



W.P.No.22596 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.06.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.22596 of 2024

and

W.M.P.No.24620 of 2024

G.Venkatkumar
S/o.Govindaraj

... Petitioner

vs.

1. The Commissioner
Maraimalaingar Municipality
Maraimalainagar
Chengalpattu District.

2. D.Maran
S/o.Devaraj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the order passed by the first respondent in Na.Ka.No.2383/2024/F1-1 dated 16.07.2024 and quash the same.

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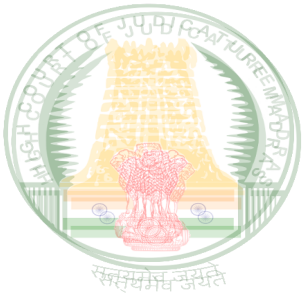
For Petitioner : Mr.G.Mageshkumar
For Respondents : Mr.T.K.Saravanan
Additional Government Pleader,
representing Mr.K.Tippu Sultan, for R1
R2 - Served - No Appearance

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed assailing a 'notice dated 16.07.2024 bearing reference Na.Ka.No.2383/2024/F1-1 issued by R1' {hereinafter 'impugned notice' for the sake of brevity}.

2. Mr.G.Magesh Kumar, learned counsel on record for writ petitioner, who is before us drew our attention to the aforementioned impugned notice and a scanned reproduction of the same as placed before us is as follows:



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நகராட்சி நிர்வாகம் மற்றும் குடிநீர் வழங்கல துறை

(92)

நகராட்சி அலுவலகம்,
மறைமலைநகர்.

அறிவிப்பு

ந.க.எண். 2383 /2024 /எப்1-1

நாள். 16.07.2024

பொருள் : ஆக்கிரமிப்பு- மறைமலைநகர் நகராட்சி - செங்கல்பட்டு மாவட்டம் - வல்லாஞ்சேரி கிராமம் - விக்னராஜபுரம் அங்கீகரிக்கப்பட்ட மனைப்பிரிவில் பொது உபயோகத்திற்காக ஒதுக்கப்பட்ட இடத்தில் சட்ட விரோதமாக கட்டிடம் கட்டுதல் - அப்புறப்படுத்த தெரிவித்தல் - தொடர்பாக.

மாவை : திரு.D.மாறன் மற்றும் விக்னராஜபுரம் மனை உரிமையாளர்கள் மற்றும் குடியிருப்பு வாசிகள், எண்.110, அண்ணா சாலை, வல்லாஞ்சேரி, என்பலரின்மனது. 03.07.2024.

மறைமலைநகர் நகராட்சி எல்லைக்குட்பட்ட வல்லாஞ்சேரி கிராமம், விக்னராஜபுரம் அங்கீகரிக்கப்பட்ட மனைப்பிரிவில் பொது உபயோகத்திற்காக (Reserved for Public Purpose) ஒதுக்கீடு செய்யப்பட்டுள்ள இடத்தில் ஆக்கிரமிப்பு செய்து சட்ட விரோதமாக கட்டப்பட்டு வரும் கட்டிடத்தை அப்புறப்படுத்தி பொது மக்கள் பயன்பாட்டிற்கு கொண்டுவர வேண்டும் என புகார் வரப்பெற்றுள்ளது.

நகராட்சி நிர்வாக இயக்குநர் அவர்களின் சுற்றறிக்கை மற்றும் பல்வேறு காலக்கட்டங்களில் பல்வேறு வழக்குகளில் நீதிமன்றங்களால் தொடர்ச்சியாக உறுதி செய்யப்பட்டுள்ளதை அறிய முடிகிறது. எனவே "பொது ஒதுக்கீடுகளில், கட்டுமானங்கள் தடை செய்யப்பட்ட வேண்டும். அவ்வாறு ஏதேனும் கட்டுமானங்கள் இருப்பின் அவற்றை இடித்து அப்புறப்படுத்தி, அனுமதிக்கப்பட்ட பொது உபயோகத்தில், அவைபயன்பாடு நடைபெற வேண்டும்" என குறிப்பிடப்பட்டுள்ளது.

