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W.P. No.38988 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.38988 of 2024

E. Chandrababu

Petitioner

vs.

1. The District Collector
Thiruvallur District
Thiruvallur
2. The District Revenue Officer
District Collector Campus
Thiruvallur District
Thiruvallur
3. The Revenue Divisional Officer
Thiruvallur Division
Thiruvallur
4. The Municipal Commissioner
Poonamallee Municipality
Poonamallee
Chennai 600 056
5. The Tahsildar
Poonamallee Taluk
Poonamallee
Chennai 600 056
6. Sakthivel
7. Jayaprakash
8. The Inspector of Police
T12, Poonamallee Police Station
Poonamallee, Chennai 600 056

Respondents



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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents 1 to 5 from interfering with the petitioner's family property situated at Survey No.302/3, Poonamallee Village, Poonamallee Taluk, within Poonamallee Municipality, Thiruvallur District, measuring an extent of 1,200 sq. ft. unless otherwise by due process of law.

For petitioner	Mr. A.E. Ravichandran
For RR 1-3 & 5	Mr. T.K. Saravanan Government Advocate
For R4	Mr. M.S. Arunkumar Government Advocate
For R8	Mr. Raj Thilak Additional Public Prosecutor

ORDER

(made by M. SUNDAR, J.)

Captioned main 'writ petition' ('WP' for the sake of brevity) has been filed complaining that respondents 1 to 5 are interfering with the writ petitioner's family property in Poonamallee Taluk situate in Poonamallee Municipality, Thiruvallur District. It is submitted that the property is in the form of a construction admeasuring 1,200 sq. ft. or thereabouts.



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2. Mr. A.E. Ravichandran, learned counsel for writ petitioner, submits that official respondents have descended on writ petitioner's property with bulldozers, the writ petitioner and his family are under imminent threat of dispossession, under pain of such dispossession, captioned main WP has been filed is his further say.

3. Issue notice to official respondents, viz., RR 1 to 5 and 8.

4. Mr. T.K. Saravanan, learned Government Advocate, accepts notice for RR 1 to 3 and 5. Mr. M.S. Arunkumar, learned Government Advocate, accepts notice for R4. Mr. Raj Thilak, learned Additional Public Prosecutor, accepts notice for R8.

5. Learned State counsel for RR 1 to 3 and 5 draws our attention to the typed set of papers filed by the writ petitioner and more particularly, a 'notice issued by R4 (signed by R4 on 31.01.2024)' ('said notice' for the sake of clarity and convenience). A scanned reproduction of said notice is as follows:



பூவிருந்தவல்லி நகராட்சி

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திருத்தப்பட்ட தமிழ்நாடு நகர்ப்புற உள்ளாட்சி அமைப்புகளின் சட்டம் 1998 பிரிவு 128(1)(b), 128(2) ன் கீழ் பிறப்பிக்கப்படும் அறிவிப்பு

தாங்கள் பூவிருந்தவல்லி நகராட்சிக்கு சொந்தமான ராஜா அக்ரஹாரம் 3வது குறுக்கு தெருவையும் எம்.ஜி. நகர் 1 வது தெருவையும் இணைக்கும் சாலைபை ஆக்கிரமிப்பு செய்து பொது மக்களுக்கும் போக்குவரத்திற்கும் இடையூறு செய்து இருப்பதால் இந்த அறிவிப்பு கிடைத்த 7 நாட்களுக்குள் மேற்படி ஆக்கிரமிப்பை அப்புறப்படுத்த வேண்டுமென இதன் மூலம் அறிவிக்கப்படுகிறது. தவறாம் பட்சத்தில் மேற்படி ஆக்கிரமிப்பு இந்நகராட்சியால் அகற்றப்படுவதுடன் அதற்குண்டான செலவு தொகை தங்களிடம் இருந்து வசூலிப்பதுடன் நீதி மன்றத்தில் குற்ற பத்திரிக்கை தாக்கல் செய்து குற்றசாட்டு நடவடிக்கை மேற்கொள்ளப்படும் என இதன் மூலம் தெரிவிக்கப்படுகிறது.

ஆணையர்

பூவிருந்தவல்லி நகராட்சி

சு.சு.சு.
3/1/24

பெறுநர்

திரு. சந்திராபாபு

த/பெ ஏழுமலை

எண். 38988/2024 ராஜா அக்ரஹாரம் 3வது தெரு

பூவிருந்தவல்லி, சென்னை. 36



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6. Learned State counsel submits that the writ petitioner has been put on notice.

7. We carefully perused Section 128 of Tamil Nadu Urban Local Bodies Act, 1998 ('TNULB Act' for the sake of brevity) which 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 within 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 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 extent 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.'

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8. Section 128(1)(b) of TNULB Act deals with power of R4 to remove encroachment from a public place when the encroachment is in the form of an immovable structure. Sub-section (2) of Section 128 talks about the punishment for such encroachment.

