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WP.No.34001 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.34001 of 2024

Parthasarathy Durai
S/o.Durai Perumal

... Petitioner

Vs.

1. The Commissioner
Greater Corporation of Chennai
Chennai-600 003.
2. The Zonal Officer
Zone 15
Corporation of Chennai
Chennai-600 115.
3. The Regional Deputy Commissioner
Greater Chennai Corporation
Regional Office - South
No.115, Dr.Muthulakshmi Salai
Adyar, Chennai-600 020.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Mandamus to direct the respondents to consider

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the representation dated 20.08.2024 and further forbear the respondents from taking any coercive action to evict the petitioner in S.No.249, Injambakkam Village, Sholinganallur Taluk, Chennai in Door No.2/187, Hanuman Colony, Main Road, Injambakkam, Chennai-600 115 without following due process of law.

For Petitioner : Mr.C.Vigneswaran
For Respondents : Mr.G.T.Subramanian
Standing Counsel

ORDER

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

This is the second round of litigation (on the same subject matter) in this Court.

2. Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to 'Survey No.249, Door No.2/187, Hanuman Colony, Main Road, Injambakkam Village, Sholinganallur Taluk, Chennai' {hereinafter 'said property' for the sake of brevity}.



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3. The genesis is a notice dated 14.08.2024 bearing reference No.Zone-XV/Division 194/4058-15/2024 made by R3 under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'said Act' for the sake of brevity}. The writ petitioner / noticee has sent a representation / reply dated 20.08.2024.

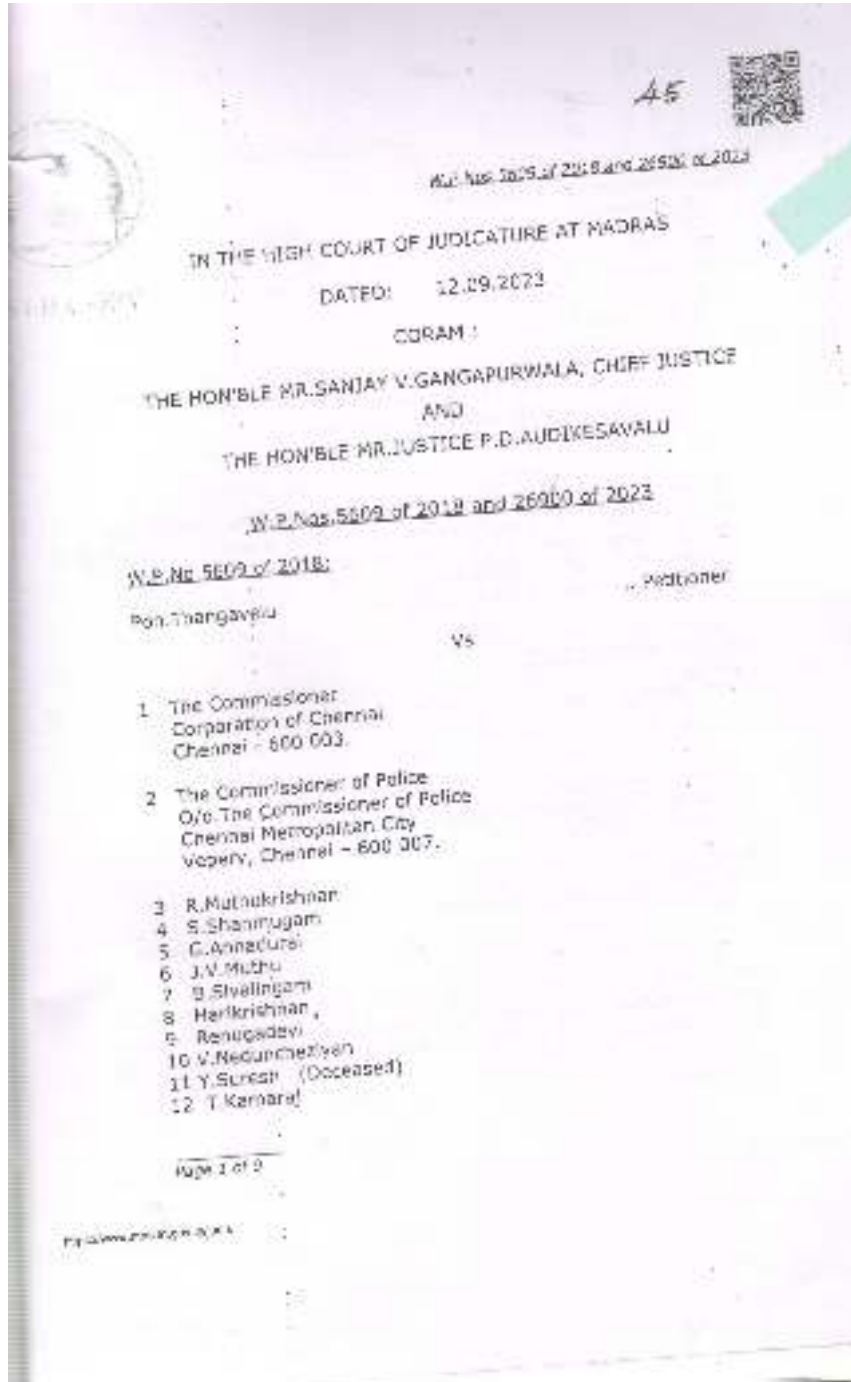
4. As regards the first round of litigation, the same is by way of W.P.No.26900 of 2023 filed by the writ petitioner seeking a mandamus to forbear the respondents from evicting the writ petitioner and that was tagged with W.P.No.5609 of 2018 filed by one Mr.Pon Thangavelu, wherein removal of encroachment was sought and both WPs were disposed of by a common order dated 12.09.2023 made by another Hon'ble Division Bench wherein the other Hon'ble Division Bench made it clear that the writ petitioner before us would not be entitled to protect their possession once the Corporation and / or the planning authority takes steps for road widening / drainage system etc., and they shall have to immediately hand over possession to the planning authority without any demur as they are neither owners nor legitimate occupiers of the subject writ petitioner. We deem it appropriate to extract and reproduce the order dated 12.09.2023 in