மறைமலைநகர் நகராட்சி எல்லைக்குட்பட்ட வல்லாஞ்சேரி கிராமத்தில் நகர் ஊரமைப்பு துறையால் அங்கீகரிக்கப்பட்ட மனைப்பிரிவில் பொது உபயோகத்திற்காக (Reserved for Public Purpose) ஒதுக்கீடு செய்யப்பட்டுள்ள இடத்தில் ஆக்கிரமிப்பு செய்து சட்ட விரோதமாக கட்டப்படும் கட்டிடத்தை இந்த அறிவிப்பு கிடைத்த 15 தினங்களுக்குள் தாங்களே கட்டிடத்தை உடனடியாக அப்புறப்படுத்தப்பட வேண்டும். தவிர்ப்பதில் தயிழ்நாடு நகர்ப்புற உள்ளாட்சி அமைப்புகளின் சட்டம் 1998-ன்படி நடவடிக்கை மேற்கொள்ளப்படும் என இதன் மூலம் அறிவிக்கப்படுகிறது.

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ஆணையாளர்
மறைமலைநகர் நகராட்சி

பெறுநர்:-
திரு.வெங்கட்குமார்
விக்னராஜபுரம்,
வல்லாஞ்சேரி.

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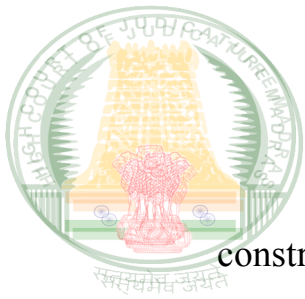
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3. Notwithstanding very many grounds and myriad averments in the support writ affidavit, learned counsel for writ petitioner predicated his campaign against the impugned notice on one point and that one point is, the impugned notice directly calls upon the noticee (writ petitioner) to remove what according to R1 is an encroachment without show causing the writ petitioner.

4. Mr.T.K.Saravanan, learned Additional Government Pleader for R1 is before us.

5. Learned State counsel submits, on instructions, that the impugned notice has been issued under Section 128 of 'Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'TNULB Act' for the sake of brevity}.

6. Learned counsel for writ petitioner submits that the impugned notice was affixed in the premises which according to R1 is offending



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construction on 22.07.2024 and writ petitioner noticee has sent a response

dated 27.07.2024 through his counsel. Section 128 of TNULB Act reads as

follows:

'128. Power to remove encroachment from public place. -

(1) The Commissioner may, -

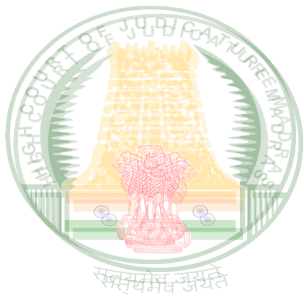
(a) remove without any notice any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching street, public place, water body, tank, other water resources or any land belonging to or vested with the municipality within the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching street, public place, water body, tank, other water resources or any 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 fifteen 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, water body, tank, other water resources 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.'



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7. There is no dispute that the alleged offending construction is an 'immovable structure' and therefore, Section 128(1)(b) of TNULB Act together with proviso thereat comes into play.

8. In the light of the narrative thus far, we find that the captioned main WP stands vastly descope. In other words, legal perimeter within which the captioned main WP should now perambulate has dwindled vastly. Therefore, with the consent of learned counsel on both sides, main WP was taken up. We find that R2 has been served, name of R2 together with full address is duly shown in the cause list but there is no representation. Cause list shows that R2 has entered appearance through counsel [Mr.R.Mani Barathi] whose name is shown in the cause list but with remark (Vakalat returned). A scanned reproduction of the cause list is as follows:

