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W.P.No.18812 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.18812 of 2024

and

W.M.P.No.20646 and 20648 of 2024

in

W.P.No.18812 of 2024

A.Veni

W/o.Late Annamalai

... Petitioner

Vs.

1. The Commissioner
Chennai Corporation
Rippon Buildings
Chennai – 600 003

2. The Zonal Officer
Zone-15
Division No.197
Sholinganallur
Chennai – 600 119

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus by calling for the



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records connected with the impugned notice dated 16.11.2023 of the 2nd respondent under Section 128 read with the Tamil Nadu Urban Local Bodies Act, 1998 and quash the same and consequently direct the respondents to not to disturb the peaceful possession and enjoyment of the petitioner's property as mentioned in the impugned notice dated 16.11.2023 issued by the 2nd respondent.

For Petitioners : Mr.J.Arul Prakasam
For Respondents : Mr.G.T.Subramanian
Standing Counsel
for Chennai Corporation

ORDER

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

In the captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity}, Mr.J.Arul Prakasam, learned counsel on record for writ petitioner, who is before us submits that an undated 'notice singed by R2 [The Zonal Officer, Zone-15, Division No.197, Sholinganallur, Chennai – 600 119] on 16.11.2023' {hereinafter 'impugned notice' for the sake of convenience and clarity} has been called in question.

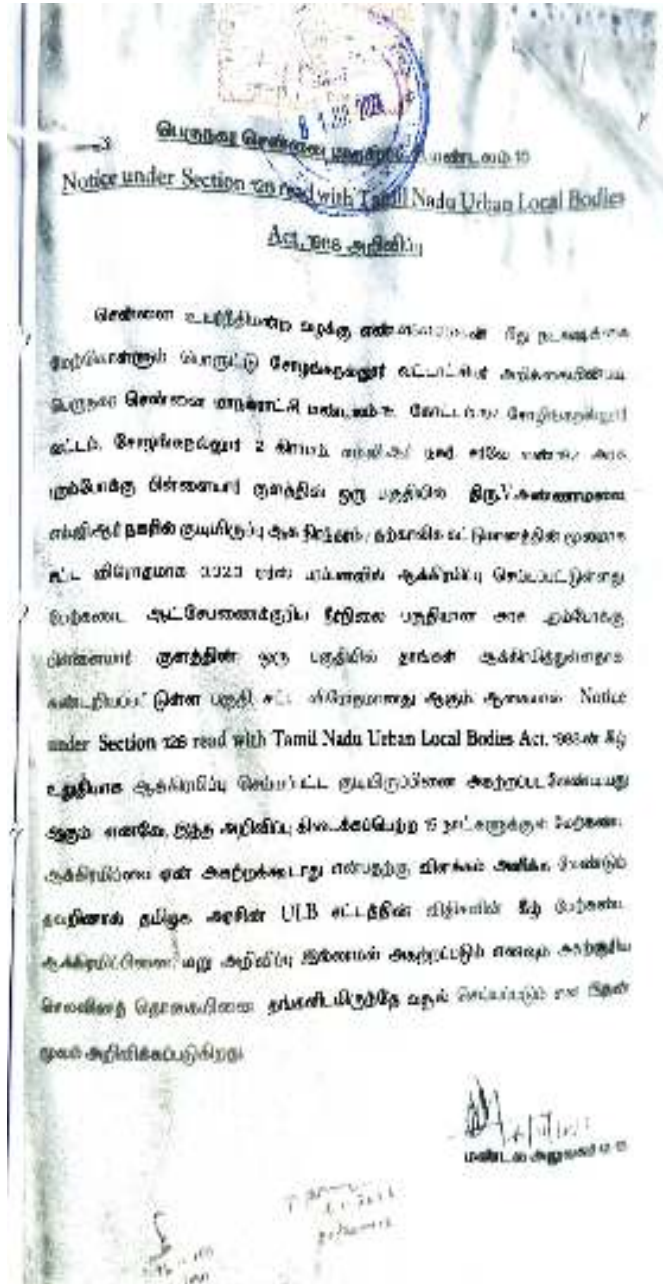
2. Learned counsel for writ petitioner submits that the impugned notice was affixed in the property concerned and a photocopy of the same has been placed before us. A scanned reproduction of the impugned notice



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is as follows:

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3. A careful perusal of the impugned notice brings to light that the caption says that it has been issued under Section 128 of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' [hereinafter 'TNULB Act' for the sake of brevity].

4. We carefully perused Section 128 of TNULB Act and the same 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.'



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5. The contents of the impugned notice makes it clear that it is obviously a notice under Section 128(1)(b) of TNULB Act. As regards, Section 128(1)(b), three aspects of significance qua case on hand emerge. They are as follows:

a) The power to remove encroachment i.e., the power to issue notice under Section 128 of TNULB Act has been vested with 'Commissioner';

b) The noticee has to be show-caused giving 7 days time; and

c) If any representation is received in this 7 days show-cause notice period, the representation shall be considered by the Commissioner before final orders are passed;

6. We find that 'Commissioner' has been defined vide Section 2(7) of TNULB Act and the same reads as follows:

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

(1)

(2)

(3)

(4)



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(5)

(6)

(7) "Commissioner" means -

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

7. There is no disputation that Chennai Corporation is not a Town Panchayat and therefore, 'Commissioner' qua Chennai Corporation is vide Section 2(7)(a) of TNULB Act.

8. Issue notice i.e., issue notice regarding Admission.

9. Mr.G.T.Subramanian, learned Standing Counsel for Chennai Corporation accepts notice for both the respondents.

10. Considering the limited and narrow scope of the captioned WP, with the consent of both sides main WP was taken up.

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11. There is nothing to demonstrate either provision for delegation of powers or delegation of powers by Commissioner. This means that the impugned notice ought to have been issued within the meaning of Section 2(7)(a) of TNULB Act and it has to be issued by R1 [The Commissioner, Chennai Corporation, Rippon Buildings, Chennai – 600 003] but it has been signed by R2.

12. The narrative thus far demonstrates that the impugned notice has been issued by R2 without jurisdiction to do so. Therefore, we deem it appropriate to interfere qua the impugned notice on this short point i.e., lack of jurisdiction.

13. In the light of the discussion, dispositive reasoning and legal provision thus far, we set aside the impugned notice (WP allowed) but on the short point of lack of jurisdiction. Therefore, we make it clear that all the rights and contentions of Chennai Corporation are preserved for issuing a notice afresh if so advised and if so desired. If such a fresh notice is issued by the competent authority i.e., R1, we make it clear that all the rights and contentions of the writ petitioner are preserved for responding



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when show-caused. The reason is, we have not expressed any view or opinion on the merits of the matter one way or the other.

14. As already alluded to supra, captioned main WP allowed albeit with preservation of rights in aforesaid manner. Consequently, WMPs are disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

gpa

To

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2. The Zonal Officer
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Chennai – 600 119

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