9. As regards said notice, we notice the following points:

i. Section 128(1)(b) and Section 128(2) have been rolled into one and a common notice has been issued;

ii. Section 128(1)(b) envisages the noticee being show caused. In other words, Section 128(1)(b) envisages a 'show cause notice' ('SCN' for the sake of brevity) but said notice, instead of show causing the writ petitioner, has straightaway directed the writ petitioner to remove the alleged encroachment within 7 days;

iii. Notwithstanding the language in which said notice is couched, the writ petitioner has sent a representation dated 03.02.2024 making it clear that it is



a reply/representation to said notice.

10. Response to SCN dated 03.02.2024 from the writ petitioner reads as follows:

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Reply/Representation to show cause notice issued under section 128(1)(b), 128(2) of Tamil Nadu Urban Local Bodies Act, 1996.

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From

03.02.2024

E. Chandrababu
S/o. Elumalai,
No.30, Raja Agraharam 3rd Street,
Poonamallee,
Chennai - 600 056.

To

The Commissioner,
Poonamallee Municipality,
Chennai - 600 056.

Sir,

Sub: Show cause notice issued under section 128(1)(b), 128(2) of
Tamil Nadu Urban Local Bodies Act, 1996 - reply - Reg.

Ref: Show Cause notice dated 31.01.2024 (Served on 01.02.2024)

In the reference cited a show cause notice has been issued under section 128(1)(b), 128(2) of the Tamil Nadu Urban Local Bodies Act, 1996 for the removal of encroachment of street connecting Raja Agraharam 3rd cross street and MG Nagar 1st street within the Poonamallee Municipal limit as if I am an encroacher.

2. In this regard under the proviso to section 128(1)(b), I submit my following representation/reply for your show cause notice, for your kind consideration and for passing final orders:

A. I submit that I was the owner of the house site measuring an extent of 1200 sq.ft comprised in Survey No. 302/3, Poonamallee village, by sale deed dated 08.09.1989 executed by my vendor J. Vasudevan. The said sale deed was registered as Document No. 6922 of 1989, on the



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file of SRO, Poonamallee. After the purchase, I was issued Patta No. 1190 by Tahsildar, Shiperumbuthur. I was in possession and enjoyment of the said house site ever since I purchased the property. Thereafter, I settled the above property in favor of my minor children namely 1, Mohan, 2, Vijayalakshmi by settlement deed dated 17.02.2003 registered as Document No. 217 of 2003 on the file of SRO, Poonamallee. Necessary computer patta was also issued by the Zonal Deputy Tahsildar under patta No. 5773, in favour of Mohan and Vijayalakshmi, showing their possession and enjoyment. Thereafter, my daughter Vijayalakshmi executed a release deed dated 10.06.2021 in favor of her brother (my son) C.Mohan, Registered as Document No.2551 of 2021 on the file of SRO, Poonamallee. Thus, my son C.Mohan has become the absolute owner of the 1200 sq.ft of the house site comprised in Survey No. 302/3. Thereafter, a separate patta was issued under Patta No. 8096 in Survey No. 302/3 measuring as extent of 1200 sq.ft in the name of my son C. Mohan and chitta and adangal also stand in the name of my son C.Mohan, who is the present owner of the property.

- B. While so, a summon was issued to me by the Revenue Divisional Officer, for cancellation of Patta in respect of the above house site measuring to an extent of 800 sq.ft out of 1200 sq.ft comprised in survey No. 302/3. The said summon was issued based on some representation given by the residents of Raja Agraharam Street, by claiming that the said extent of the land is a road. I participated in the said enquiry and I gave all the supporting documents and statements. Unfortunately, the RDO, Tiruvallur has passed an order under



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reference No. 2325/2023/A2 dated 22.06.2023, cancelling the patta to an extent of 800 sq.ft out of 1200 sq.ft, mainly on the ground that I executed a general power of attorney in favor of one Mrs. Hemalatha W/o Vasudevan, under power of attorney document No. 942/1994 dated 01.05.1994 and thereafter I executed a settlement deed in favor of my children under document No. 217 of 2007 dated 17.02.2003 suppressing the general power of attorney given to Mrs. Hemalatha.

C. I submit that I do not know what is the illegality in executing a settlement deed after giving a general power of attorney. The fact remains that the power of attorney was not exercised by my power agent Mrs. Hemalatha and no gift deed was executed in favor of the Poonamallee municipality, gifting the said 800 sq.ft. of land towards the road. I state that 800 sq.ft was never gifted to Poonamallee municipality for the purpose of road and the said extent of land stood in my name and patta and chitta and adangal everything stand even as on date on the name of my son C.Mohan.

D. Aggrieved by the order passed by the RDO, Tiruvallur, I preferred an objection dated 17.07.2023, before the RDO, Tiruvallur objecting the order dated 22.06.2023. I was not aware of the difference between "Revenue Divisional Officer" and "District Revenue Officer" as I was not fully conversant with the procedures. When I enquired with the office of the RDO, Tiruvallur about my objection dated 17/07/2023, I was informed that appeal should be filed before the DRO, Tiruvallur not before the RDO, Tiruvallur. Immediately, I preferred an appeal before the DRO, Tiruvallur on 08.01.2024 and the same was taken on file and given Rc. No. 1688885/N2 and the same is still pending before the



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DRO, Tiruvallur. I have also informed about the pendency of the appeal to the Tahsildar, Poonamallee in my letter dated 18.01.2024 and requested him not to take any adverse or coercive action during the pendency of appeal before the DRO, Tiruvallur.

