

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4072 of 2014

and

M.P.No.1 of 2014

PATTALI MAKKAL KATCHI

Rep. it's President,

G.K.Mani

No.63, North Muthu Naicken Street,

Teynampet,

Chennai - 600 018.

... Petitioner

Vs

1. The Additional Chief Secretary /
Commissioner of Revenue Administration
Revenue Department - Administration Disaster
Management and Mitigation Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The General Manager,
Metropolitan Transport Corporation,
(Chennai) Limited,
Pallavan House, Chennai - 600 002.

... Respondents

Prayer : Petition filed Under Article 226 of the Constitution of India praying for issuance of writ of Certiorari calling for the records relating to the proceedings in SR No.943/MTC/KPM/2013 dated 17.06.2013 of the 1st respondent herein and quash the same.

For Petitioner : Mr.K.Balu

For 1st Respondent : Mr.K.M.D.Muhilan
Government Advocate

For 2nd Respondent : Mr.M.Chidambaram

ORDER

The writ on hand has been instituted questioning the notice of hearing dated 17.06.2013, directing the petitioner to appear for an enquiry either in person or through counsel and file written statement in respect of the allegation being under the provisions of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (hereinafter referred to as 'the Act').

2. The impugned notice states that an application under the Act claiming compensation from the petitioner for the revenue loss caused due to Non Operation and Partial Operation of the Metropolitan Transport

Corporation (Chennai) buses in Chennai, Kancheepuram and Thiruvallur District owned by the Metropolitan Transport Corporation (Chennai) Limited, during the agitation held by the petitioner party members for the period from 25.04.2013 to 19.05.2013 is preferred. The said application is posted for the appearance of the petitioner on 02.07.2013 in the Chambers of the Additional Chief Secretary/Commissioner of Revenue Administration, Ezhilagam, Chepauk, Chennai – 600 005. The petitioner has chosen to file a writ petition instead of defending their case before the first respondent Additional Chief Secretary to Government.

3. The learned counsel for the petitioner mainly contended that the petitioner is not responsible for any damages or committed any such offence of causing damage to the public properties. On political considerations, the impugned notice has been issued with an ulterior motive. Thus, the impugned notice is untenable and liable to be set aside.

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4. On 25.04.2013, Pattali Makkal Katchi and Vanniar Sangam on behalf of Dr.S.Ramadoss had conducted "Chithirai Thiruvizha" at

Mamallapuram. The Pattali Makkal Katchi party members who came to participate in the same festival are alleged to have entered into a wordy quarrel at Kadayam Theru Colony Bus stop near Marakanam and as a result of the same, damage to the property had occurred. For numerous hours, traffic was affected in East Coast Road and that pursuant to the said violence, the sculptures and statues of political leaders are alleged to have been damaged. The party workers are said to have violated the conditions imposed by the Police and hence, the party members were arrested by the Police. As a consequence to the same, on 30.04.2013, demonstrations were contemplated to be held without the permission of the Police at Krishnagiri and hence, Dr.S.Ramadoss and the President of the petitioner Party among 500 members were arrested and on account of the same, members of the Party and Vanniar Sangam had indulged in road roko, pelting of stones on vehicles, felling of trees, damaging public property. On account of the same, a tense situation prevailed in Kancheepuram, Thiruvallur and Chennai Districts from 25.04.2013 to 19.05.2013 and the public movements were being affected. The normal life of the public at large was affected.

5. The broad allegations against the petitioner are extracted in the affidavit filed in support of the writ petition itself. With reference to the said allegations, the learned counsel for the petitioner contended that all such allegations are false and frivolous. The petitioner's members had not involved in commission of any offence nor caused any damage to the public properties. No doubt, a tensed situation was created during the particular period and the MTC buses could not be operated during the appropriate time. However, the respondents cannot blame the petitioner for such incidents. The impugned notice of hearing merely states that due to non-operation of the Transport Corporation Buses at the instance of the petitioner party, monetary loss sustained by the Transport Corporations are to be compensated.

