IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

CORAM

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

W.P.No.130 of 2025
and
W.M.P.No.144 of 2025

Kamalam
W/o.Subramani ... Petitioner

Vs.

1. The District Collector
O/o.Collectorate
Namakkal District.

2. The Tahsildar
Sendhamangalam
Namakkal District.

3. The Revenue Inspector
Sendhamangalam
Namakkal District. ... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to provide the petitioner opportunity of personal hearing before passing any orders based on the show cause notice dated 29.11.2024 issued under Section 7 of Madras Act III of 1905.

For Petitioner : Mr.S.Saravanakumar

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to proceedings under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity}.

2. Writ petitioner was visited with a 'Show Cause Notice' {'SCN'} under Section 7 of said 1905 Act and the writ petitioner has responded to the same i.e., shown cause vide response dated 07.12.2024.

3. Mr.S.Saravanakumar, learned counsel on record for writ petitioner submits that simple prayer of writ petitioner is to direct R3 to provide a

personal hearing before making orders under Section 6 of said 1905 Act.

4. We carefully considered the arguments and we also perused the case file. At the outset, we find that there is no acknowledgment for 07.12.2024 response but we express no opinion on the same as this is Admission Board.

5. Be that as it may, there is no disputation about the position that no rules for considering the response to Section 7 notice have been framed.

6. Another Hon'ble Division Bench of this Court vide order dated 16.12.2019 in W.A.No.4073 of 2019 upheld a order of one of us sitting as a single Judge (M.Sundar, J.,) in ***State Bank of India Officers*** case law, ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019].***

7. In this ***State Bank of India Officers*** case, a principle that the expression 'affording an opportunity' does not make a personal hearing imperative was laid down. In the case on hand, Section 7 of said 1905 Act only mandates that a notice calling upon a person concerned to show cause before a certain date i.e., show cause as to why he should not be proceeded under Section 6 of said 1905 Act, shall be served. Therefore, it cannot be gainsaid that personal hearing is statutorily imperative before an order under Section 6 of said 1905 Act is made. In another matter, adverting to ***State Bank of India Officers*** case, this Court had followed the principle that personal hearing is not imperative and that it is only at the discretion of the authority concerned depending on the facts and circumstances of the case and the nature of the cause shown. This is vide order dated 11.12.2024 in W.P.No.28696 of 2017 which reads as follows:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

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

W.P.No.28696 of 2017
and
W.M.P.Nos.30881 & 30882 of 2017
in
W.P.No.28696 of 2017

S.Sanjay
S/o.B.Shanthilal ... Petitioner

Vs.

1. The Secretary to Government
Municipal Administration and
Water Supply Department
Fort St.George
Chennai-600 009.

2. The Commissioner
Ootacamund Municipality
Ootacamund. ... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the proceedings of the 1st respondent bearing Letter No.(P)No.370/MA.1/2017 dated 15.09.2017 and quash the same.

For Petitioner	:	Mr.Jayesh B. Dolia Senior Counsel for Mr.V.Kalyanaraman
For Respondents	:	Mr.V.Ravi Special Government Pleader, for R1 Mr.P.Srinivas, for R2

ORDER

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

Captioned main 'Writ Petition' {'WP' for the sake of brevity} pertains to proceedings under 'the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)' {hereinafter 'District Municipalities Act' for the sake of brevity} read with 'the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993' {hereinafter 'Hill Station Rules' for the sake of brevity}.

2. At the outset, we need to make it clear that 'Tamil Nadu Urban

Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'TNULB Act' for the sake of brevity} which is a conditional legislation kicked in on 13.04.2023. Section 200 of TNULB Act captioned 'Repeal and Saving' makes it clear that District Municipalities Act has been repealed by TNULB Act [Section 200(1)(b)]. Section 200(3)(e) of TNULB Act which is a saving clause makes it clear that all things done, made, instituted, executed and appointed under District Municipalities Act before commencement of TNULB Act shall be deemed to have been done, made, instituted and executed by Local Body concerned under the provisions of TNULB Act.

