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W.P.No.20745 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.20745 of 2024

&

W.M.P.No.22686 of 2024

in W.P.No.20745 of 2024

Mrs.V.Preethi

... Petitioner

Vs.

1. The Commissioner
Arni Municipality
Arni Town, Arni
Thiruvannamalai District
2. The District Collector
Thiruvannamalai District
Thiruvannamalai
3. The District Inspector of Survey
Thiruvannamalai District
Thiruvannamalai



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4. The Executive Engineer
Public Works Department
Arni
Thiruvannamalai District

5. N.Damodaran

6. Mr.N.Sunderraj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed in proceedings vide Na.Ka.No.1034/2022/F1 dated 20.06.2024 on the file of the 1st respondent and quash the same by directing the 3rd respondent to undertake survey of the lands comprised in T.S.No.35/14 located in Arni Town, Ward-C, Block No.2 as per the land survey records so maintained in the Survey Department and in the 1st respondent Municipality and note down the features of existing nature of structures and buildings and Vellore road covered in T.S.No.35/14 for locating the exact extent of the land being under occupation by unauthorized encroachment for action being taken thereon in accordance with the law by the respondents 1 and 2 besides forbearing the respondents 1 and 2 from dispossessing the petitioner and petitioner's family members without adopting due process of law.

For Petitioner : Mr.R.Natarajan

For Respondents : Mr.P.Balathandayutham
Spl.Govt.Pleader for R1 to R4

ORDER

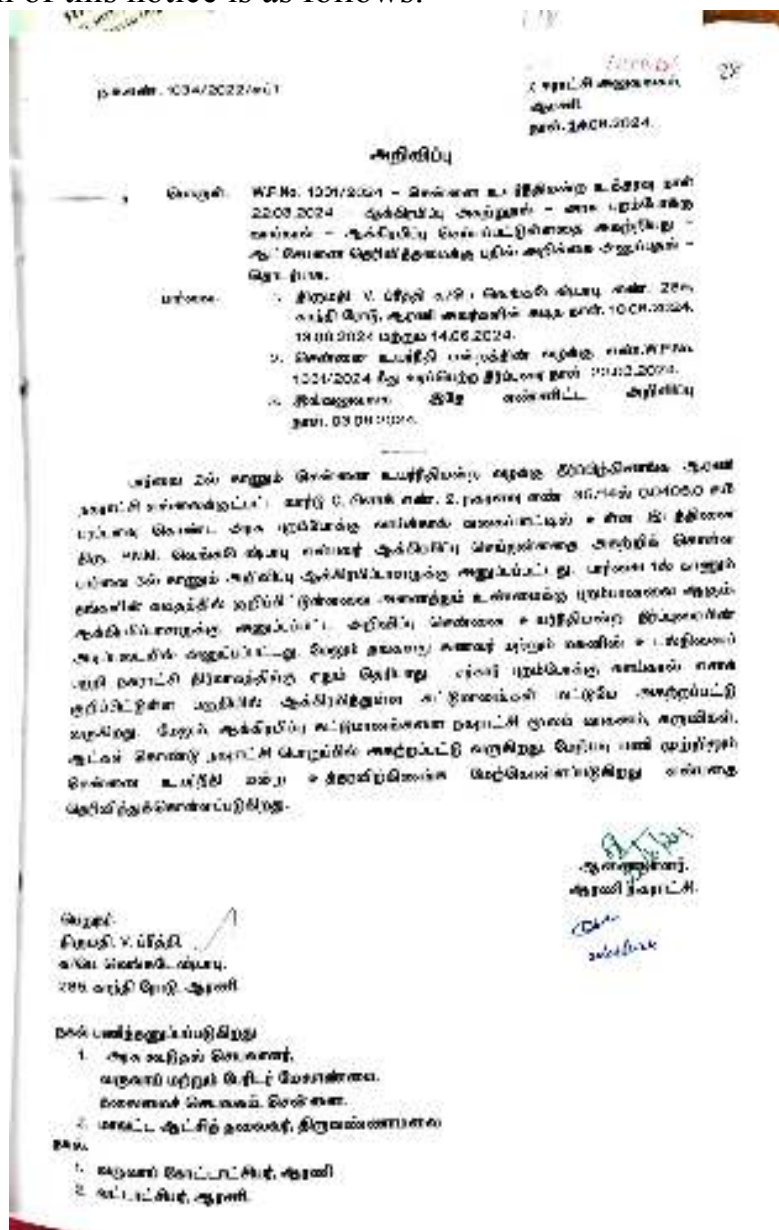
[Order of the Court was made by M.SUNDAR, J.,]

Captioned main 'Writ Petition' ['WP' for the sake of brevity] has been filed *inter alia* assailing a notice dated 20.06.2024 bearing reference



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ந.க.எண்.1034/2022/எஸ்1 issued by R1 [The Commissioner, Arni Municipality, Arni Town, Arni, Thiruvannamalai District] and a scanned reproduction of this notice is as follows:





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2. The aforementioned 'notice issued by R1' shall hereinafter be referred to as 'impugned notice' for the sake of convenience and clarity.