6. The learned counsel for the petitioner states that the very initiation of proceedings under the Act is untenable. The question of recovery of compensation would arise only when an offence punishable has been committed during any procession, meeting, agitation, demonstration or any other activity organised. Section 2(3) of the Act defines, a political party

recognised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. So, Pattali Makkal Katchi has been recognised as Political Party under the said order in the year 2009. Therefore, the petitioner would not come within the purview of Section 2(3) of the said Act. Thus, the allegations levelled against the petitioner Party in the application of the second respondent would not attract Sections 9 and 10 of the Act. Thus, the initiation of proceeding itself is without jurisdiction. Criminal offences were registered against the members of the Petitioner / Political party. However, those cases are ended with an order of acquittal. Thus, there is no cause for claiming compensation from the Petitioner / Political party.

7. The learned counsel for the petitioner reiterated that in case of commission of any punishable offence, if committed, and public properties are damaged, then alone, the liability can be fixed against the Political party. But, in the present case, there was no commission of offence or conviction in respect of the criminal cases registered. Thus, there is no *prima facie* case or material against the petitioner for invoking the provisions of the Act. It is

contended on behalf of the petitioners that the damage or loss caused to the property should be referable to the “mischief” under Section 3 or mischief by fire or explosive substance under Section 4 or any damage that is caused due to pelting of stones, bricks, etc., under Section 5 of the Act. Thus, only if any such mischief within the definition of the Act is established, then alone, the question of fixing liability would arise and therefore, claiming of compensation is misconceived and beyond the scope of the provisions of the Act.

8. The learned counsel for the petitioner proceeded by elaborating the scope of Section 9, 11(2) of the Act. It is contended that when the initiation of action against the petitioner prima facie not in accordance with the provisions of the Act. Thus, the petitioner need not appear before the competent authority as the authority lacks jurisdiction.

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9. Section 2(4) of the Act defines the word "*Property*" means any property, movable or immovable or machinery owned by, or in possession

of, or under the control of any person including the Central Government or the State Government etc. However, in the present case, perusal of the notice would reveal that the application itself is filed claiming compensation from the petitioner only for the revenue loss caused due to non operation and partial operation of Metropolitan Transport Corporation (Chennai) buses in Chennai, Kancheepuram and Thiruvallur Districts. Therefore, even the notice states that the notice did not contain any such allegation of commission of an act of mischief within the meaning of the Act. Thus, the notice itself is without jurisdiction and liable to be set aside.

10. The learned Government Advocate appearing on behalf of the first respondent disputed the contentions raised on behalf of the petitioner in entirety. It is contended that the provisions of the Act has been erroneously interpreted on behalf of the petitioner. Under Section 3 of the Act punishment for committing mischief in respect of property whoever commits mischief. Therefore, irrespective of the fact that a person is a political party or group of persons or otherwise, actions are permissible under the provisions of the Act. It is not as if the damage is caused only by a political

party, actions are to be initiated under the provisions of the Act. But, whoever commits mischief or damage or loss to the property, the actions can be initiated under the provisions of the Act. Thus, the very contention raised that the petitioner is not amenable to the act during the relevant point of time is a wrong interpretation offered and therefore, the said contention is liable to be rejected.

11. The learned Government Advocate on behalf of the first respondent further has stated that the word 'mischief' is defined in clear terms. Further, damage or loss of property are also the grounds for claiming compensation. The damage or loss are distinguishable, if any person causes damage to the property or financial losses to the State Government or Central Government as defined under Section 2(4) of the Act, then, compensation shall be claimed by filing an application. However, the writ petitioner claims that they have not committed any mischief, but the present writ petition is filed challenging the notice of hearing, calling upon the petitioner to submit their explanations in respect of certain allegations. It is for the authorities to form a final opinion for proceeding in the matter by

invoking the provisions of the Act. In view of the fact that the writ petition is filed challenging the very notice issued, the same is not maintainable and liable to be rejected.

12. The learned counsel appearing on behalf of the second respondent Metropolitan Transport Corporation opposed the contentions raised on behalf of the petitioner by stating that 58 buses were actually damaged. 12 buses at Chennai, 26 buses at Thiruvallur and remaining buses at Kancheepuram were damaged during the relevant point of time by the members of the petitioner political Party. The material evidences are available with the second respondent and the second respondent is ready to establish such damage extensively caused at the instance of the petitioner party members. The loss as per assessment is running to several crores. The Metropolitan Transport Corporation buses are public properties and therefore, there is no infirmity in respect of the notice issued to the writ petitioner. This apart, the petitioner has to defend their case in the manner known to law. Contrarily, the writ petition against such a notice of hearing is not maintainable and liable to be dismissed.