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W.P.Nos.5609 of 2018 & 26900 of 2023. A scanned reproduction of the

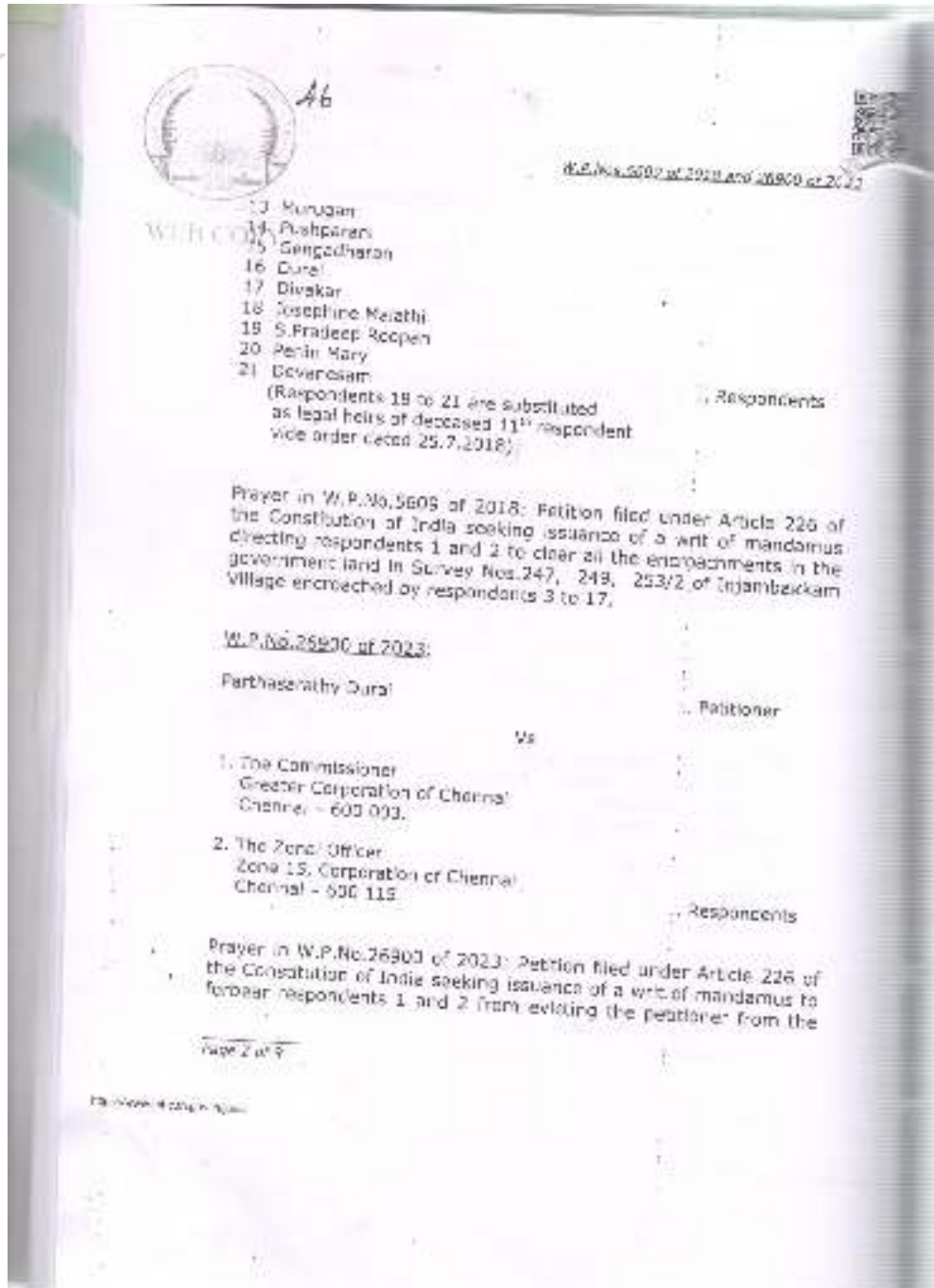
