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W.P.Nos.25324 & 24093 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM :

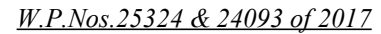
THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.Nos.25324 & 24093 of 2017

E.Usharani	..	Petitioner in W.P.No.25324 of 2017
K.Selvaraj	..	Petitioner in W.P.No.24093 of 2017

v.

1. The Member Secretary
Chennai Metropolitan
Development Authority
Thalamuthu Natarajan Maaligai
Egmore, Chennai 600 008
2. The Commissioner
Villivakkam Panchayat Union
Ambattur, Chennai 600 053
3. The Tahsildar
Maduravoyal, Chennai 600 095 .. Respondents 1 to 3 in both W.P's
4. V.Sanjay
(R4 impleaded vide order
dated 05.01.2024 in WMP.
27745 & 27746/2017 in WP.
24093 & 25324/2017) .. 4th Respondent in both W.P's



W.P.No.24093 of 2017 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent relating to his proceeding Na.Ka.No.2252/2017/A3 dated 01.09.2017 and to quash the same.

For Respondents :: Mr.C.N.Vinobha
Standing Counsel for R1
Mr.P.Sanjai Gandhi for R2
Mrs.S.Anitha
Special Government Pleader for R3
Dr.G.Krishnamurthy for R4

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

The petitioners in these two writ petitions are the owners of plots bearing Nos.27 & 28 in Sakthi Nagar Second Street, Vanagaram, Chennai in the unapproved layout coming under the control of Villivakkam Panchayat Union. The petitioners have also put up constructions. Though the construction put up by the petitioners in their respective plots is not in



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accordance with any approved building plan or planning permission, it is admitted that the petitioners in the respective writ petitions have filed regularisation applications and they are being followed up. In the meanwhile, one V.Sanjay, who has been impleaded as the fourth respondent in the writ petitions, filed Writ Petition No.36758 of 2015 before this Court for a direction to the respondents 1 & 2 herein to consider the representation dated 07.10.2015 and to remove the unauthorized and illegal construction put up by the petitioners by encroaching into the public property. This Court, by order dated 19.11.2015, directed the official respondents to consider and pass orders on the fourth respondent's various representations on merit and in accordance with law within a period of six weeks after affording opportunity of hearing to the petitioners herein before taking any coercive action, if necessary. It appears that a contempt petition is also filed by the fourth respondent. Probably, on account of the filing of contempt petition, the second respondent appears to have called upon the petitioners in the respective writ petitions to submit documents in their possession regarding their residential house as well as residential plot. The petitioners specifically state that they have personally submitted the documents as



4. Though the learned counsel appearing for the contesting second respondent refers to the order passed by this Court earlier in the writ petition filed by the fourth respondent and the direction to consider his representation, he is unable to convince this Court that the impugned order was passed after issuing a show cause notice to the petitioners. Even if a statute does not provide observance of the principles of natural justice, before passing an order affecting an individual's civil right, this Court has repeatedly held that observance of principles of natural justice should be read into the provisions of the Act whenever coercive action is taken affecting the civil rights of the petitioners. Therefore, the impugned order is liable to be quashed on the short ground that the same is in violation of the principles of natural justice.

5. It is now brought to our notice that by virtue of the notification issued by the Government, the Tamil Nadu Urban Local Bodies Act, 1998 has come into force and the said Act is applicable to the second respondent local body, namely, Villivakkam Panchayat Union. Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998 reads as follows:-



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“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 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 1 [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:



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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.”

Since the encroachment is by putting up construction in the street according to the second respondent, a show cause notice is required even in terms of Section 128(1)(b) of the Act. Further, following the judgment of the Hon'ble Supreme Court in *Madhavrao Scindia v. Ramesh Jatav and others*, (2006) 1 SCC 379, this Court in W.P.(MD) No.7664 of 2022 dated 09.06.2022 (J.Nisha v. The District Collector, Nagercoil, Kanyakumari District and others) has held that the question whether a person is in encroachment cannot be determined without conducting a survey and measurement in his presence when the alleged encroachment is in dispute.

6. In the light of the above, these writ petitions are disposed of with the following directions:-

(a) The impugned order dated 01.09.2017 is quashed, as the same is in violation of the principles of natural justice.

(b) The second respondent shall cause a survey and inspection by the third respondent-Tahsildar along with the



Taluk Surveyor. On such requisition by the second respondent, the third respondent-Tahsildar shall inspect the subject properties with the assistance of the Taluk Surveyor or a competent person in the presence of the petitioners after issuing notice to the petitioners in the respective writ petitions, within a period of three weeks from the date of requisition by the second respondent.

(c) After inspection, the third respondent shall draw a report along with the plan showing the encroachment, if any, made by any of the petitioners.

(d) Copy of report of inspection drawn by the third respondent shall be furnished to the petitioners as well as the second respondent.

(e) If the report discloses encroachment by the petitioners in any public street or road, the second respondent shall issue show cause notice to the petitioners in terms of Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 and after giving an opportunity of hearing to the petitioners, shall pass final orders within a period of six weeks from the date of hearing on the reply, if any, received from the petitioners.

(f) The second respondent shall also give an opportunity of hearing to the fourth respondent at whose instance the



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earlier proceedings were initiated for removal of encroachment.

(g) It is now represented that the petitioners have now submitted regularization applications. Depending upon the outcome of the regularization applications, it is open to the official respondents to initiate appropriate action for removal of unauthorized construction, if any.

Consequently, W.M.P.Nos.26782 & 25412 of 2017 are closed.

W.M.P.No.31719 of 2022 is also closed as unnecessary, as the fourth respondent has already been impleaded. There shall be no order as to costs.

Index : yes/no

(S.S.S.R.,J.)

(N.S.,J.)

Neutral citation : yes/no

05.01.2024

SS

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