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W.P.No.34085 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.34085 of 2024

& W.M.P.No.36905 of 2024 in W.P.No.34085 of 2024

Tmt.C.Chinnammal

W/o.(Late).Chinnappa

.. Petitioner

VS

1. State of Tamil Nadu rep. By its
Represented by its Secretary
Municipal Administration Department
Fort St.George
Chennai – 600 009

2. The District Collector
Chengalpattu District Collector Office
Grand Southern Trunk Road
Chengalpattu, Venbakkam
Tamil Nadu – 603 111

3. The Commissioner



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Tambaram City Municipal Corporation
No.28, Muthuranga Mudali Street
Tambaram West, Chennai – 600 045

4. The Tahsildar

Taluk Office, Tambaram
Chitlapakkam, West Tambaram
Tambaram, Chennai, Tamil Nadu – 600 045 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of impugned order issued by the 3rd respondent bearing Na.Ka.No.4051/2024/F1/Zone-II dated 03.10.2024 directing the petitioner to remove the house constructed in Kilakatalai village ward No.H, Block No.24 and quash the same as illegal and consequently direct the 2nd and 3rd respondents to consider the representation dated 24.05.2024 to take steps to issue patta for the said property.

For Petitioner : Mr.G.K.Thamizh Arasan

For Respondents : Mr.M.S.Arasakumar
Govt. Advocate for R1, R2 and R4
Dr.T.Seenivasan
Special Government Pleader for R3

ORDER

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

Captioned writ petition has been filed with a certiorarified



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mandamus prayer.

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2. Certiorari limb assails a 'notice dated 03.10.2024 bearing reference ந.க.எண்.4051/2024/F1/மண்டலம் II issued by R1' {hereinafter 'impugned notice' for the sake of brevity} and a scanned reproduction of the same is as follows:





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3. The mandamus limb seeks a direction to R2 and R3 to consider petitioner's earlier representation dated 24.05.2024.

4. Notwithstanding myraid grounds in the support affidavit, Mr.G.K.Thamizh Arasan, learned counsel for writ petitioner predicates his argument on the ground that writ petitioner has not been given an opportunity.

5. Issue notice to respondents.

6. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1, R2 and R4 and Dr.T.Seenivasan, learned Special Government Pleader accepts notice for R3.

7. Mr.T.K.Saravanan, learned State counsel, on instructions, submits that the impugned notice dated 03.10.2024 has been issued 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]. Learned State counsel submits that owing to the language in



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which Section 128 of TNULB Act is couched, if the writ petitioner chooses to send a representation within seven days, the same will be considered and final orders will be passed.

8. Owing to the limited scope of the captioned writ petition, main writ petition was taken up with the consent of both sides in the Admission Board itself.

9. Section 128 of TNULB Act 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



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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.'

10. Proviso Section 128(1)(b) of TNULB Act says that any representation sent in response to the notice will be considered and orders will be passed by R3 (Commissioner, Tambaram City Municipal Corporation). Therefore, we make the following order:

i) Certiorari limb of the prayer is dismissed i.e., the impugned notice is sustained but with a rider that the same will now be treated as a show-cause notice within the meaning of Section 128 (1)(b) of TNULB Act;

ii) The writ petitioner is not the noticee in the impugned notice but if a representation is sent in response to the impugned notice within 7 days from today i.e., to reach R3 within 7 days from today (i.e., by 26.11.2024), R3 shall



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consider the same and pass orders;

iii) If no representation is sent, it will be open to R3 to proceed on the basis that no response has been received pursuant to the impugned notice, which is now being treated as a SCN;

iv) If representation is sent within 7 days and if order is passed by R3, further proceedings (if any) will be pursuant to and in accordance with the orders of R3;

v) The mandamus limb pertains to prior representation dated 25.04.2024 (prior to impugned notice). Therefore, we are not acceding to the mandamus prayer but we are giving directive that R3 shall pass orders if representation is received within seven days.



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Captioned writ petition disposed of in the aforesaid manner with the aforesaid directives. Consequently, connected writ miscellaneous petition is closed. There shall be no order as to costs.

[M.S.,J] [K.R.S.,J]

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Index: Yes/No

Neutral Citation: Yes/No

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To

1. The Secretary

State of Tamil Nadu

Municipal Administration Department

Fort St.George

Chennai – 600 009

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and
K.RAJASEKAR, J.,

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