3. Reverting to the case on hand, captioned WP has been filed assailing an order dated 15.09.2017 bearing reference Letter (P)No.370/MA.1/2017 made by R1 [The Secretary to Government, Municipal Administration and Water Supply Department]. This '15.09.2017 order' made by R1 shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

4. Writ petitioner has put up a commercial building (ground + 2 floors) at 'R.S.No.E11/311 at Main Bazaar in Udhagamandalam Municipal Limit' [hereinafter 'said property' for the sake of convenience and clarity].

5. R2 sent a notice dated 07.03.2006 bearing reference UAC No.17/2005(S) pointing out that construction in said property has been put up without obtaining any permission from the competent authority under the District Municipalities Act. This notice called upon noticee / writ petitioner to demolish the construction and it also made it clear that in the event of non-compliance, Section 339 of District Municipalities Act which provides for enforcement will be resorted to. Notwithstanding the language in which this notice is couched, the same was treated as 'Show Cause Notice' {'SCN'} and noticee / writ petitioner sent a reply dated 15.03.2006 contending that construction in said property was 70 years old, it has been put up with brick and mud mortar. It was contended that superstructure was badly damaged due to traffic and rains and writ petitioner has no option other than rebuilding. In other words, writ petitioner / noticee made it clear that superstructure qua said property was rebuilt. It was only contended that a plan was submitted but they have no information about the same. In other words, response of writ petitioner is that no permission from competent authority has been obtained. Based on this response, a SCN was issued by R2 being SCN dated 10.04.2008 bearing reference UAC No.17/2005. This

notice was issued under various sub-sections and clauses of Section 217 of District Municipalities Act and this SCN was followed by a communication dated 03.11.2008 bearing reference UAC No.16/2007/S *inter alia* making it clear that construction is unauthorized and that if it is not demolished within seven days, enforcement will be resorted to. Writ petitioner sought review of this 03.11.2008 order. To be noted, the review was under Section 217-K of District Municipalities Act. In the review, writ petitioner was given an opportunity and the impugned order was made. Assailing the impugned order, captioned WP has been filed.

6. Notwithstanding very many grounds raised in the writ support affidavit, Mr.Jayesh B. Dolia, learned Senior Counsel appearing on behalf of counsel on record for writ petitioner predicated his argument on Section 217-K(2) of District Municipalities Act which mandates that reasonable opportunity of making representation should be given to a person before making a review order. We shall advert to this argument infra after setting out the trajectory of the captioned WP before Hon'ble predecessor Bench.

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7. Hon'ble predecessor Bench, by order dated 05.02.2024 appointed an Advocate Commissioner and remit of Advocate Commissioner was to inspect said property and file a report with details about the age of the building. Advocate Commissioner was permitted to take assistance of a qualified Engineer in this regard. Advocate Commissioner has filed a report dated 30.03.2024 together with photographs. In the report, Advocate Commissioner has made it clear that he inspected said property on 16.03.2024. Advocate Commissioner, in his report, has stated that said property consists of four floors namely, ground floor, first floor, second floor and third floor. After giving dimensions, Advocate Commissioner based on the report of Engineer has opined that the age of the ground floor and first floor is about 40 years. Photographs annexed also suggest that second and third floors appear to be new construction. Hon'ble predecessor Bench has given further directives regarding taking action against similar violations. We deem it appropriate to say that R2 will do well to initiate action against similar violations.

8. This Court, now reverts to the argument on which learned Senior Counsel predicated his campaign against the impugned order. As already

alluded to supra, notwithstanding very many averments in the writ support affidavit, learned Senior Counsel predicated his argument on Section 217-K(2) of District Municipalities Act which reads as follows:

> *'217-K. Review.- (1) ....*
>
> *(2) No order under this section adversely affecting a person shall be made unless that person has had a reasonable opportunity of making his representation.'*

9. A careful perusal of the language in which sub-section(2) of Section 217 of District Municipalities Act is couched makes it clear that no order shall be made without affording a reasonable opportunity. One of us (M.Sundar .J) sitting as a single Judge of this Court vide ***State Bank of India officers*** case law, ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019]*** in paragraph No.23 brought out and articulated the difference between 'reasonable opportunity' and 'personal hearing'. Paragraph No.23 reads as follows:

> *'23. A careful reading of Point 3(b) of said Circular reveals that Circular also has noticed the difference between the two*

expressions used in the two provisos i.e., proviso to Section 22(4) and proviso to Sections 27(1) and 27(2). The reason is, Circular makes it clear that the dealer should be given 'reasonable opportunity and personal hearing' as per Section 22(4) whereas while making a reference to Sections 22, 25 and 27, circular says that order should not be made without 'affording an opportunity to the dealer'. Therefore, even the circular has instructed the Assessing officer to give personal hearing only when the exercise is under Section 22(4). With regard to generic Sections 22, 25 and 27, the circular only says that no order should be made without affording an opportunity to the dealer. Therefore, it follows as an inevitable and in the considered view of this Court indisputable sequitur that opportunity to the dealer to be afforded under Section 22 and the opportunity to be afforded to the dealer under Section 27 are different and distinct as alluded to supra. In other words, while it is personal hearing under Section 22 (4) of TNVAT Act, it is reasonable opportunity to show-cause under Section 27 of TNVAT Act.'

10. The above ***State Bank of India officers Association*** order of this Court was carried in appeal by the dealer vide W.A.No.4073 of 2019 and Hon'ble Division Bench vide order dated 16.12.2019 dismissed the writ appeal confirming the afore-referred 01.08.2019 order.

11. In this view of the matter, we have no hesitation in holding that

reasonable opportunity does not necessarily mean personal hearing. It may or may not be personal hearing and it will depend on the facts and circumstances of the case. Be that as it may, we are of the considered view that it is not necessary to dilate more on this aspect of the matter, as rightly pointed out by learned counsel for R2, in the case on hand, it is clear from the impugned order itself that personal hearing has been afforded. Paragraph No.3 of the impugned order reads as follows:

> '3. இதனையடுத்து, பார்வை 3-ல் காணும் அரசு கடிதத்தில், தாங்கள் 31.08.2017 அன்று நேரடி விசாரணையில் கலந்துகொள்ள அழைக்கப்பட்டதையடுத்து, தங்களது சார்பாக திரு.சஞ்சய் அவர்கள் விசாரணையில் கலந்து கொண்டார்.'

12. There is no disputation or contestation that Sanjay (writ petitioner) participated in the enquiry. Therefore, it is clear that the writ petitioner has been given an opportunity to participate in the enquiry which means that writ petitioner has been given a personal hearing. This by itself douses the argument of writ petitioner.

13. Learned Senior Counsel for writ petitioner submitted that there are similar buildings without any setback and which have been constructed without any permission or sanction from competent authority. In other words, there are other unauthorised buildings which are in complete violation is his say. As already alluded to supra, we make it clear that R2 will do well to take action against the other similar violations also but that cannot be a ground to interfere with the impugned order, as there can be no equality in illegality.

14. Learned Special Government Pleader appearing on behalf of R1 supported the contentions of R2.

15. In the light of the narrative, discussion and dispositive reasoning set out supra, we have no hesitation in holding that there is no ground to interfere qua impugned order.

16. We make it clear that there is no impediment for respondents now to proceed with enforcement as already mentioned in their communications

as the captioned WP fails.

17. Ergo, the sequitur is, captioned WP is dismissed. Captioned 'Writ Miscellaneous Petitions' {'WMPs'} thereat also perish with the captioned WP and the captioned WMPs thereat are also dismissed. There shall be no order as to costs.

(M.S.,J.) **(K.R.S.,J.)**
11.12.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

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8. In the light of the aforementioned principle, captioned WP fails to pass muster in the Admission Board.

Ergo, the sequitur is, captioned WP is dismissed. Consequently, captioned 'Writ Miscellaneous Petition' {hereinafter 'WMP' for the sake of brevity} thereat also perishes with the main WP. In other words, captioned WMP is also dismissed. There shall be no order as to costs.

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

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To

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O/o.Collectorate
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Sendhamangalam
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M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

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