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WP.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 & 17423 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 &
17423 of 2024

and

W.M.P.Nos.19173, 19177, 19180, 19187, 19182, 19186, 19196, 19201 &
19205 of 2024

in

W.P.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 &
17423 of 2024

W.P.No.17402 of 2024

S.Gopalan
S/o.Sadaiyan

... petitioner

Vs.

1. The Collector
O/o. The District Collector
Salem - 636 001.
2. The Revenue Divisional Officer
Mettur Dam-1
Salem District.

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3. The Assistant Director
Town Panchayat
O/o. The District Collector
Salem - 636 001.
4. The Tahsildar
Mettur Taluk, Salem District
5. The Mecheri Town Panchayat
Mecheri, Salem District.
5. The Executive Officer
Mecheri Special Grade Town Panchayat at Mecheri,
Salem District.
6. G.Thamizhizhanjeliyan
S/o.Gopal ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to Na.Ka.No.01/2024 dated 13.06.2024 issued by the 5th respondent, quash the same and consequently, direct the respondents 1 to 3 to provide house site patta to the petitioner in Survey No.229/1 situate in Mecheri Special Grade Town Panchayat, Alaghagounder, Salem District in the light of the Government Order in Revenue Department in G.O.Ms.No.318 dated 30.08.2019 within the time period.

For Petitioner in all WPs : Mr.T.Dharani
For Respondents in all WPs : Mr.P.Balathandayutham
Special Government Pleader



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COMMON ORDER

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

This common order will now govern the captioned 9 'Writ Petitions' {hereinafter 'WPs' for the sake of brevity, convenience and clarity} and captioned 9 'Writ Miscellaneous Petitions' {hereinafter 'WMPs' for the sake of brevity, convenience and clarity} thereat.

2. We are making a common order as the factual matrix is common and lands in question i.e., lands which are the subject matter of impugned notices issued by R5 (the Executive Officer, Mecheri Special Grade Town Panchayat at Mecheri, Salem District) are the same.

3. Writ petitioners in the captioned 9 WPs are noticees qua impugned notices except W.P.No.17418 of 2024, wherein writ petitioner is Mr.M.Gopal, Son of Mr.Mottaiyan and noticee is Mr.Mathaiyan, Son of



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Mr.Perumal. As regards short facts shorn of elaboration, 'lands comprised in S.Nos.228/1 and 299/1 are situate in Ward No.04, Azhagaagoundanoor {அழகாகவுண்டனூர்}, Macheri Village, Salem District (to be noted, situate in Macheri Special Grade Town Panchayat - மேச்சேரி சிறப்புநிலை பேரூராட்சி, சேலம் மாவட்டம்)' {hereinafter 'said lands' for the sake of brevity, convenience and clarity}.

4. R5 has issued '9 notices all dated 13.06.2024' {hereinafter 'impugned notices' for the sake of brevity, convenience and clarity} making writ petitioners as noticees (with the exception of W.P.No.17418 of 2024 wherein writ petitioner is Mr.M.Gopal, Son of Mr.Mottaiyan and noticee is Mr.Mathaiyan, Son of Mr.Perumal) and scanned reproduction of these 9 notices are as follows:



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WEB COPY Impugned notice in W.P.No.17402 of 2024:





WP.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 & 17423 of 2024

WEB COPY **Impugned notice in W.P.No.17406 of 2024:**



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[illegible]

Impugned notice in W.P.No.17411 of 2024:

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W.P.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 & 17423 of 2024

[illegible]

Impugned notice in W.P.No.17412 of 2024:



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Impugned notice in W.P.No.17415 of 2024:

[illegible]



WP.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 & 17423 of 2024

Impugned notice in W.P.No.17418 of 2024:

[illegible]



W.P.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 & 17423 of 2024

Impugned notice in W.P.No.17421 of 2024:

[illegible]



WP.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 & 17423 of 2024

Impugned notice in W.P.No.17423 of 2024:

[illegible]



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5. Mr.T.Dharani, learned counsel on record for writ petitioner submits that a part of said lands i.e., lands comprised in S.No.229/1 are Grama Natham and that writ petitioners are entitled to patta.

