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W.P.No.19750 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.19750 of 2024

P.Sureshkumar
S/o.Pachaiyappan

... Petitioner

Vs.

1. Tahsildar
Kundrathur
Kundrathur Taluk
Kancheepuram District

2. The Commissioner
Kundrathur Municipality, Kundrathur
Kanchipuram District – 600 069

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to remove the encroachment on Palavarayan Kulakkarai Street situated at Kundrathur, Kundrathur Taluk made by the residents of the Street based on the representations dated 27.04.2024 and 02.05.2024.

For Petitioner : Mr.M.P.Rajavelayutham

For Respondents : Mr.P.Balathandayutham



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W.P.No.19750 of 2024

Spl.Govt.Pleader for R1 & R2

ORDER

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

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed alleging encroachment in a street which goes by the name 'Palavarayan Kulakkarai Street' [hereinafter 'said street' for the sake of convenience and clarity].

2. Adverting to certain photographs annexed to the typed-set of papers Mr.M.P.Rajavelayutham, learned counsel for writ petitioner submits that multiple encroachment by different people have been made qua said street and there is inaction on the part of respondents though representation dated 27.04.2024 has been sent.

3. Issue notice regarding admission to official respondents.

4. Mr.P.Balathandayutham, learned Special Government Pleader accepts notice for both the respondents.

5. Learned State counsel submits, on instructions, that said street is a public street and it vests in R2. Learned State counsel further submits that a survey has been made and action is proposed under Section 128(1)(b) of 'the



W.P.No.19750 of 2024

Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)'

[hereinafter 'TNULB Act' for the sake of brevity].

6. Section 128 (1) (b) of TNULB Act together with the proviso thereat reads as follows:

'128. Power to remove encroachment from public place. - (1)

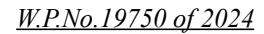
The Commissioner may, -

(a);

(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.'

7. The aforementioned proviso makes it clear that alleged encroachers have to be show-caused giving 7 days time to respond. The proviso also makes it clear that any representation received during this 7 days period should be considered before final orders are made by R2. This means that the rights and contentions of alleged encroachers are adequately protected. We make it clear that all questions are left open, we are not expressing any view or opinion on the merits of the matter and all the rights and contentions of the alleged encroachers are preserved for being raised in their response



The representation dated 27.04.2024 as placed before us is as follows:

27 Dec 2024

[illegible]



WEB COPY



W.P.No.19750 of 2024

14

சிரமத்திற்கு உள்ளாகின்றனர். துரிப்பாக காலதாமதத்தில் பள்ளி செல்லும் மாணவர்களுக்கும் வேலைக்குச் செல்லும் பொது மக்களுக்கும் பெரும் சிரமத்தை உண்டாக்குகிறது. அந்த வழியே இருசக்கர வாகனங்களில் செல்லும் நபர்கள் விபத்துக்குள்ளாகவும் அதிக வாய்ப்பு உள்ளது. மேலும் இந்த புகார் மனுவுடன் சாலை ஆக்கிரமிப்பு தொடர்பான புகைப்படங்களை இணைத்துள்ளேன். எனவே மேற்கூறிய பாலவராயன் தளக்கரை தெருவில் ஆக்கிரமித்துள்ள ஆக்கிரமிப்புகளை ஆய்வு செய்து உடனடியாக ஆக்கிரமிப்புகளை அகற்ற வழிவகை செய்யுமாறு பணிவுடன் கேட்டுக்கொள்கிறேன்.

இப்படிக்கு

P. J. M. K. S.
27/4/24

8. The aforementioned representation shall be treated as a representation vide proviso to Section 128(1)(b) of TNULB Act and the same shall be considered by R2 before final order is made.

9. In the light of the narrative thus far, we dispose of the captioned WP as closed recording the stated position of learned State counsel with further observation that intended proceedings vide Section 128(1)(b) of TNULB Act shall proceed on its own merits and in accordance with law untrammelled by this order. We also make it clear that captioned WP is disposed of with preservation of rights of all concerned, more particularly



W.P.No.19750 of 2024

noticee vide Section 128(1)(b) of TNULB Act and that we have not expressed any view or opinion on the merits of the matter.

Captioned WP disposed of albeit with aforementioned preservation of rights in the aforesaid manner. No costs.

(M.S.,J.) (K.G.T.,J.)
22.07.2024

Index : Yes / No
Speaking / Non-speaking order
Neutral Citation : Yes / No
gpa

To

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WEB COPY



W.P.No.19750 of 2024

M.SUNDAR, J.,
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gpa

W.P.No.19750 of 2024

22.07.2024

Page Nos.7/7