13. Considering the arguments as advanced by the respective learned counsels appearing on behalf of the parties to the *lis*, issues to be considered by this Court are, whether a writ against a notice of hearing is entertainable or not? If so, under what circumstances such writ is entertainable? and the scope of the provisions of the Act viz., the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and its applicability.

14. No writ against a notice is entertainable in a routine manner. A writ against a notice of enquiry is entertainable only on limited grounds. If a notice has been issued by an incompetent authority having no jurisdiction directly hitting the provisions of the Act, then a writ is entertainable. If an allegation of malafides are established, then also a writ may be entertained, considering the nature of the allegations and the manner in which it is established. Even in case of raising an allegation of malafides against the competent authority, such authority must be impleaded as party respondent in a personal capacity in the writ proceedings. In the absence of any one of

the above grounds, no writ can be entertained against a notice of enquiry and thus, the petitioner is expected to submit his explanations / objections and the documents, if any, in order to defend their case and to prove their innocence or otherwise.

15. Let us examine the impugned notice of hearing challenged in the present writ petition. The notice dated 17.06.2013 states that an application under the Act 1992 claiming compensation from the petitioner for the revenue loss caused due to non operation and partial operation of the MTC buses in Kancheepuram, Chennai and Tiruvallur is preferred. The application is posted for the appearance and for submission of reply in the Chambers of the first respondent. This being the nature of the impugned notice of hearing, this Court is of the opinion that the petitioner ought to have submitted its reply/objections before the first respondent establishing their case with relevant documents and evidences.

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16. The learned counsel for the petitioner raised the point of jurisdiction with reference to the provisions of the Act. In this regard, it is

necessary to consider the scope of the provisions of the Act. The statement of objects and reasons of the Act enumerates that widespread damages for the public property are being caused during procession, assembly, meeting, agitation, demonstration or other activities organised by political parties or communal, language or ethnic groups. It has been decided to prevent such widespread damages to public property by enacting a comprehensive legislation providing for punishments of the persons who actually cause damage or loss to the public property and to make the political parties or communal, language or ethnic groups which organised such procession, assembly, meeting, agitation, demonstration or other activities liable to pay compensation in respect of damage or loss caused to any public property. With this object, a comprehensive legislation was enacted i.e., Tamil Nadu Act 59 of 1992. It was enacted to prevent such widespread damages to public property.

17. Keeping in mind the statement of objects and reasons, the provisions of the Act are to be interpreted constructively, so as to ensure that the purpose and objects are achieved.

18. Section 2(2) defines "mischief" shall have the same meaning as in Section 425 of the Indian Penal Code (in short 'IPC'). It is made clear that the definition provided under the Indian Penal Code for the word 'mischief' is to be taken into consideration for the purpose of application.

19. Section 2(4) defines 'property' means *any property movable or immovable or machinery owned by, or in possession of, or under the control of any person including]*

- (a) *the Central Government; or,*
- (b) *the State Government; or,*
- (c) *any local authority; or,*
- (d) *the Tamil Nadu State Electricity Board; or,*
- (e) *any University in this State; or*
- (f) *any co-operative society including a land development bank registered or deemed to be registered under the Tamil Nadu Co - operative Societies Act, 1983; or*
- (g) *any corporate body constituted under any Act passed by Parliament or the Legislative Assembly of this State; or*
- (h) *any other corporation owned or controlled by the Central Government or the State Government; or*
- [(i) any institution concern or undertaking; or*
- (j) *any company."*

20. Section 3 provides for 'Punishment for committing mischief in

respect of [property]', which reads as under:

"Whoever,-

- (i) Commits mischief by doing any act in respect of any {Substituted for th word "public property" by the Tamil Nadu Public Porperty (Prevention of Damage and Loss) Act, 1994 (Tamil Nadu Act 46 of 1994)} [property] and thereby causes damage or loss to such [property] to the amount of one hundred rupees or upwards; or
- (ii) commits mischief by doing any act which causes or which he knows to be likely to cause a diminution of the supply of water to the public or to any person for any purpose or an inundation of, or obstruction to, any public drainage, or
- (iii) commits mischief by doing any act which renders any public road, bridge, navigable channel, natural or artificial impassable or less safe for traveling or conveying property, shall be punished with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine:

Provided that the Court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year.

