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W.P. No.38700 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

CORAM:

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

W.P. No.38700 of 2024 and W.M.P. No.41894 of 2024

C.Lakshmi

Petitioner

vs.

1. The Commissioner
The Greater Chennai Corporation
Zone-VII, Ambattur
2. The Regional Joint Commissioner
The Greater Chennai Corporation
Thiru Vee Ka Nagar, Near Poonga
Shenai Nagar, Chennai-30
3. The Zonal Officer
Greater Chennai Corporation
Zone 7, MTH Road
Ambattur, Chennai-53
4. The Chief Engineer
Greater Chennai Corporation
Ambattur, Chennai-53
5. The Assistant Engineer
Ambattur, Greater Chennai Corporation
Ward 81, Zone 7, Chennai
6. The Tahsildar
Taluk Office, Ambattur
7. The Revenue Divisional Officer
Ponneri

Respondents



Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the 3rd respondent ending with proceedings dated 18.11.2024 in Ma.A.7.NaKa.No. 804/2024 and quash the same.

For petitioner	Mr. N.A. Nissar Ahmed, Sr. Counsel for Mr. I. Kowser Nissar
For RR 1 to 5	Ms. K. Aswini Devi Standing Counsel for Chennai Corporation
For RR 6 & 7	Mr. M.S. Arasa Kumar Government Advocate

ORDER

(made by M. SUNDAR, J.)

Captioned 'main writ petition' ('WP' for the sake of brevity) has been filed assailing a communication dated 18.11.2024 bearing reference Ma.A.7 Na.Ka. No.804/24 ('impugned communication' for the sake of brevity, clarity and convenience) issued by R3 (Zonal Officer, Greater Chennai Corporation).

2. Mr. N.A. Nissar Ahmed, learned Senior Counsel appearing on behalf of counsel on record for writ petitioner, adverting to earlier order dated 20.03.2024 made in W.P. No.6633 of 2020 by another Hon'ble Division Bench, submits that impugned communication has been sent by R3 without giving an opportunity to the writ petitioner.



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3. Issue notice to respondents.

4. Ms. K. Aswini Devi, learned Standing Counsel, accepts notice for RR 1 to 5. Mr. M.S. Arasakumar, learned Government Advocate, accepts notice for RR 6 and 7.

5. Ms. K. Aswini Devi, learned Standing Counsel submits that impugned communication has been issued pursuant to the aforementioned order dated 20.03.2024 made in W.P.No.6633 of 2020.

6. A careful perusal of this order made by another Hon'ble Division Bench makes it clear that the Court has directed an opportunity to be provided to the alleged encroachers for submission of their objections and documents. To put it differently, this means that the respondents should adhere to Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998 ('TNULB Act' for the sake of brevity). In the case on hand, the applicable provision is Section 128(1)(b) together with proviso, which 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



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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.'

(underlining made by this Court for ease of reference)

7. In the light of the narrative thus far, we are of the considered view that it would be appropriate to take up the main WP and write that the impugned communication shall now be treated as a 'show cause notice' ('SCN' for the sake of brevity) under Section 128(1)(b) of TNULB Act enabling the writ petitioner to send a representation along with supporting documents (if so advised and if so desired) within seven days from today *i.e.*, by 09.01.2025 and that if the same is done, R1 shall pass final orders. This Court is of the considered view that the sole grievance of the writ petitioner stands redressed on such a course being adopted.

8. Accordingly, the following order is made:

- i. Impugned communication being communication dated 18.11.2024 bearing reference Ma.A.7.NaKa.No. 804/2024 issued by R3 shall now be treated as a SCN under Section 128(1)(b) of TNULB Act;



- ii. Noticee/writ petitioner (if so advised and if so desired) shall send a representation within seven days from today, *i.e.*, on or before 09.01.2025;
- iii. If the noticee/writ petitioner sends a representation within the aforesaid time frame, it is open to the respondents to proceed in accordance with law *qua* removal of encroachment.

9. Though obvious, we make it clear that we have not expressed any view or opinion on the merits of the matter and therefore, R1, while passing final orders shall do so untrammelled by the observations made in this order.

10. Captioned main WP is disposed of in the aforesaid manner. Consequently, captioned W.M.P. stands disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.R.S., J.)
02.01.2025

Index : Yes/No
NC : Yes/No
cad



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M. SUNDAR, J.

and

K. RAJASEKAR, J.

cad

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