



W.P.No.38411 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

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

W.P.No.38411 of 2024
and
W.M.P.No.41603 of 2024
in
W.P.No.38411 of 2024

S.Manokaran
S/o.M.G.Sekar

... Petitioner

Vs.

1. The Commissioner
Coimbatore of Corporation
Coimbatore Corporation Office
Raja Street, Townhall
Coimbatore - 641 001.
2. The City Planner
North Zone, Coimbatore Corporation Office
Raja Street, Townhall
Coimbatore - 641 001.
3. Mr.Kumar
City Planner
North Zone, Coimbatore Corporation Office
Raja Street, Townhall
Coimbatore - 641 001.

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4. K.Devaraj
S/o.Kulandaisamy

5. G.Palraj

6. S.Palanisamy
S/o.Subramaniyan

7. G.Bhuvaneswari
W/o.Gurusamy

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned notice of the 2nd respondent in Na.Ka.No.Nil dated Nil.2024 signed by her on 27.11.2024 and quash the same and consequently, direct the 2nd respondent to refrain from harassing the petitioner by sending more frivolous and illegal notices.

For Petitioner : Mr.S.Sathia Chandran
For Respondents : Mr.Najeeb Usman Khan
Standing Counsel
for R1 to R3

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed with a certiorarified mandamus prayer *inter alia* assailing a



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'notice signed by R2 [The City Planner, North Zone, Coimbatore Corporation Office, Raja Street, Townhall, Coimbatore - 641 001] on 27.11.2024' {hereinafter 'impugned notice' for the sake of brevity}.

2. Impugned notice does not bear a reference and as against the date column only year 2024 has been mentioned, however, it has been signed by R2 on 27.11.2024.

3. Mr.S.Sathia Chandran, learned counsel on record for writ petitioner, advertng to impugned notice besides pointing out that it does not bear a complete date and a reference number, submits that notice reads that it 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} but Section 128 of TNULB Act provides for a noticee being show caused (7 days notice) and an order to be made by R1 (vide proviso to Section 128(1)(b) of TNULB Act) if there is a representation within seven days.



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4. Issue notice to official respondents i.e., R1, R2 and R3, who has been arrayed by name [Mr.Kumar].

5. Mr.Najeeb Usman Khan, learned Standing Counsel for Coimbatore Corporation accepts notice for R1 to R3.

6. Learned Standing Counsel regrets error qua no reference and complete date not being given in the impugned notice. Learned Standing Counsel makes a request to consider the impugned notice to be dated 27.11.2024. We accede to this request with a caveat that in the days to come, we may take a serious view for such a notice being issued in a casual manner.

7. Considering the limited scope of the captioned WP, main WP was taken up with the consent of both sides making it clear that all rights and contentions of R4 to R7 (private respondents) remain preserved.



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8. Section 128(1)(b) of TNULB 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.'

9. A scanned reproduction of impugned notice is as follows:



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கோயம்புத்தூர் மாதவராட்சி,
வடக்கு மண்டலம்.

த.க.எண். _____ நாள். - 2024.

தமிழ்நாடு நகர்ப்புற உள்ளாட்சிகளின் சட்டம் 1998
(திருத்தப்பட்டது 2022) பிரிவு,
128-இன் கீழ் ஆக்கிரமிப்பு அகற்றப் பிறப்பிக்கப்படும்
அறிவிப்பு

கோயம்புத்தூர் மாதவராட்சி, வடக்கு மண்டலம், கண்டு எண். 25 நாடாட்சி. 14
122 பஸ்கள், குறுத்துவான் அலெக்சாண்டர்ஸ் உடன் 20-ம் பிப்ரவரி 2024 X 100-55554-சு
புள்ளியில் தாங்கள் வட்டம் அமைத்து, சிவப்பிரியா செல்லு சிவசுந்தர பாண்டியன் அமைதி
மகத்தூரணிகள்

எனவே, இந்த அறிவிப்பை வெற்றிட கோவ் 7 நாடாட்சிதான் கோயம்பு
ஆக்கிரமிப்பு நாடாட்சியை அகற்றப் பிறப்பிக்கப் பட்டிருக்கிறது.

கோயம்பு ஆக்கிரமிப்புகளை தாங்கள் அங்கீகரிக்கத் தவறினால் கோயம்பு
சட்டப்பிரிவு 128(2) இன் கீழ் அங்கு மீது நீதி மன்றத்தில் ஆரம்பிக்கும் செயல்படும்.
தவிர கோயம்பு சட்ட பிரிவுகளை கோயம்பு ஆக்கிரமிப்புகளை மாநகராட்சி ஆட்களால்
கொண்டு அங்கீகரிக்கத் தவறும் எல்லா செயல்களும் கோயம்பு சட்ட
பிரிவுகளால் அங்கீகரிக்கப்படும் எனவும் அறிவிக்கப்படுகிறது.

நகர திட்டமிடும், 2024/2025
கோயம்புத்தூர் மாநகராட்சி.

37/11/24

வெறுமல்
கிடைத்தது.
ம.கோவ் 7
1013, திருவள்ளூர் அலெக்சாண்டர்ஸ்
100 பிப்ரவரி 2024
கோயம்புத்தூர்.



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10. It is clear that impugned notice has not show caused the writ petitioner and it has directly called upon the writ petitioner to remove alleged encroachment. It is imperative that the writ petitioner is show caused, given an opportunity to make a representation and if representation is made within seven days, an order has to be made by R1 as already alluded to supra.

11. Learned counsel for writ petitioner points out that writ petitioner has responded to the impugned notice vide a communication dated 03.12.2024.

12. In the light of the narrative thus far, captioned main WP is disposed of by making following order:

(i) Impugned notice shall now be treated as 'Show Cause Notice' {'SCN'} under Section 128(1)(b) of TNULB Act. This means that certiorari limb prayer is not acceded to but impugned notice is now directed to be treated as SCN;

(ii) As the impugned notice has not been issued under Section 128 of TNULB Act, writ petitioner will now be given



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seven days time from today i.e., upto 23.12.2024 to make

further representation in addition to 03.12.2024 response;

(iii) If the writ petitioner makes further representation, R1 shall make a final order considering 03.12.2024 response and further representation, if any;

(iv) If there is no further representation, 03.12.2024 response of writ petitioner shall be considered as a representation and final orders shall be made by R1 as expeditiously as the business of R1 permits;

(v) All the rights and contentions of writ petitioner, local body as well as private respondents (R4 to R7) are preserved when representation is sent and / or when R1 makes final orders under proviso to Section 128(1)(b) of TNULB act;

(vi) We make it clear that further proceedings (if any) shall be subject to and depending on final orders of R1 under Section 128(1)(b) of TNULB Act. Mandamus limb of prayer is answered to this limited extent;

(vii) Final orders to be made by R1 shall be duly



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communicated to writ petitioner, private respondents and all others concerned under due acknowledgment within three working days from the date on which final orders are made.

Captioned main WP is disposed of in the aforesaid manner. Consequently, captioned Writ Miscellaneous Petition thereat is disposed of as 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

Speaking order / Non-speaking order

mk



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and
K.RAJASEKAR, J.,

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