21. Section 4 deals with 'Mischief causing damage to [property] by

fire or explosive substance'. Section 5 provides 'Punishment for throwing stones, bricks, etc., upon persons travelling in motor vehicles'. Section 6 is a 'Special Provision regarding bail'. Section 7 relates to 'Order to pay compensation'. Section 8 is 'Power to try Offences' i.e. a Chief Metropolitan Magistrate or a Court of Session is competent. Section 9 denotes 'Liability to pay Compensation in certain cases'. Section 10 enumerates 'Claim for compensation'. Section 11 is the 'Authority to decide compensation'. Section 12 is the 'Recovery of compensation as arrear of land revenue'.

22. With reference to the above provisions of the Act, it is to be considered, whether the damage or loss caused due to such acts, are falling within the ambit of the provisions of the Act for the purpose of grant of compensation or not?

23. Section 2(2) "mischief", as defined under Section 425 IPC enumerates that whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the

situation thereof as destroys or diminishes its value or **utility**, or affects it injuriously, commits “mischief”. Explanation 1 to Section 425 IPC stipulates that ‘It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. Therefore, the express mention of ‘damage’ in the Section is indicative of the fact that the purview of the offence of ‘mischief’ is not intended to be confined only to cases of ‘wrongful loss’, but also to engulf within it all such cases of damages by unlawful means.

24. Keeping in mind the definition provided under Section 2(2) and Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, whoever commits mischief by doing any act in respect of any property and thereby causes damage or loss to such property, the word ‘damage or loss’ cannot be confined only with reference to the causing of physical damage to the movable property. The loss independently stated in the Act shall include “financial loss”, if any caused on account of such act of

mischief falling within the definition of the Act. The “Property” is defined under Section 2(4) of the Act as stated above. Thus, the movement of such movable properties, which is intended for public usage and benefit is prevented or restrained from peaceful moving, the said Act would also fall under the definition of “mischief” as the movement was restrained in an illegal manner, which is a mischief within the definition of the Act. In the event of “Financial loss” on account of such restraint or prevention of the movement of the movable properties belongs to the public, then also, compensation is recoverable under the provisions of the Act. Thus, direct losses by causing visible damage to the property and the indirect financial losses caused on account of restraining the movable public properties would also fall under the definition of mischief and thus, such acts are falling within the ambit of the provisions of the Act.

25. The statement of objects and reasons of the enactment would emphasize that damage or loss caused to the public property by the political parties or communal, language or ethnic groups must be compensated since such losses caused are against the interest of the public and against the

public properties. Thus, the Act is to be interpreted by creating the nexus between the purpose and object of the Act and the provisions enumerated. Any other narrow interpretation or straight formula understanding would undoubtedly defeat the purpose and object of the Act.

26. Section 3 of the Act is crystal clear and the language adopted is “whoever commits mischief” by doing any act in respect of any property and thereby causes damage or loss. The above phraseology adopted in the Statute must be understood, with reference to its context. “Whoever, commits any act in respect of any property” means, all the acts, which all are falling under the definition of mischief causes damage or action is actionable under the Act and compensation shall be granted. In this regard, any act causing physical damage to the public property or financial loss to the public Exchequer by preventing or restraining the public servants or competent authorities for peaceful providing of services to the public at large and to the benefit of the public and during such process, if financial losses are caused, then all such persons are liable to pay compensation for such public losses occurred to the State Exchequer. Section 3 connotes that

thereby causes damage or loss. It is not restricted with the word damage alone. The provision proceeds by stating “damage or loss”. Thus, it is to be construed that any act is actionable either in case of damage or in case of loss. Thus, the word loss to be independently taken into consideration for the purpose of initiation of action under the provisions of the Act. Thus, the damage if committed directly to the property physically and the loss would include all such consequential losses including the financial losses due to such act, which all are falling under the definition of “mischief” and all such acts are actionable under the provisions of the Act. Thus, the word 'damage or loss' as contemplated is to be understood independently in both the cases, where damage and loss is caused or damage alone is caused or loss alone is caused. In all such circumstances, initiation of proceedings for fixing liability and award compensation is permissible.