6. Issue notice to official respondents i.e., issue notice regarding admission.

7. Mr.P.Balathandayutham, learned Special Government Pleader accepts notice for R1 to R5.

8. Learned State counsel points out that said lands have been classified as 'Pathai' (பாறை) and therefore the contention of writ petitioners that they are entitled to patta at least for a portion of said lands qua S.No.229/1 is incorrect. We refrain from expressing any view or opinion on this rival contention / contention to the contrary as we would now be directing R5 to treat impugned notices as 'Show Cause Notices' {hereinafter 'SCNs' in plural and 'SCN' in singular for the sake of brevity, convenience and clarity} so that writ petitioners can respond within seven days from



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today (to be noted, this is in the light of the language in which Section 128(1)(b) of 'the Tamil Nadu Urban Local Bodies Act, 1998' {hereinafter 'TNULB Act' for the sake of brevity} is couched). In other words, all questions are left open.

9. Section 128 of TNULB Act in its entirety reads as follows:

'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.

(2) Whoever makes any encroachment in any land or space



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(not being private property) in any public street or any [land belonging to or vested with the municipality] within the municipal limit, shall, on conviction, be punished with imprisonment which shall not be less than one year but which may extend to three years and with fine which may extend to [fifty thousand rupees]:

Provided that the Court may, for any adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year.'

10. A careful perusal of Section 128 of TNULB Act makes it clear that the Statute vests the power qua Section 128 in 'Commissioner'. 'Commissioner' has been defined vide Sub-Section (7) of Section 2 of TNULB Act which reads as follows:

'2. Definitions. - In this Act, unless the context otherwise requires -

(1)

(2)

(3)

(4)

(5)

(6)

(7) "Commissioner" means -

(a) in relation to a municipal corporation and [municipal



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council], the Commissioner of the municipal corporation or [municipal council], as the case may be; and

(b) in relation to a town panchayat, the Executive Officer of the town panchayat; '

11. In the case on hand, as already alluded to supra, said lands are situate in a Town Panchayat i.e., Special Grade Town Panchayat. Therefore, in the light of Section 2(7)(b) of TNULB Act 'Commissioner' as occurring in Section 128 of TNULB Act would be R5.

12. We also find that SCNs advert to an order dated 20.02.2024 made in W.P.No.3984 of 2024 by another Hon'ble Division Bench. We find that the other Hon'ble Division Bench has made it clear that it is not required to pass any order in the writ petition. This is clear from paragraph No.3 of order dated 20.02.2024 made in W.P.No.3984 of 2024 and a scanned reproduction of the entire order is as follows:



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W.P.No.3894 of 2024

COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM :

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

W.P.No.3894 of 2024

G.Tamil Elanchezhian .. Petitioner

VS.

1. The District Collector
Salem 636 001.

2. The Revenue Divisional Officer
Mettur Dam - 1, Salem District.

3. The Assistant Director of Town Panchayat
Collectorate, Salem 636 001.

4. The Tahsildar
Mettur Taluk
Salem District.

5. The Executive Officer
Mocheri Town Panchayat, Mocheri
Salem District.

6. Nallanpan .. Respondents

7. N.Ganeshan

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மேலாங்குடி



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W.P.No. 3984 of 2024

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Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of Mandamus directing the respondents herein to forthwith remove the encroachments made on government paramboke land in S.No.228/1, 229/1, in the public pathway leading to the burial ground in Mecheri Village, Mettur Taluk, Salem by considering the petitioner's representation dated 06.02.2023 and 02.08.2023.