E. When the appeal for cancellation of Patta is pending before the DRO, Tiruvallur, all of the sudden, a notice has been issued in the reference cited, as if I have encroached upon the street. I submit whether I am an encroacher or not, that has to be decided by the DRO, Tiruvallur in appeal pending in Rc.No 1688895/V2 dated 09.01.2024 (copy enclosed). When the proceedings for cancellation of patta has not attained finality, show cause notice issued by you calling upon me to remove the encroachment within a period of 7 days is against law and without jurisdiction.

F. In fact even before the RDO, Tiruvallur, I have categorically informed that if the land measuring 700 sq.ft out of 1200 sq.ft, is required for the purpose of the road, the same shall be acquired by invoking the Land Acquisition Act by giving me compensation. Without giving compensation, cancelling the patta and forcefully removing me from possession without paying compensation is against my constitutional Right to Property under Article 300-A of Constitution of India.

G. I reiterate that my son C.Mohan has all the title documents, patta, chitta and adangal in his name and he cannot be dispossessed, unless by authority of law and the procedure initiated for cancellation of patta by RDO, Tiruvallur based on some representation given by some residents of Raja Agraharam Street, itself is illegal and without jurisdiction.



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ii) Further when the appeal for cancellation of patta is pending, as stated above before the DRO, Tiruvallur, the show cause notice dated 31.01.2024 issued by you under section 128(1)(b) and 128(2) of Tamil Nadu Urban Local Bodies Act, 1998 is unlawful.

I. Further, the proviso to Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998, states as below:

"Provided that the Commissioner shall consider any representation received within the time limit, before passing final order"

Hence the present representation / reply to your show cause notice is given in pursuance to the above proviso to Section 128(1)(b) of the Act and I humbly request you that my presentation may be considered in depth and necessary final order may be passed dropping all the further proceedings consequent to your show cause notice dated 31.01.2024, in view of the pendency of my appeal before the DRO, Tiruvallur. I have enclosed all the relevant documents for your kind consideration. Once again, I request you to drop all the further proceedings and pass final orders.

Thanking you,

Yours faithfully,

E. Chandrababu

(E. Chandrababu)

3/2/24

Copy to:

1. District Revenue Officer, Tiruvallur.
2. Tahsildar, Poonamallee.

Enclosure:

S.No	Name of the Document Enclosed
1.	Sale Deed dated 08.09.1989 in favor of Chandrababu.
2.	Patta No.1190 in favor of Chandrababu.



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3.	Settlement Deed dated 17.02.2003 in favor of C.Mohan and C.Vijayalakshmi.
4.	Patta No.5773 in favor of C.Mohan and Vijayalakshmi.
5.	Release Deed dated 10.06.2021 by Vijayalakshmi in favor of C.Mohan.
6.	Patta No.8069 in favor of Mohan.
7.	Chitta and adangal in favor of C.Mohan.
8.	22.06.2023 order passed by the RDO, Tiruvallur.
9.	Objection Letter dated 17.07.2023 given to RDO, Tiruvallur.
10.	Appeal under RC No. 1688885/N2 dated 08.01.2024 filed before the DRO, Tiruvallur.
11.	Letter dated 18.01.2024 given to the Tahsildar, Poonamallee.

11. This Court, having noticed the three points alluded to in paragraph 9, *supra*, is of the view that ends of justice would be served if the said notice is directed to be treated as a SCN and the aforereferred 03.02.2024 response of writ petitioner to the same, be treated as a representation with a further directive to R4 to pass final orders *vide* proviso to Section 128(1)(b). We do so.

12. This Court also makes it clear that further action (if any and if that be so) shall be subject to and depending upon the

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outcome of the final orders which R4 has to make in the aforesaid manner. This is the safety valve which we have put in and we are also ensuring that the procedure is brought within the perimeter of the procedure prescribed under the local municipal law, *i.e.*, TNULB Act.

13. Captioned WP is disposed of as closed albeit by writing that said notice signed by R4 on 31.01.2024 is treated as a SCN and the writ petitioner's response dated 03.02.2024 is treated as response to SCN and R4 shall now pass final orders considering the representation of the writ petitioner and this is in accordance with proviso to Section 128(1)(b) of TNULB Act. As already alluded to in paragraph 12, *supra*, further action (if any and if that be so) will be subject to and will depend on final orders to be made by R4. Consequently, captioned W.M.P. thereat is also disposed of as closed. There shall be no order as to costs.

**(M.S., J.) (K.R.S., J.)
18.12.2024**

Index : Yes/No
NC : Yes/No
cad



To:

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M. SUNDAR, J.

and

K. RAJASEKAR, J.

cad

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