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W.P.No.18335 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.18335 of 2024
and
W.M.P.No.20142 of 2024

Mansi Banthia

... Petitioner

Vs.

- 1.The Commissioner,
The Greater Chennai Corporation,
Chennai.
- 2.The Assistant Commissioner,
The Greater Chennai Corporation,
Chennai.
- 3.The Executive Engineer,
Zone VI,
The Greater Chennai Corporation,
Chennai.
- 4.The Assistant Executive Engineer,
Zone VI,
The Greater Chennai Corporation,
Chennai.



W.P.No.18335 of 2024

5.The Assistant Engineer,
Zone VI,
The Greater Chennai Corporation,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent herein in proceedings in Zone VI/Eng/Dn78/3884/2024 dated 07.06.2024 and quash the same as illegal and consequently directing the respondents to conduct proper enquiry and pass orders after giving proper opportunity to the petitioner.

For Petitioner : Mr.K.Rajendra Prasad

For R1 to R5 : Mr.E.C.Ramesh
Standing Counsel

ORDER

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

This writ petition is filed challenging the notice issued to the petitioner by the respondents in exercise of their power under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as “the Act” for brevity).



W.P.No.18335 of 2024

2. Brief facts that are necessary for the disposal of this writ petition are as follows :

The petitioner states that he has purchased the property measuring about 2372 sq.ft. in S.F.Nos.2105, 2106/2 & 2106/3 by registered sale deed dated 05.05.2021 with three storied building with Ground + 2 Floors. It is the case of the petitioner that the construction was about 20 years back and he is in peaceful possession and enjoyment of the property without any hindrance from anyone. By the impugned notice, the 1st respondent has called upon the petitioner to remove the encroachment in a canal to an extent of 551 sq.ft. within 15 days. The grievance of the petitioner is that the petitioner was never put on notice and the alleged encroachment is not after making any survey or fixing boundaries of the property as per the Revenue documents. The Hon'ble Supreme Court, in ***Madhavrao Scindia (dead) through LRs v. Ramesh Jatav and others*** reported in ***(2006) 1 SCC 379***, has held as follows :

“1. The learned Senior Counsel for the petitioners submits that the impugned order of the High Court has been passed with undue haste. Some of the directions made by the High Court are vague and premature. As to para 11, it is



WEB COPY



W.P.No.18335 of 2024

submitted that no encroachment could have been directed to be removed and no demolition could have been ordered without recording a specific finding in that regard. The Municipal Corporation ought to have been directed to carry out a survey in the presence of the parties and identify encroachment and unauthorised construction, if any, so that the aggrieved party could have the remedy of approaching the civil court. As to para 10, it is submitted that that direction, if any, was called for against O.P. Saraswat who is in illegal possession of land in excess of what he is entitled to.

2.Issue notice to Respondents 1 to 11. The learned counsel for the petitioners submits that for the present notice is not required to be issued to Respondents 12 to 24.

3.Until further orders, it is directed that the direction made by the High Court shall remain stayed until the Municipal Corporation has identified the boundaries of the land alleged to be public park and clearly identified, by taking measurements, the encroachment, if any. Needless to say such survey and identification shall have to be done in the presence of the parties likely to be affected adversely by the action of the Municipal Corporation.”



W.P.No.18335 of 2024

3.The case of the petitioner is that he is not in encroachment and the construction is in his patta land.

4.Be that as it may, when summary proceedings are initiated for removal of encroachment, the same cannot be without a survey to identify the boundaries or encroachment in the presence of the petitioner. Since the procedure is summary in nature, there must be a survey by Revenue officials in the presence of the petitioner before proceeding with removal of encroachment under Section 128 of the Act. Section 128(1)(a)(b) of the Act 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 or vested with the municipality within



WEB COPY



W.P.No.18335 of 2024

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.”

5. Even though a Show Cause Notice is issued, the Show Cause Notice is not after any survey by the Revenue officials in the presence of the petitioner. **Therefore, the impugned order is set aside.** However, liberty is given to the respondents to take appropriate action after finding whether the petitioner is in encroachment of the property by causing a survey by Revenue officials in the presence of the petitioner. When a survey is conducted by the Revenue officials at the instance of the respondents, the competent person who conducts the survey in the presence of concerned Tahsildar shall issue notice to the petitioner as well as the official respondents. After conducting survey in the presence of petitioner, the Revenue officials concerned shall serve a copy of the report and plan, demarcating or pointing out the exact encroachment, if any, by the petitioner. Thereafter, the respondents shall proceed further under Section 128 of the



W.P.No.18335 of 2024

Act.

WEB COPY

6. With these directions, this writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (N.S., J.)
08.07.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

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WEB COPY



W.P.No.18335 of 2024

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W.P.No.18335 of 2024

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