same is as follows:





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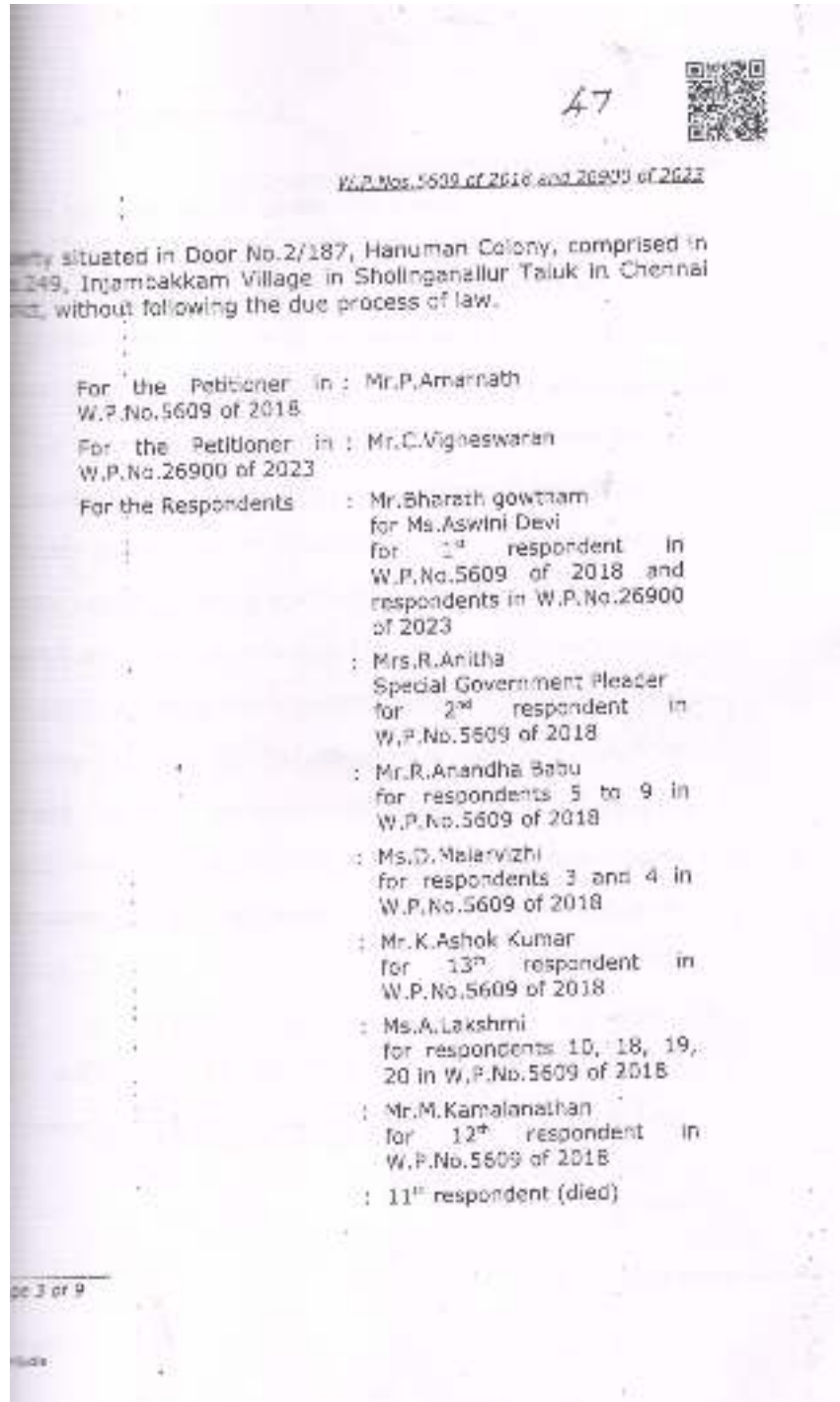




