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W.P.No.32715 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.32715 of 2024

and

W.M.P.No.35556 of 2024

in

W.P.No.32715 of 2024

Ashokan

S/o.Annamalai

... Petitioner

Vs.

1. The Commissioner
Sholinghur Municipality
Ranipet District.

2. The Tahsildar
Sholinghur
Ranipet District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorari to call for the records of the 1st

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respondent leading to the issuance of the impugned order dated 13.07.2024

bearing Na.Ka.No.2876/2024/F1 and quash the same.

For Petitioner : Mr.B.Arvind Srevatsa
For Respondents : Mr.T.K.Saravanan
Government Advocate

ORDER

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

This order will now dispose of the captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} and captioned 'Writ Miscellaneous Petition' {hereinafter 'WMP' for the sake of brevity} thereat.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the listing on 18.11.2024 which reads as follows:

***'W.P. No.32715 of 2024
and W.M.P. No.35556 of 2024***

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

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



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Alleged encroachment in 'Survey No.645/2A in Kondapalayam Village, Thakkan Kulam, Sholinghur, Ranipet District' (hereinafter 'said land' for the sake of convenience and clarity) is the subject matter of the captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity).

2. One Thiru.P.Chinnaiyan alias Venkatesan filed a Public Interest Litigation (PIL) alleging encroachment in said land seeking removal of encroachment inter-alia on the ground that said land has been classified as 150 Feet Road. This PIL is vide W.P.No.26425 of 2024 and the same came to be disposed of by another Hon'ble Division Bench on 11.09.2024 inter-alia directing survey to be made and further directing the official respondents to take action in accordance with Section 128(1)(b) of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'said Act' for the sake of convenience and clarity), if encroachment is found. To be noted, the writ petitioner before us (Mr.Ashokan, S/o. Mr.Annamalai) is R4 in the PIL and the PIL order dated 11.09.2024 directed survey to be held with prior notice inter-alia to R4.

3. Mr.B.Arvind Srevatsa, learned counsel on record for writ petitioner submits that 'notice dated 13.07.2024 bearing Ref. Na.Ka.No.2876/2024/F1' has been issued by R1 without conducting survey. This notice shall be referred to as 'impugned notice' for the sake of convenience and clarity.

4. Learned counsel for writ petitioner submits that the impugned notice concludes that there is survey.



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5. Issue notice.

6. Mr.T.K.Saravanan, learned Government Advocate accepts notice for both respondents. Learned State counsel submits that survey has been conducted and impugned notice has been issued only after survey. In any event, Section 128 of said Act contemplates a show cause notice. As regards the question as to whether survey was conducted with prior notice to R4 in PIL (writ petitioner before us), learned State counsel requested for time to get instructions and revert to this Court.

7. In the light of the narrative thus far, considering the language in which Section 128 of said Act is couched, the impugned notice shall be kept in abeyance until further orders.

8. List in the Admission Board i.e., Motion List on Thursday under the cause list caption 'NOTICE REGARDING ADMISSION'.

9. List on 21.11.2024.'

3. The aforementioned proceedings shall now be read as an integral part and parcel of this order.

4. Today, learned State Counsel submits that survey was in fact conducted and that the impugned notice (dated 13.07.2024) was issued only after such survey but the survey was prior to 11.09.2024 i.e., prior to earlier order made by another Hon'ble Division Bench in W.P.No.26425 of 2024. A scanned reproduction of 11.09.2024 order in W.P.No.26425 of 2024 is as

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follows:

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM:

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE P.B.BALAKRISHNAN

W.P.No.32715 of 2024

K.Chinnappa alias Venkatesan ... Petitioner

VS

1.The District Collector,
Ranipet District,
At Ranipet.

2.The Commissioner,
Sholinghur Municipality,
Sholinghur,
Ranipet District.

3.The Tahsildar,
Sholinghur,
Ranipet District.

4.Acharya
5.Tamilvelu ... Respondents

Prayer : Petitioner filed under Article 226 of the Constitution of India asking issuance of a writ of mandamus directing the respondents to consider the petitioner's representation dated 24.6.2024 and thereby direct respondents 1 to 3 to remove the encroachment and flag construction put up on the public road by respondents 4 and 5 in Survey No.645/2A, which classified as 150 Feet Road, Kondamalayam.