30	WP/22596/2024 (Land.Ench.)	(RE-NOTIFIED) G.VENKAT KUMAR VS THE COMMISSIONER AND ANOTHER.	M/S. G.MAGESHKUMAR D.NANDHINI P. DINESH KUMAR ----- M/S. K. TIPPUSULTHAN, M. GOPINATH, S.K. MUKESH FOR R1 DT 09/08/2024 R2 - SERVED R2 - D.MARAN S/O DEVARAJ, NO 110, ANNA SALAI VALLANHERI VILLAGE GUDUVANHERI POST CHENGALPATTU DISTRICT 603 202 M/S. R. MANI BARATHI (VAKALAT RETURN)
	AND WMP 24619/2024	To Dispense With G.VENKAT KUMAR VS THE COMMISSIONER AND ANOTHER.	M/S. G.MAGESHKUMAR D.NANDHINI P. DINESH KUMAR -----
	AND WMP 24620/2024	Interim stay G.VENKAT KUMAR VS THE COMMISSIONER AND ANOTHER.	M/S. G.MAGESHKUMAR D.NANDHINI P. DINESH KUMAR -----



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9. We make it clear that all rights and contentions of R2 will remain preserved about which there is allusion again infra. Be that as it may, proviso to Section 128(1)(b) of TNULB Act uses the expression 'any representation'. Therefore, we make it clear that if R2 chooses to send any representation within 15 days from today i.e., on or before 11.07.2025, the same also shall be considered by R1 before making final orders vide proviso to Section 128(1)(b) of TNULB Act.

10. Reverting to the lone point on which the campaign against the impugned notice is predicated, as the writ petitioner has responded to the impugned notice, we deem it appropriate to say that 'impugned notice' shall be treated as 'Show Cause Notice' {'SCN'} and response of writ petitioner dated 27.07.2024 shall be treated as cause shown. This satisfies the requirement under Section 128(1)(b) of TNULB Act. Likewise, R2 shall be favoured with a copy of impugned notice forthwith and if R2 sends any representation within the specified fifteen days window i.e., within fifteen days, the same shall be considered by R1 before making final orders which is in tune with proviso to Section 128(1)(b) of TNULB Act. In this regard, all questions are left open and all rights and contentions of R2 are preserved



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for sending a representation. This aspect of the order covers the requirement

under Section 128(1)(b) of TNULB Act and also puts in a safety valve qua

R2 (private respondent), who is not before us. To be noted, there is an allusion about the safety valve supra.

11. In the light of the narrative thus far, as impugned notice is now treated as SCN and SCN has been responded to i.e., cause shown by writ petitioner vide 27.07.2024 communication through his counsel, R1 shall proceed in accordance with law and on the merits of the matter i.e., on the basis of the merits of the cause shown with a rider that representation, if any, from R2 shall be considered vide proviso to Section 128(1)(b) of TNULB Act and proceedings shall be concluded as expeditiously as the official business of R1 would permit. We make it clear that when we say that the proceedings shall be concluded, it includes either dropping proceedings accepting cause shown or carrying the matter to its logical end of removal of encroachment and as we have not expressed any view or opinion on the merits of the matter, it would be solely on the merits of the writ petitioner's response to SCN and in accordance with law. For this purpose, all rights and contentions of both sides, (including R2 as already alluded to supra) are



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left open and all questions are left open. All rights are preserved in this regard.

Captioned WP disposed of in the aforementioned manner with observations set out supra and with preservation of rights in the aforementioned manner. Consequently, captioned Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

(M.S.J.,)

(H.C.J.,)

27.06.2025

Index : Yes / No

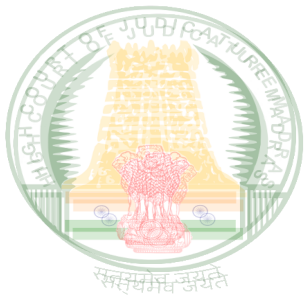
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Speaking / Non-speaking

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To

The Commissioner
Maraimalaingar Municipality
Maraimalainagar
Chengalpattu District.



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W.P.No.22596 of 2024

**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

mk

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27.06.2025

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