



W.P.No.31442 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.31442 of 2024

and

W.M.P.Nos.34146 & 34147 of 2024

and

W.P.No.31442 of 2024

W.M.M.Maznavi

Partner M/s.Wavoo Magdoom Realtors

191, 3rd Floor, N.S.C.Bose Road

Chennai-600 001.

... Petitioner

Vs.

1. The Commissioner
The Greater Chennai Corporation
Ripon Building, Chennai-600 003.
2. The Executive Engineer
Zonal Office - XV
Greater Chennai Corporation
No.120, Rajiv Gandhi Salai
Sholinganallur
Chennai-600 119.
3. Zonal Officer

Page Nos.1/9



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W.P.No.31442 of 2024

Zonal Office - XB
Greater Chennai Corporation
No.120, Rajiv Gandhi Salai
Sholinganallur, Chennai-600 119.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records of the 2nd respondent pertaining to the impugned notice No.Z.O.15/4983/2024 dated 25.09.2024 issued to the petitioner and quash the same.

For Petitioner	:	Mr.P.Wilson Senior Counsel for Mr.Richardson Wilson
For Respondents	:	Mr.G.T.Subramanian Standing Counsel for Corporation

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed *inter alia* assailing a 'notice dated 25.09.2024 bearing reference No.Z.O.15/4983/2024' {hereinafter 'impugned notice' for the sake of brevity} purportedly issued under Section 128 of 'Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'TNULB Act' for the sake of brevity}.



W.P.No.31442 of 2024

WEB COPY

2. Mr.P.Wilson, learned Senior Counsel appearing on behalf of counsel on record for writ petitioner submits that it is not a case of encroachment and that allegation against writ petitioner is only construction in violation of plan. It is also brought to our notice that proceedings under Section 79 of 'the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972)' [hereinafter 'said Act' for the sake of brevity} is pending.

3. Issue notice to respondents.

4. Mr.G.T.Subramanian, learned Standing Counsel accepts notice for all three respondents and Mr.G.T.Subramanian, learned Standing Counsel submits, on instructions that the notice has been issued pursuant to certain Court directions but it appears that Court directions if at all and if that be did not direct issue of notice under Section 128 of TNULB Act. It is emphatic submission of learned Senior Counsel that Section 128 of TNULB Act is not attracted.

Page Nos.3/9



W.P.No.31442 of 2024

WEB COPY

5. Be that as it may, a perusal of impugned notice brings to light that writ petitioner noticee has been called upon to show cause and notice also says in the same breath that action will be taken to remove deviated portion of unauthorized construction without further notice. Impugned notice has to be treated as 'show cause notice' ['SCN'] considering the language in which Section 128 of TNULB Act is couched. 128 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.



W.P.No.31442 of 2024

(2) Whoever makes any encroachment in any land or space (not being private property) in any public street or any [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.'

6. If the impugned notice is treated as SCN, it will be open to writ petitioner noticee to send a reply / show cause *inter alia* raising the point that Section 128 of TNULB Act will not be attracted. If writ petitioner does that, second respondent has to pass order. This is clear from the proviso to Section 128(1)(b) of TNULB Act. On response, it is open to respondents to roll back and withdraw the notice but that will not curtail respondents from initiating proceedings under Section 135 of TNULB Act or any other appropriate provisions of applicable Statute/s.

7. Considering the limited scope of captioned WP, with the consent of learned counsel on both sides main WP was taken up in the Admission Board.

Page Nos.5/9



W.P.No.31442 of 2024

8. The following order is made:

(i) Impugned notice dated 25.09.2024 bearing reference No.Z.O.15/4983/2024 will be treated as SCN;

(ii) Writ petitioner shall send a reply to the same within a fortnight from today i.e., on or before 18.11.2024;

(iii) All rights and contentions of writ petitioner including rights of writ petitioner to say that Section 128 of TNULB Act is not attracted are preserved for sending reply to SCN;

(iv) On receipt of reply within fortnight, the second respondent shall pass an order within a fortnight therefrom i.e., 02.12.2024;

(v) If the order is adverse to writ petitioner, the order will be kept in abeyance for another fortnight i.e., till 16.12.2024 to enable writ petitioner to work out his remedies;

(vi) On the contrary, if the order is in favour of



W.P.No.31442 of 2024

WEB COPY

writ petitioner, it will be open to respondents to initiate action under suitable provision, if so advised and if so desired;

(vii) Though obvious, we make it clear that further action will be subject to orders that are made by R2 in response to SCN.

Captioned WP is disposed of in the aforesaid manner. Consequently, captioned WMPs are disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

04.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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W.P.No.31442 of 2024

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W.P.No.31442 of 2024

M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

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W.P.No.31442 of 2024

04.11.2024

Page Nos.9/9