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W.P.No.5609 of 2018 and 26900 of 2023



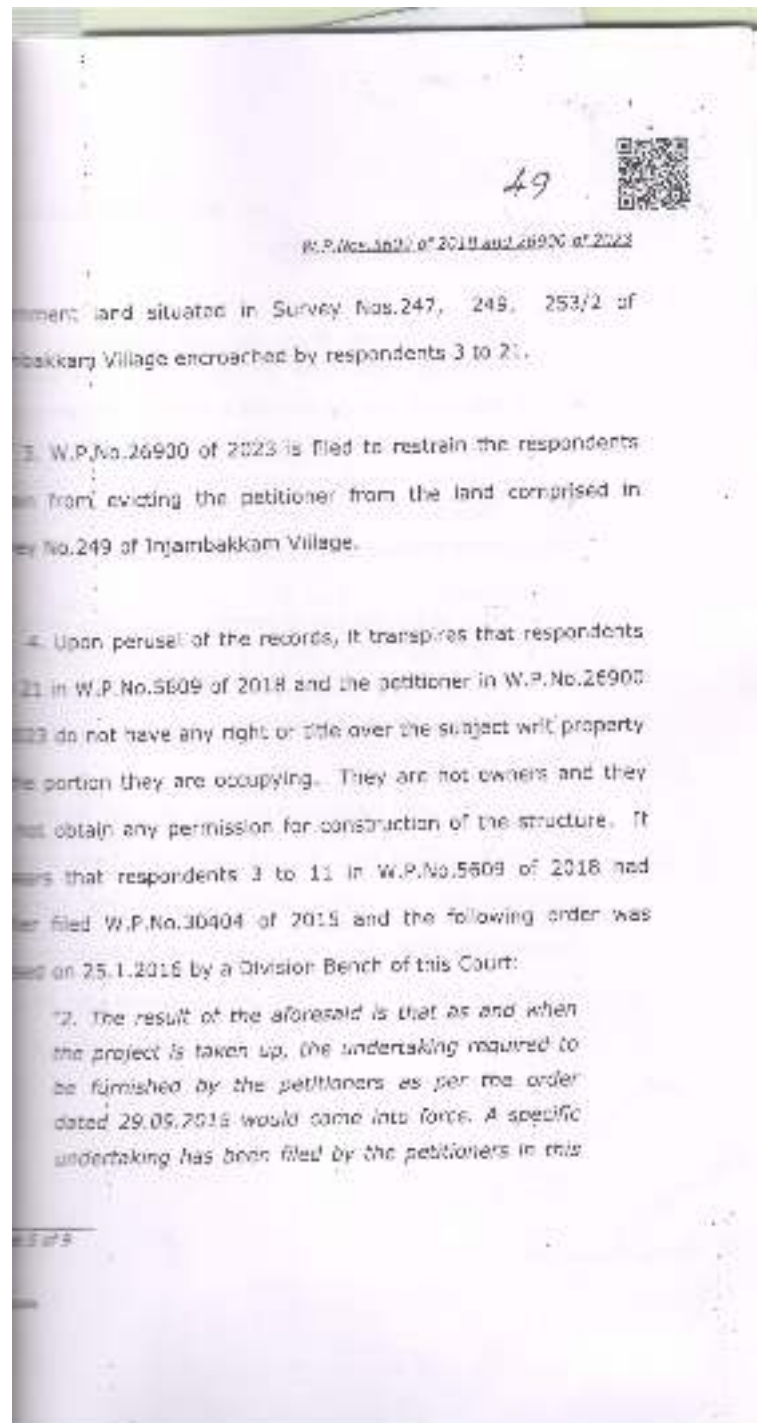
COMMON ORDER
(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.P.Amanath, learned counsel for the petitioner in W.P.No.5609 of 2018; Mr.C.Vignaswaran, learned counsel for the petitioner in W.P.No.26900 of 2023; Mr.Bharath Gowtham, learned counsel for the first respondent in W.P.No.5609 of 2018 and respondents in W.P.No.26900 of 2023; Mrs.R.Ancha, learned Special Government Pleader for the second respondent in W.P.No.5609 of 2018; Mr.R.Arundha Babu, learned counsel for respondents 5 to 9 in W.P.No.5609 of 2018; Ms.D.Malarvizhi, learned counsel for respondents 3 and 4 in W.P.No.5609 of 2018; Mr.K.Ashok Kumar, learned counsel for the 13th respondent in W.P.No.5609 of 2018; Ms.A.Lakshmi, learned counsel for respondents 10, 18, 19 and 20 in W.P.No.5609 of 2018; and Mr.M.Kamalanathan, learned counsel for the 12th respondent in W.P.No.5609 of 2018.

2. In W.P.No.5609 of 2018, the petitioner seeks directions against respondents 1 and 2 to clear all the encroachments on the

