



WEB COPY

W.P.No.20127 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.20127 of 2024

and

W.M.P.No.22032 of 2024

in

W.P.No.20127 of 2024

Surapet Pavani Palms
Flat Owners Association, Rep. by its Vice President
No.122A, Ambattur to Puzhal Main Road
Surapet, New Surapet Bus Stop
Chennai-600 066.

.. Petitioner

Vs.

1. The Commissioner
Greater Chennai Corporation
Rippon Building,
Chennai-600 003.
2. The Zonal Officer
Zone-3, Greater Chennai Corporation
No.1, Thattankulam Road
Madhavaram, Chennai-600 060.
3. The Assistant Engineer
Zone-3, Greater Chennai Corporation
No.1, Thattankulam Road
Madhavaram, Chennai-600 060.
4. G.Rajendran
Pavani Palms, AF-S1
No.122/1A, Ambattur to Puzhal Main Road



W.P.No.20127 of 2024

Surapet, Chennai-600 066.

.. Respondents

WEB COPY

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records connected with the proceedings issued in Ma.A.3.Na.Ka.No.3754/2024 dated 26.06.2024 passed by the 2nd respondent and quash the same and consequently, direct the 1st and 2nd respondents to pass appropriate orders after serving proper notice to the petitioner's association and also take necessary action against the 3rd respondent who is involved in their internal matters personally.

For Petitioner : Mr.S.Illamvaludhi
For Respondents : Mr.G.T.Subramanian
for R1 to R3
Mr.P.Srinivasan, for R4

ORDER

(Order of the Court was made by **M.Sundar, J.**)

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed in this Court on 16.07.2024 with a Certiorarified Mandamus prayer qua 'proceedings dated 26.06.2024 bearing reference Ma.A.3.Na.Ka.No.3754/2024 made by R2 (the Zonal Officer, Zone-3, Greater Chennai Corporation, No.1, Thattankulam Road, Madhavaram, Chennai-600 060.)' {hereinafter 'impugned proceedings' for the sake of convenience and clarity}.

2. Mr.S.Illamvaludhi, learned counsel on record for WP



W.P.No.20127 of 2024

petitioner, advertizing to impugned proceedings submits that R2 has issued the impugned proceedings without show causing the noticee.

3. Issue notice to respondents i.e., notice regarding admission.

4. Mr.G.T.Subramanian, learned counsel accepts notice for R1 to R3. Mr.P.Srinivasan, (Enrol.No.511/1993), learned counsel with address for service at No.248, New Additional Law Chambers, High Court, Chennai-600 104, accepts notice for R4.

5. Learned counsel submits that impugned proceedings pertains to encroachment in a public pathway and therefore, the same has been made under the 'Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999) {hereinafter 'TNULB Act' for the sake of brevity}.

6. Considering the limited scope of captioned WP, main WP was taken up with the consent of all learned counsel before us i.e., learned counsel for writ petitioner, learned Standing Counsel for Chennai Corporation (R1 to R3) and Mr.P.Srinivasan, learned counsel, who has accepted notice for R4.



W.P.No.20127 of 2024

WEB COPY

7. A careful perusal of the TNULB Act brings to light that proceedings, if any, in cases of this nature has to necessarily be under Section 128(1)(b) of TNULB Act and proviso thereat. Section 128(1)(b) of TNULB Act provides for a noticee being show caused with 7 days time to respond. To be noted, Section 128(1)(b) of TNULB Act together with proviso thereat 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 (not being private property) in any public street or any



W.P.No.20127 of 2024

[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.'

8. In the light of the provision and inbuilt mechanism therein i.e., mechanism to show cause the noticee qua proceedings under Section 128(1)(b) of TNULB Act, we are of the considered view that the impugned proceedings deserves to be dislodged on this short point without expressing any view or opinion on the merits of the matter. We have also noticed that proviso to Section 128(1)(b) of TNULB Act provides for any representation to be considered, if the representation is made within 7 days window. This means that it will be open to R4 to make a representation and the same will also be considered before making final orders.

9. In the light of the narrative thus far, captioned WP is disposed of in the following manner:



W.P.No.20127 of 2024

WEB COPY

(i) Impugned proceedings are set aside on the short point that noticee has not been show caused though Section 128(1)(b) of TNULB Act provides for the same;

(ii) We make it clear that we have not expressed any view or opinion on the merits of the matter and we are setting aside the impugned proceedings on the sole ground that it has not show caused the noticee and it has only directed the noticee to remove the alleged encroachment;

(iii) The concerned respondent shall now issue notice afresh in accordance with Section 128(1)(b) of TNULB Act and proviso thereat to writ petitioner and shall mark a copy to R4;

(iv) In response to the aforementioned notice, writ petitioner shall respond in seven days and within seven days window, R4 shall sent a representation;

(v) The concerned respondent, who issues Section 128(1)(b) notice shall proceed with the matter further on its own merits and in accordance with law untrammelled by any observations in this order;

(vi) Though obvious, we make it clear that



W.P.No.20127 of 2024

WEB COPY

concerned respondent shall consider the representation from R4 before making final orders and this is in the light of proviso to Section 128(1)(b) of TNULB Act;

(vii) Proceeding with the matter post Section 128(1)(b) of TNULB Act notice means that it is open to the concerned respondent to either drop proceedings accepting the response to SCN or carry the matter to its logical end i.e., removal of alleged encroachment.

Captioned WP disposed of in the aforesaid manner with aforementioned directives / observations. Consequently, captioned Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
19.07.2024
(2/2)

Index:Yes
Neutral Citation: Yes
Speaking order
mk

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

mk



W.P.No.20127 of 2024

To

WEB COPY

1. The Commissioner
Greater Chennai Corporation
Rippon Building,
Chennai-600 003.
2. The Zonal Officer
Zone-3
Greater Chennai Corporation
No.1, Thattankulam Road
Madhavaram, Chennai-600 060.
3. The Assistant Engineer
Zone-3
Greater Chennai Corporation
No.1, Thattankulam Road
Madhavaram, Chennai-600 060.

W.P.No.20127 of 2024

**19.07.2024
(2/2)**