the sake of convenience and clarity) saying that the same has



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been set apart for common use i.e., well and overhead tank; that the writ petitioner has allegedly caused encroachment qua land in question; that therefore this SCN dated 04.04.2024 was issued under Section 128 of Urban Act; that in response to this notice, writ petitioner sent a reply showing cause vide communication dated 12.04.2024 inter-alia referring to the aforementioned 03.11.1993 sale deeds and saying that writ petitioner has purchased Plot No.48 under these sale deeds and referring to abovesaid earlier common order (W.P. No.26578 of 2013) and adding that writ petitioner has filed a suit in O.S.No.262 of 2002 on the file of District Munsif Court, Coimbatore (to be noted, this is a bare injunction suit qua said land); that this suit has been filed against one K.Ramalingam and a Welfare Association arraying them as D1 and D2; that the suit is pending but there is no interim order; that after writ petitioner's reply to SCN i.e., reply dated 12.04.2024, the respondent has issued the impugned notice inter-alia saying that there is no sketch showing Plot No.48 and that there is nothing to demonstrate that land in question (Survey No.68/1D1 PT) belongs to writ petitioner; that the impugned notice calls upon the writ petitioner to remove the alleged encroachment within seven days and says that failing compliance, the respondent would remove the encroachment and recover expenses; that



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captioned WP has been filed in this Court on 10.06.2024; that captioned WP is in the Admission Board today and Mr.N.Manokaran, learned counsel for writ petitioner is before us as already alluded to supra.

4. This Court having set out essential facts and the trajectory which the captioned matter has taken in reaching/being listed in the Admission Board, is now of the considered view that WP does not pass muster in the Admission Board and it deserves to be dismissed for reasons/grounds which would be set out infra in this order.

5. This Court while making the adumbration of the reasons will also be setting out the points raised by learned counsel, discussion and dispositive reasoning on the same as regards each point. This adumbration is as follows:

5.1 Learned counsel for writ petitioner submitted that there is no disputation or contestation that the impugned notice pertains to Survey No.68/1D1 PT i.e., land in question and that land in question does not form part of said land i.e., subject matter of conveyance qua aforementioned two sale deeds dated



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03.11.1993. This by itself is good enough to conclude the matter but as other points were canvassed we are considering the same also.

5.2 Learned counsel emphatically submitted that in response to SCN, the respondent should have measured, localised the land in question and in the process of removing alleged encroachment in land in question, writ petitioner's property on said land will be disturbed but the impugned notice is very clear that it pertains only to Survey No.68/1D1 PT i.e., land in question. Even according to the writ petitioner, the land in question does not form part of the said land. Therefore, this argument does not cut ice with this Court in the Admission Board.

5.3 An earlier order made by another Hon'ble Division Bench being order dated 15.05.2024 (Vacation Bench) in W.P. No. 13637 of 2024 and WMP thereat (*R.Muralidharan* case) was adverted to by learned counsel and learned counsel submitted that R.Muralidharan is a similarly placed person. We are of the considered view that the order in *R.Muralidharan* case does not come to the aid of the writ petitioner for multiple reasons and they



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are:

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(i) In *R.Muralidharan* case (order placed before us), there is no mention about the survey number;

(ii) In *R.Muralidharan* case, there is no issue that the notice in question pertains to a survey number other than the survey number belonging to the writ petitioner as is evident from the order;

(iii) Section 128(1)(b) and the proviso thereat qua Urban Act provides for issue of show cause notice returnable by seven days and also provides for considering 'any representation' received within the time limit i.e., within seven days before passing final orders. It does not refer to personal hearing. In a similar situation, a clear distinction between statutory requirement 'to give an opportunity/show cause' and 'personal hearing' was elucidatively set out in an order made in W.P.No.22634 of 2019, [State Bank of India Officers Association (CC) – SBIOA Vs. Assistant



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Commissioner (ST), Muthialpet Assessment Circle, Chennai-600 001] dated 01.08.2019 when one of us [M.Sundar, J.] sitting single. The relevant paragraphs in this SBIOA order are as follows:

'11.DISCUSSION AND DISPOSITIVE REASONING:

a) With regard to the first ground namely, personal hearing and violation of NJP, from the nature of the submissions made at the Bar, it comes to light that this is the sheet anchor submission with regard to challenge to the impugned order. Therefore, it becomes necessary to examine whether grant of personal hearing is statutorily imperative while an Assessing Officer makes a revised assessment under Section 27(1) of TNVAT Act. It is also necessary to examine as to whether it is statutorily imperative for an Assessing Officer to give personal hearing/hold personal hearing in every case in which a revised assessment is made under Section 27(1) of TNVAT Act.

b) This takes us to the provision, namely Section 27(1) and more particularly the proviso to sub-sections (1) and (2) of Section 27. This Court deems it appropriate to extract Section 27(1) and 27(2) together with the proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act.

'27. (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of five years from the date of assessment order by the assessing authority, determine to the



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best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of order of assessment by the assessing authority, reassess the tax due after making such enquiry as it may consider necessary.

