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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

CORAM

THE HON'BLE MR.SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

WP No. 7542 of 2019
CNR: {HCMA010484892019}
and
WMP Nos. 8194 & 8196 of 2019

Case QR

Radha Krishnamoorthy
S/o. Krishnamoorthy, No.32/120,
Shanmugarayan Street,
Seven Wells, Chennai – 600001.

..Petitioner(s)

Vs

1. The Regional Deputy Commissioner,
   North, Greater Chennai Corporation,
   Division 52, Unit 12, Zone 5,
   Madras 3.

2. The Commissioner,
   Corporation of Chennai, Madras 3.

3. S.Hari Babu,
   S/o. Sriram Subbramaniam,
   No.28, 5th Lane, Anjaneya Nagar,
   Royapuram, Chennai 13.

..Respondent(s)

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records in Z.O.5.C.No.2264/2018 dated 13.02.2019 on the file of the 1st

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respondent and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner(s): Mr.Avinash Wadhwani

For Respondent(s): Mrs.S.Rajeni Ramadass
For R1 & R2
Mr.V.Ramamurthy
For R3

O R D E R

[Order of the Court was made by G.ARUL MURUGAN, J.]

The writ petition has been filed challenging the notice dated 13.02.2019 issued by the 1st respondent/Corporation of Chennai, directing the petitioner to remove the encroachments.

2. Learned counsel appearing for the petitioner submitted that the Sai Baba Temple, which is the property in question, was constructed long ago and is in no way situated on the road or obstructing any pedestrian access. He further submitted that, before the issuance of the impugned order directing the petitioner to remove the encroachment, no notice was issued affording him a reasonable opportunity of being heard. Therefore, the impugned order suffers from a violation of the principles of natural justice.

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3. Countering the submissions, learned Standing Counsel appearing on behalf of the Greater Chennai Corporation submitted that, in fact, in the Public Interest Litigation (PIL) filed before this Court in W.P.No.27561 of 2018, this Court, by an order dated 27.02.2019, observed that the property in question belongs to the Chennai Corporation and directed the Corporation to take steps to remove the encroachments. Due to which, the impugned order came to be passed seeking to remove the encroachments. As the impugned order was passed in compliance with the orders passed by this Court, the petitioner cannot have any grievance, particularly when the aforesaid order dated 27.02.2019 was not challenged by the petitioner. Further, learned Standing Counsel submits that, since the encroachment is on the road, the Corporation has the power under Section 222 of the Chennai City Municipal Corporation Act, 1919 [hereinafter referred to as 'the Act'] to directly remove the encroachment, the impugned order came to be passed, and no interference is required.

4. Heard the rival submissions made on either side and perused the materials available on record.

5. It is true that, in the Public Interest Litigation filed in WP.No.27561 of 2018, alleging encroachments, this Court, by an order

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dated 27.02.2019, recorded that, based on the steps taken by the Corporation on 19.11.2019, the petitioner, who had constructed the temple, had already removed the shed and thereby the encroachment in front of the temple had been removed. Further, the order recorded the report filed by the Tahsildar stating that the structure is situated on land vested with the Greater Chennai Corporation and that the Corporation shall take necessary steps to remove the shed.

6. It is the vehement contention of the learned Standing Counsel that, in view of the aforesaid order dated 27.02.2019, nothing remained to be adjudicated upon and all that was required was to remove the encroachments in question.

7. We are not able to agree with the submission made by the learned Standing Counsel, as this Court, by its order dated 27.02.2019, had only observed that, since the property in question belongs to the Greater Chennai Corporation, appropriate steps are to be taken for the removal of the encroachments. It goes without saying that whenever the Corporation is taking steps to remove an encroachment or taking any action adverse to the interest of any person in possession or enjoyment of the property, it is for the Corporation to take steps after affording a reasonable opportunity to the party concerned. Heavy reliance is placed

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on Section 222 of the Act, pursuant to which the impugned order came to be passed. At this juncture, it would be appropriate to refer to Section 222 of the Act, which reads as under:

> *"222. Removal of encroachments.*
>
> *(1) The commissioner may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar, or groundfloor window) situated against or in front of such premises and in or, over, any street or any public place, the control of which is vested in the corporation.*
>
> *(2) If the owner of occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title or where such period is less than thirty years, for a period of thirty years or that it was erected with the consent of any municipal authority duly empowered in that behalf, and that the period, if any, for which the consent is valid has not expired, the corporation shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same."*

8. Even though, as per Section 222(1) of the Act, the Commissioner may, by notice, require the owner or occupier to remove or alter any projection or obstruction situated against or in front of such premises and in or, over, any street which is under the control of the Corporation, however, Sub-Section (2) of Section 222 of the Act allows the owner or occupier of the premises to prove that any such projection or encroachment has existed for a period sufficient under the law of

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limitation, thereby enabling him to seek compensation for any damage that may be suffered by the removal or alteration of the same.

9. A bare perusal of the aforesaid provision shows that an opportunity to the person, i.e., the owner or occupier is required whenever the Corporation resorts to proceedings for the removal of encroachments under Section 222 of the Act. If no opportunity is given to the owner or occupier and the Corporation directly proceeds to remove the encroachment, Sub-Section (2) of Section 222 of the Act will become otiose, as the owner or occupier will not have an opportunity to prove that the projection has existed for a period sufficient under the law of limitation, thereby enabling him to seek compensation for the damages suffered.

10. In view of the aforesaid, we are of the considered opinion that, before resorting to any proceedings for the removal of an encroachment, it is incumbent upon the Corporation to issue a notice calling upon the person in possession and afford him a reasonable opportunity. On a perusal of the impugned order dated 13.02.2019, though it is titled as a notice, the contents of the notice state that, since the petitioner has built an unauthorised temple over the road, the Corporation is entitled to remove the encroachment and, therefore, the petitioner has been

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directed to remove the encroachment within a period of 15 days. This impugned order dated 13.02.2019 cannot be construed as a notice, as the Corporation has already arrived at a decision and directed the petitioner to remove the encroachment.

11. In view of the same, we are inclined to quash the impugned order, mainly on the ground of violation of the principles of natural justice, and remand the matter to the file of the Corporation to take fresh proceedings in accordance with law. It is for the Corporation to initiate fresh proceedings after issuing notice to the petitioner, giving him a reasonable opportunity, and thereafter communicate its decision. Till such time the order is passed, no coercive action shall be taken against the Temple.

12. Accordingly, the impugned order issued by the 1st respondent in Z.O.5.C.No.2264/2018, dated 13.02.2019, is quashed and the Writ Petition stands allowed in the above terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(SUSHRUT ARVIND DHARMADHIKARI, C.J.) (G.ARUL MURUGAN J.)

17-11-2026

Jeni/gya

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To

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2.The Commissioner,
Corporation of Chennai, Madras 3.

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AND
G.ARUL MURUGAN, J.

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