For the Petitioner : Mr.R.Dhanasekar
For Mr.R.Thamaraiselvan

For the Respondents : Mr.T.K.Saravanan
Government Advocate
for Respondents 1 to 4

Mr.A.Anandan
Government Advocate
for Respondent-5

ORDER
(Made by the Hon'ble Chief Justice)

We have heard Mr.R.Dhanasekar, learned counsel, for Mr.R.Thamaraiselvan, for the petitioner, Mr.T.K.Saravanan, learned Government Advocate for the respondents 1 to 4 and Mr.A.Anandan, learned Government Advocate for the fifth respondent.

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தமிழ்நாடு உயர்நீதிமன்றம்



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2. Learned Government Advocate, on instructions, submits that the encroachment, as alleged, would be removed within two months.

3. In view of the statement made by learned Government Advocate, we are not required to pass any order in the writ petition. Accordingly, the writ petition is disposed of. There shall be no order as to costs.

(S.V.G., C.J.) (D.B.C., J.)
20.02.2024

Index : Yes/No
Neutral Citation : Yes/No

kpl

To

1. The District Collector, Salem 636 001.
2. The Revenue Divisional Officer
Mettur Dam - 1, Salem District.
3. The Assistant Director of Town Panchayat
Collectorate, Salem 636 001.
4. The Tahsildar, Mettur Taluk, Salem District.
5. The Executive Officer, Mecheri Town Panchayat, Mecheri
Salem District.

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13. Therefore, the impugned notices will now be treated as SCNs under Section 128(1)(b) of TNULB Act and it will be dealt with on its own merits i.e., merits of responses and in accordance with law, untrammelled by any observation/s in this order as well as the earlier order wherein, Hon'ble Division Bench has made it clear that it is not required to pass any order.

14. In the light of the narrative thus far, we find that legal perimeter within which the captioned matters now perambulate has shrunk largely and therefore, with the consent of learned counsel on both sides, captioned 9 main WPs were taken up in the Admission Board. We are acutely conscious that R6 (private respondent) is not before us. Therefore, we make it clear that when writ petitioners respond to SCNs, representations dated 06.02.2023 and 02.08.2023 sent by R6 shall also be considered. To be noted, this is in the light of proviso to Section 128(1)(b) of TNULB Act which says that any representation qua SCN (within time limit thereat) shall also be considered before passing final orders. To be noted, reference to 06.02.2023 and 02.08.2023 representations are there in the prayer part of order dated 20.02.2024 made by another Hon'ble Division Bench in



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W.P.No.3984 of 2024. As seven days time limit is construed from today, these two representations from R6 shall also be construed to have been received within the same time limit. This protects and preserves the rights of R6 and therefore, we have put in a safety valve qua R6 who is not before us and this facilitates disposal of main WPs.

15. In the light of the narrative, discussion and dispositive reasoning set out supra, we make the following order:

(i) 9 impugned notices being notices dated 13.06.2024 bearing reference Na.Ka.No.01/2024 shall now be treated as SCNs within the meaning of Section 128(1)(b) of TNULB Act;

(ii) 9 noticees and noticee and / or writ petitioner in W.P.No.17418 of 2024 shall now respond to SCNs within seven days from today i.e., by 09.07.2024;

(iii) R5 shall consider representations sent by R6 (representations dated 06.02.2023 and 02.08.2023) before making final orders and this is vide proviso to Section 128(1)(b) of TNULB Act as already alluded to supra;



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(iv) Depending on the outcome qua aforementioned drill

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Captioned 9 WPs are disposed of in the aforesaid manner with the aforementioned directives. Consequently, captioned 9 WMPs are also disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

02.07.2024

Index : Yes / No

Speaking Order

Neutral Citation : Yes / No

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P.S. I: *Upload forthwith*

P.S.II : *All concerned including the 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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2. The Revenue Divisional Officer
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Mecheri, Salem District.
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Mecheri Special Grade Town Panchayat at Mecheri,
Salem District.



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

mk

W.P.Nos.17402, 17406, 17411, 17412, 17413, 17415, 17418, 17421 &
17423 of 2024

02.07.2024
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