3. Mr.R.Natarajan, learned counsel for writ petitioner points out that an earlier writ petition being W.P.No.1331 of 2024 was filed by one N.Damodaran *inter alia* seeking a mandamus to remove what according to him is encroachment made by R7 thereat. Learned counsel pointed out that R7 in W.P.No.1331 of 2024 is one Mr.P.N.M Venkatesh Babu, who is spouse of writ petitioner [Ms.V.Preethi]. Learned counsel submits that W.P.No.1331 of 2024 came to be disposed of by another Hon'ble Division Bench on 22.03.2024 by an order which reads as follows:



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W.P.No.1331 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM :

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

W.P.No.1331 of 2024

N.DAMODARAN

.. Petitioner

Vs

- 1 THE SECRETARY
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
GOVERNMENT OF TAMIL NADU
CHENNAI - 600 009.
- 2 THE DISTRICT COLLECTOR
OFFICE OF COLLECTORATE
TIRUVANNAMALAI DISTRICT,
- 3 THE DISTRICT REVENUE OFFICER
ARNI TOWN, TIRUVANNAMALAI DISTRICT.
- 4 THE REVENUE DIVISIONAL OFFICER
ARNI TOWN, TIRUVANNAMALAI DISTRICT.
- 5 THE TAHSILDAR
ARNI TOWN, TIRUVANNAMALAI DISTRICT.
- 6 THE COMMISSIONER
ARNI TOWN MUNICIPALITY, ARNI.
- 7 P.N.M.VENKATESH BABU

.. Respondents

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W.P.No.1331 of 2024

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 1 to 5 to remove the encroachment made by the 7th respondent based on the notice dated 14.03.2023 issued by the 5th respondent under Section 6 of the Tamil Nadu Land Encroachment Act 1905 and also based on petitioner's representation dated 17.07.2023.

For the Petitioner : Mr.P.Satheesh Kumar

For the Respondents : Mr.P.Harish,
Government Advocate
for respondents 1 to 5

: Mr.P.Srinivas
for 6th respondent

: No appearance
for 7th respondent

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

Heard Mr.P.Satheesh Kumar, learned counsel for the petitioner; Mr.P.Harish, learned Government Advocate for respondents 1 to 5; and Mr.P.Srinivas, learned counsel for the sixth respondent.

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2. The sixth respondent and the State authorities are not confirming whether the alleged encroachment is in the government property and/or the municipal property. The government authorities as well as the sixth respondent shall conduct a joint survey of the subject writ land and take steps to remove the encroachment, if any, in accordance with law, expeditiously.

With these observations, the writ petition is disposed of.
There shall be no order as to costs.

(S.V.G., C.J.)

(D.B.C., J.)

22.03.2024

Index : Yes/No
Neutral Citation : Yes/No
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4. Learned counsel submits that R7 was not before the Court and the earlier writ petition came to be disposed of in the Admission Board.

5. Pursuant to the aforementioned earlier order, R1 issued a notice dated 03.06.2024 to Thiru.P.N.M.Venkatesh Babu and there are two replies dated 07.06.2024 and 13.06.2024 from the writ petitioner. Learned counsel points out that Thiru.P.N.M.Venkatesh Babu is not of sound mind but it may not be necessary to go in that aspect of the matter as aforementioned



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impugned notice (20.06.2024 notice) which is assailed in the captioned WP has been now issued to the writ petitioner [Ms.V.Preethi].

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

7. Mr.P.Balathandayutham, learned Special Government Pleader accepts notice for R1 to R4.

8. Learned State counsel submits that the impugned notice dated 20.06.2024 issued by R1 is one 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]. This dwindles the scope of the captioned writ petition vastly and therefore, with the consent of learned counsel on both sides, main WP is taken up and heard out in the Admission Board.

9. We are acutely conscious that R5 and R6 are not before this Court. To be noted, R5 [N.Damodaran] is writ petitioner in the earlier WP being W.P.No.1331 of 2024 but we will be putting in a safety valve as regards R5 and R6 as we are taking up the main WP in the Admission Board.



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10. As regards Section 128 of TNULB Act, 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.'

11. A careful perusal of the aforementioned provision makes it clear that the impugned notice pertains to Section 128 (1)(b) of TNULB Act and the proviso thereat as it is a case of immovable structures. Section 128(1)(b) necessarily means that the noticee should be show-caused giving 7 days time and if any representation is received in 7 days window, the same has to be considered by R1 before making final order and this is vide proviso to



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Section 128(1)(b) of TNULB Act.

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12. A careful perusal of the impugned notice makes it clear that it really does not show-cause the noticee but it only calls upon the noticee to cooperate for removal of what according to R1 is encroachment but that there is encroachment is subjected to disputation and contestation by the writ petitioner.

13. In the light of the legal provision and the language in which Section 128 of TNULB Act is couched, facts and circumstances of this case and the trajectory the matter has taken, we make the following order:

i) The impugned notice dated 20.06.2024 bearing reference ந.க.எண்.1034/2022/எப்1 issued by R1 shall now be treated as a 'show-cause notice' ['SCN'] within the meaning of Section 128 (1)(b) of TNULB Act;

b) The noticee (writ petitioner) shall send a response to the same within 7 days from Monday (06.08.2024) i.e., by 12.08.2024;

c) In the *interregnum* i.e., between today and 06.08.2024, notice shall be served on R5 and R6 also and it is



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open to R5 and R6 to send representations. If R5 and R6 send representations, the same shall be considered vide proviso to Section 128(1)(b) of TNULB Act before making the final order. To be noted, this is the safety valve we are putting in as regards R5 and R6 (private respondents) who are not before this Court;

d) If the proceedings are dropped, accepting the cause shown, there will be no difficulty but if the proceedings are to go on post cause being shown and representations of R5 and R6 (if any) are considered until then i.e., until orders are made by R1 under Section 128(1)(b) of TNULB Act *status quo* as of today shall obviously be maintained.

Captioned WP disposed of in the aforesaid manner with the aforementioned observation, directives and preservation of rights in the aforesaid manner. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

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



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30.07.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The Commissioner
Arni Municipality
Arni Town, Arni
Thiruvannamalai District
2. The District Collector
Thiruvannamalai District
Thiruvannamalai
3. The District Inspector of Survey
Thiruvannamalai District
Thiruvannamalai
4. The Executive Engineer
Public Works Department
Arni
Thiruvannamalai District



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

gpa

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30.07.2024