(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of five years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

(underlining made by this Court to supply emphasis and highlight)

12. Adverting to the aforesaid provision, namely proviso to sub-sections (1) and (2) of Section 27, it was submitted by learned Revenue Counsel that the impugned order being a revised Assessment Order made under Section 27(1), the



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respondent has complied with the mandatory requirement of reasonable opportunity to show-cause as there is no dispute that a show-cause notice dated 12.01.2017 has been issued and after receiving the reply dated 08.03.2017, the respondent has applied her mind to the reply and asked for further documents to be furnished for verification vide a further notice dated 21.08.2018 and the writ petitioner has responded to the same under cover of an undated letter which was hand delivered in the respondent's office on 01.11.2018. Therefore, it was submitted that a reasonable opportunity to show-cause against the impugned order has been given and therefore, it cannot be gainsaid that there is violation of NJP qua the impugned order.

13. On an extreme demurrer, writ petitioner has not demonstrated that prejudice has been caused to it owing to personal hearing not being held. In other words, SCN/revisional notice has been issued to writ petitioner, writ petitioner has sent elaborate reply. After the reply, specific documents have been called for from writ petitioner for verification, writ petitioner has also produced those documents. What writ petitioner could have projected in a personal hearing has not been articulated. Therefore, this court comes to the conclusion that on a demurrer, writ petitioner has not been able to demonstrate that any prejudice has been caused to writ petitioner because of personal hearing not being held.'



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(iv) The above writ petition order was confirmed by a Hon'ble Division Bench in W.A.No.4073 of 2019, [State Bank of India Officers Association (CC), SBIOA Vs. Assistant Commissioner (ST), Chennai] vide order dated 06.12.2019;

(v) In *R.Muralidharan* case, the aforementioned earlier Division Bench order in SBIOA case has obviously not been brought to the notice of the Hon'ble Division Bench as R.Muralidharan does not refer to SBIOA order of an earlier Division Bench. Therefore, we respectfully adhere to the distinction between 'opportunity/showing cause' and 'personal hearing' as elucidatively set out in SBIOA case and unhesitatingly lay down the legal position that as regards Section 128 of Urban Act, personal hearing is not statutorily imperative but in a given case based on facts, circumstances of case and nature of response to SCN it is always open to the authority issuing SCN to hold personal hearing if deserved necessary albeit at the discretion of the authority issuing the SCN.

6. Learned counsel pressed into service the judgment of Hon'ble Supreme Court in *Thummala Krishna Rao* case being ***Government of Andhra Pradesh Vs. Thummala Krishna Rao***



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and Another reported in **(1982) 2 SCC 134** and learned counsel articulated/canvassed the proposition that summary eviction under Section 6 of 'The Tamil Nadu Land Encroachment Act, 1905' (hereinafter 'said Act' for the sake of convenience and clarity) cannot be resorted to in cases of long possession and in cases where title is in dispute. A careful perusal of *Thummala Krishna Rao* case brings to light that *Thummala Krishna Rao* case also does not come to the aid of the writ petitioner and the reasons are as follows:

6.1 In *Thummala Krishna Rao* case, on facts there were three parcels of lands and the question was whether these three parcels of lands were subject matter of acquisition which was made way back in the period between 1932 and 1937 for the benefit of Osmania University and Osmania University had filed a suit for title. The facts are very different in the case on hand. This is not a case of acquisition and disputation as to whether a parcel of land forms part of the subject matter of acquisition and pendency of suit in this regard. As regards the case law, we respectfully remind ourselves of the declaration of law made by a Constitution Bench of Hon'ble Supreme Court in the celebrated ***Padma Sundara Rao*** case [***Padma Sundara Rao Vs. State of***



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Tamil Nadu reported in **(2002) 3 SCC 533]**. Padma Sundara Rao

is a classic case as to how a case law should be relied upon by a Court. Most relevant paragraph in **Padma Sundara Rao** 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.'

6.2 If we apply *Padma Sundara Rao* principle, we have no hesitation in saying that the sequitur is, *Thummala Krishna Rao* case does not come to the aid of the writ petitioner in the case on



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hand.

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7. Yet another point is, writ petitioner has already responded to the SCN i.e., response dated 12.04.2024 alluded to supra, but there is a mention only about writ petitioner's suit being O.S. No.262 of 2002 which is a bare injunction suit and it pertains only to said land and not land in question. In writ petitioner's response to SCN, there is no mention about the subsequent suit filed by the Welfare Association which the learned counsel for writ petitioner brought to our notice. This suit is O.S. No.306 of 2003 on the file of II Additional District Munsif, Coimbatore filed by Welfare Association (D2 in writ petitioner's suit, to be noted, writ petitioner is D1 in O.S.No.306 of 2003) and in this suit, only a declaration regarding said land having been set apart for reserved site or common use has been claimed. In other words, this second suit which has not been mentioned in the writ petitioner's reply to SCN i.e., O.S. No. 306 of 2003 also does not pertain to said land but pertains to land in question.

8. To be noted, notwithstanding the averments and grounds in the support affidavit, learned counsel predicated and projected his case in the Admission Board on the aforementioned



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points, all the points have been considered by us and they do not find favour with us, in other words, the points do not cut ice for the writ petition to pass muster in the Admission Board.

9. As the impugned notice pertains to land in question i.e., Survey No.68/1D1 PT, it is obvious that the respondent as of now can proceed only with regard to the land in question i.e., survey number mentioned in the impugned notice.

10. Ergo, sum sequitur is, captioned WP fails in the Admission Board and the same is dismissed. Consequently, captioned WMP also perishes and therefore captioned WMP is also dismissed. There shall be no order as to costs.

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

Index:Yes
Neutral Citation: Yes
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To

The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore – 641 001.



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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,
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