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File No. 5609 of 2018

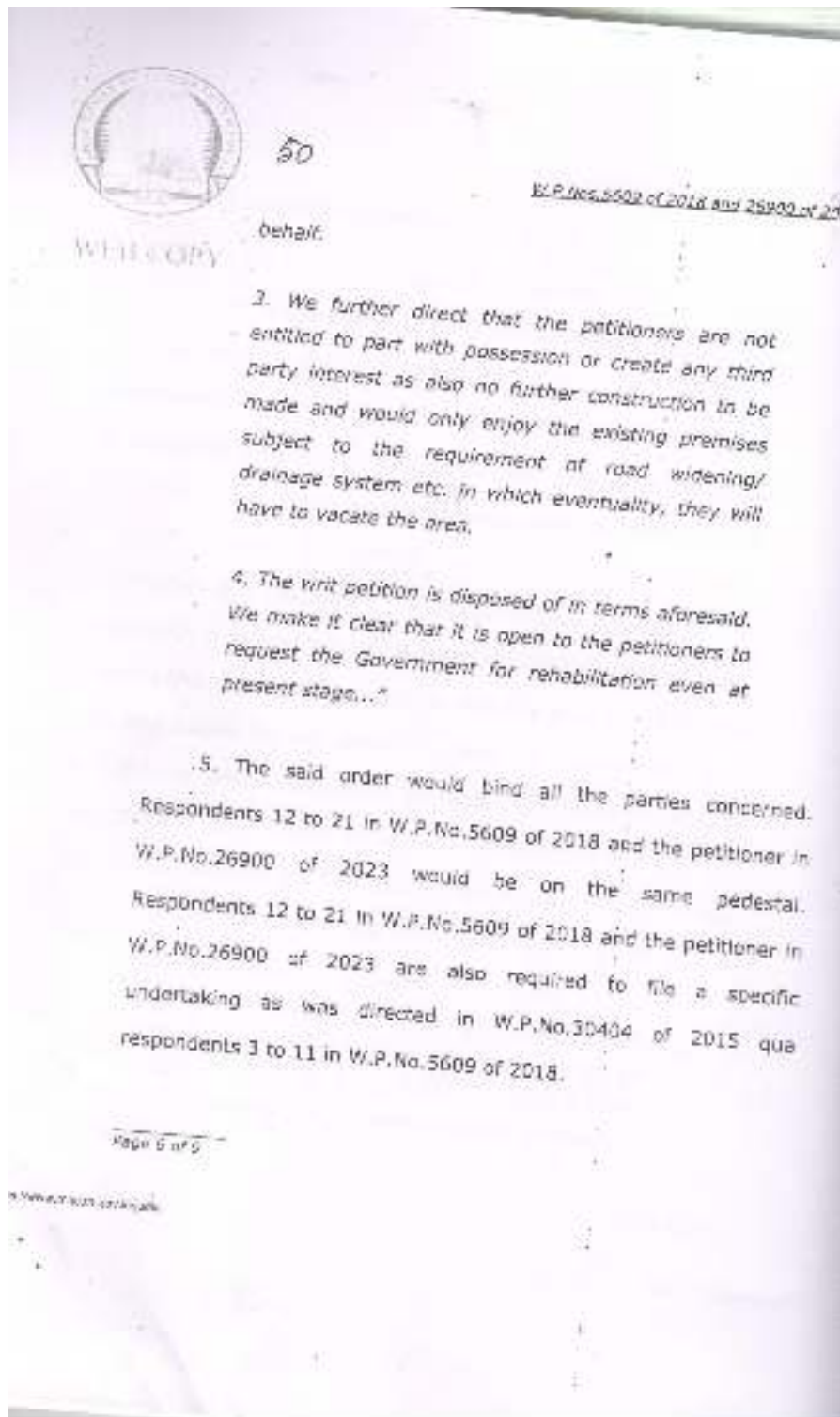




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6. Respondents 3 to 21 in W.P.No.5609 of 2018 and the petitioner in W.P.No.26900 of 2023 would not be entitled to protect their possession once the Corporation and/or the planning authority takes steps for road widening/drainage system, etc, and they shall have to immediately hand over the possession to the planning authority without any demur, as they are neither owners nor legitimate occupiers of the subject writ property.

With these observations, these writ petitions are disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.25329 of 2022 and 26323 of 2023 are closed.

(S.V.G., C.J.) 12.09.2023 (P.D.A., J.)

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6. Under the aforesaid circumstances, local body i.e., Chennai Corporation has very fairly submitted that a notice under Section 128(1)(b) of said Act was issued giving opportunity to writ petitioner i.e., show causing writ petitioner and calling upon the writ petitioner to show cause within 15 days. The writ petitioner has also responded by way of a representation dated 20.08.2024. This means that the first respondent should now pass an order under proviso to Section 128(1)(b) of said Act. Section 128 of said 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 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 [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.'

7. Issue notice to the respondents.

8. Mr.G.T.Subramanian, learned Standing Counsel accepts notice for all three respondents and learned State Counsel submits that writ petitioner having been show caused has responded and now orders will be made by R1 in accordance with Proviso to Section 128(1)(b) of said Act.



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9. In the light of the limited scope of the captioned WP, main WP is taken up in the Admission Board by consent of both sides.