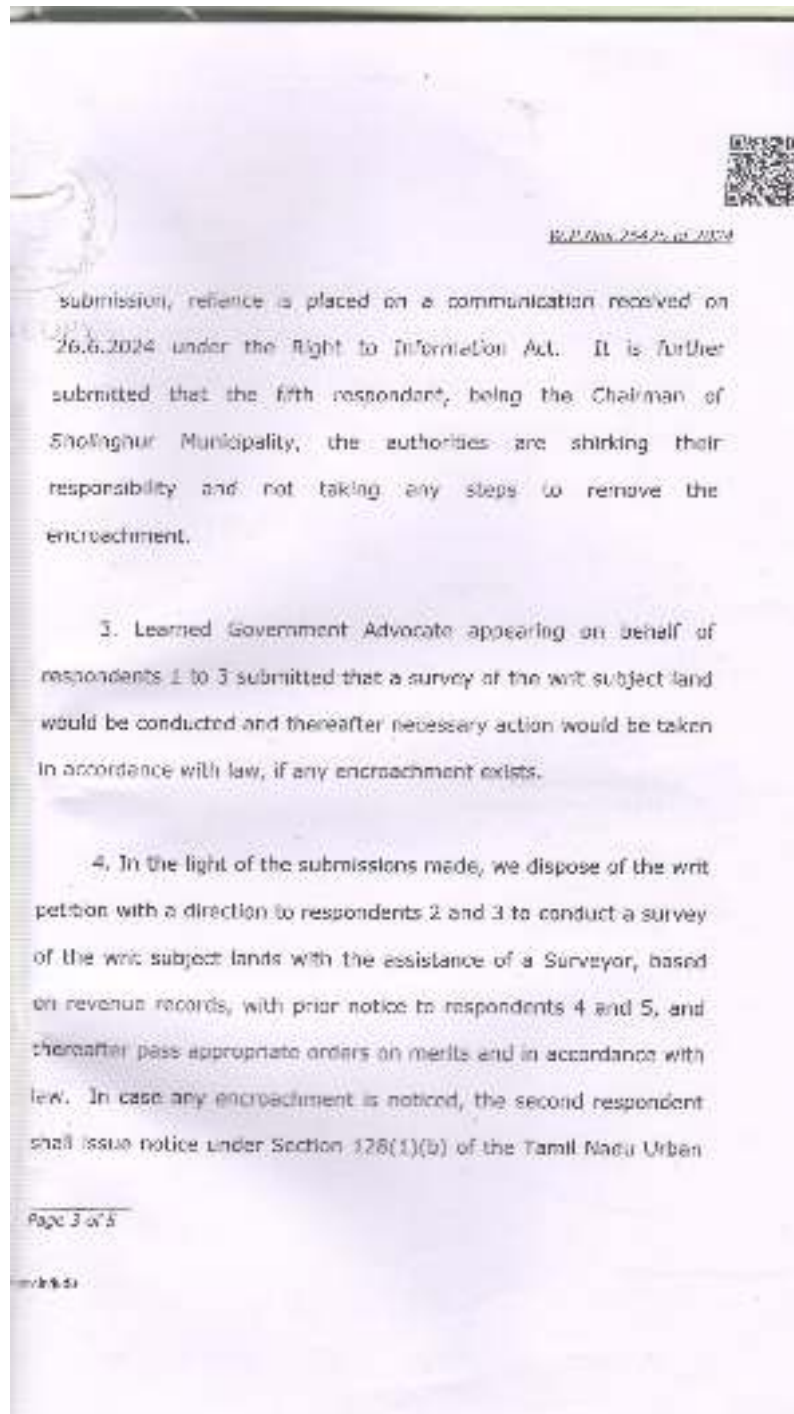
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Local Bodies Act, 1998 and thereafter proceed in accordance with law. The entire exercise shall be concluded within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

(D.K.K., A.C.J.) (P.B.B., J.)
11.09.2024

Index	:	Yes/No
NC	:	Yes/No
SSI	:	

To:

- 1.The District Collector,
Ranipet District,
At Ranipet,
- 2.The Commissioner,
Sholinghur Municipality,
Sholinghur,
Ranipet District.
- 3.The Tahsildar,
Sholinghur,
Ranipet District.

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5. To be noted, R4 in the earlier writ petition is the sole writ petitioner before us now. In the light of the stated position of parties, impugned notice is set aside without expressing any opinion or view on the merits of the matter and it is solely for the purpose of facilitating the survey in the presence of writ petitioner as well as R5 in the previous writ petition namely Tamilselvi besides writ petitioner in the previous writ petition P.Chinnayan alias Venkatesan.

6. In the light of the narrative thus far, the following order is made:

(a) Impugned notice being notice dated 13.07.2024 bearing reference Na.Ka.No.2876/2024/F1 issued by first respondent [The Commissioner, Sholinghur Municipality, Ranipet District] is set aside without expressing any view or opinion on the merits of the matter and it is solely for the purpose of carrying out *de novo* survey in the presence of writ petitioner, Tamilselvi and writ petitioner in earlier WP namely, P.Chinnayan alias Venkatesan;



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(b) Learned counsel for writ petitioner consented to P.Chinnayan alias Venkatesan also being put on notice at the time of survey;

(c) All three parties shall be put on notice regarding survey and survey shall be completed as expeditiously as the business of the respondent would permit but in any event, within three weeks from today i.e., 17.12.2024;

(c) In the survey, if no encroachment is found, that is the end of the road too. However, if encroachment is found, a fresh notice *inter alia* under Section 128(1)(b) of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'TNULB Act' for the sake of brevity} or any other appropriate statute can be issued by the respondent;

(d) If latter i.e., encroachment is found and notice is issued, all rights and contentions of writ petitioner Tamilselvi and P.Chinnayan alias Venkatesan and all concerned (if there are other encroachers) are preserved for raising their contentions.



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WEB COPY Captioned WP and captioned WMP disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

26.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

P.S. Though the captioned WP is disposed of, Registry to list the captioned WP under the cause list caption 'FOR REPORTING COMPLIANCE' on 02.01.2025.



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M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

mk

To

1. The Commissioner
Sholinghur Municipality
Ranipet District.
2. The Tahsildar
Sholinghur
Ranipet District.

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26.11.2024

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