10. In these circumstances, we deem it appropriate to usefully refer to an order dated 11.11.2024 made in W.P.No.33614 of 2024 by this Bench for the same issue and the same reads as follows:

'Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed with a certiorarified mandamus prayer assailing a notice dated 14.08.2024 bearing reference Zone-XV/Division 194/4058-14/2024 issued by R5 (The Regional Deputy Commissioner (South), Greater Chennai Corporation, Chennai). This 14.08.2024 notice has been issued under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'Urban Local Bodies Act' for the sake of convenience and clarity) and this '14.08.2024 notice' shall be referred to as 'impugned notice' for the sake of convenience and clarity. This is the certiorari limb of the prayer. As regards mandamus limb, petitioner seeks to mandamus R5 to not to evict the writ petitioner from 'S.Nos.247, 249, 253/2, Injambakkam Village in Sholinganallur Taluk in Chennai District' (hereinafter 'said property' for the sake of convenience and clarity).

2. Learned counsel for writ petitioner points out that post impugned notice, a representation dated 22.08.2024 has been sent



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to R5 and the same has been duly received by R5 on 27.08.2024.

3. Issue notice to respondents. Mr.T.K.Saravanan, learned Government Advocate accepts notice for R1 to R3 and R7 to R12 and Ms.V.Soundarya, learned counsel for Mr.D.B.R.Prabhu, learned standing counsel accepts notice for R4 to R6.

4. Mr.T.K.Saravanan, learned State counsel submits that in the light of the representation pursuant to impugned notice R4 (The Commissioner, Greater Chennai Corporation, Chennai) has to now pass orders. This is a very fair submission considering the language in which Section 128 of Urban Local Bodies Act is couched. In the case on hand, proviso to Section 128(1)(b) is attracted. Section 128(1)(b) of Urban Local Bodies Act together with proviso reads as follows:

'128.Power to remove encroachment from public place -
(1)The Commissioner may, -

(a).

(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.'

5. Owing to the limited scope of the captioned WP, main WP was taken up with the consent of both sides making it clear that all the rights and contentions of R13 (Mr.Pon Thangavelu, S/o.Ponniah Servai) who is a private respondent will be preserved and protected, when orders are passed by R4.

6. As regards the certiorari limb of the prayer, we find no infirmity warranting interference more so as the impugned notice is in the nature of 'Show Cause Notice' (SCN), the impugned notice is sustained.

7. As regards the mandamus limb, it is only appropriate that orders are passed by R4 before there is any further action.

8. Let R4 consider the writ petitioner's representation dated 22.08.2024 (rights of R13 are preserved in this regard) and pass orders in accordance with proviso to Section 128(1)(b) of Urban Local Bodies Act as expeditiously as the business of R4 would permit but in any event within a fortnight from today i.e., by 25.11.2024.

9. If the aforementioned order is in favour of writ petitioner that is the end of the matter. If the order is adverse, the consequence will follow.

10. Ergo, sequitur is, captioned WP is disposed of dismissing certiorari limb and as regards the mandamus limb



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recording the position that further action inter-alia in terms of eviction will be after passing orders by R4 in the aforesaid manner.

11. Captioned WP is disposed of in the aforesaid manner. Consequently, captioned Writ Miscellaneous Petition (WMP) is disposed of as closed. There shall be no order as to costs.'

11. In the afore-referred order, paragraphs 10 and 11 are the operative portions. We remind ourselves of age-old adage that '*Sauce to Goose is Sauce to Gander too*'. Therefore, the same order as in *R.Muthukrishnan* case will be made in this writ petition also.

12. Ergo, the sequitur is, captioned WP is disposed of recording the position that further action *inter alia* in terms of eviction will be subject to the order to be made by R1 under proviso to Section 128(1)(b) of said Act.

Captioned WP is disposed of in the aforesaid manner. 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

Speaking order / Non-speaking order

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To

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2. The Zonal Officer
Zone 15
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Chennai-600 115.
3. The Regional Deputy Commissioner
Greater Chennai Corporation
Regional Office - South
No.115, Dr.Muthulakshmi Salai
Adyar, Chennai-600 020.

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M.SUNDAR, J.,
and

K.RAJASEKAR, J.,

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