27. Admittedly, there are serious allegations of damage and loss of public property. However, the present writ petition is filed, challenging the notice of hearing. Thus, this Court is not expected to adjudicate the merits of the case. Regarding the allegations set out against the petitioner / Political

party, findings are to be given only after conducting an enquiry by the competent authority with reference to the documents and evidences made available.

28. The contention of the petitioner that criminal case ended with an order of acquittal, is of no avail to them. Mere acquittal in a criminal case cannot be a bar to proceed under the provisions of the Act to recover the compensation for damages or losses. The Act contemplates independent action for the purpose of recovering the damages or losses caused to the properties as defined under Section 2(4) of the Act. In this regard, Section 14 of the Act denotes that the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force and nothing contained herein shall exempt any person from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him. Thus, any criminal proceedings initiated against such offenders are no way connected with the actions to be initiated for grant of compensation for damages or losses under the provisions of the Act.

29. To establish a criminal offence under the Indian Penal Code before the competent Court of law, high standard of proof is required. However, no such high Standard of proof is required in such proceedings, where the assessment of damages or losses are to be calculated. The standard of proof required to convict a person in a criminal case can no way be compared with the cases, where compensations are awarded for the damages and losses. Thus, the yardsticks to be adopted in criminal trial cannot be adopted in the enquiry to be conducted by the competent authorities for the purpose of fixing liability and award of compensation for damages or losses under the provisions of this Act. Further, the saving clause unambiguously stipulates that the actions under the Act is independent. The purpose and object of the Act is to ensure that the public properties are protected and in the event of causing any damages or losses, compensation is recoverable from such persons for such act of mischief, if established. Thus, the contention in this regard raised on behalf of the petitioner is rejected.

30. The petitioner relying on Section 9, contended that only if a

commission of offence is proved, action is permissible and not otherwise. Such an argument deserves no merit consideration, in view of the fact that Section 9 stipulates 'liability to pay compensation in certain cases'. Thus, if liability is fixed, thereafter Section 9 would come into operation. Further, the provisions State that, where an offence punishable under this Act has been committed. Thus, the competent authority after conducting an enquiry, if arrived a conclusion that an offence within the provisions of the Act is committed, then he is empowered to fix liability under Section 9. Thus, invoking Section 9 would arise only after completion of enquiry and at the time of fixing liability. Section 3 of the Act states that, whoever commits mischief thereby causes damage or loss is liable to pay compensation. Section 9 further elaborates by stating that, where an offence punishable under this Act, committed through any procession, assembly, meeting, agitation, demonstration or any other activity organised by a political party or communal, language or ethnic group, it shall be presumed, that the offence, has also been committed by such political party or communal, language or ethnic group and such political party or communal, language or ethnic group shall be liable to pay compensation for damage or loss caused

to any property.

31. Thus, the liability is to be fixed only after conducting full fledged enquiry. But the present writ petition is filed, challenging the notice of hearing and therefore, this Court cannot offer any finding on merits or on factual aspects. The provisions are interpreted for the purpose of dealing with such cases in the manner known to law. It is the duty of the Constitutional Courts to interpret the provisions of the Act in order to achieve its purpose and object and to ensure the constitutional principles are achieved.

32. In the present writ petition, the Metropolitan Transport Corporation contended that several buses were severely damaged, financial losses were also caused by preventing the buses from moving for providing public services. There were losses to the TASMAC shops also as the damage or loss is caused towards TASMAC. However, the allegations are to be proved at the time of conducting enquiry and only thereafter, the liability is to be fixed and compensation are to be awarded. This being the scope of the Act,

this Court is of the considered opinion that facts are to be adjudicated independently by the competent authority. With reference to the interpretations, the authority competent has to apply the facts along with the provisions of the Act and its interpretations and accordingly, take a decision on merits and in accordance with law.

33. The petitioner has got a right to establish their case by availing the opportunities to be provided by the competent authorities. They are at liberty to submit all their defense statements, objections, documents, evidences, for the purpose of establishing their case in the manner known to law.

34. Ordinary citizen of this great Nation are mostly voiceless. Constitutional Courts are the voices for those voiceless majority citizen for the purpose of protecting their fundamental and the Constitutional rights. Looking back, this great Nation witnessed series of agitations, demonstrations, violations, affecting the public at large. In all such circumstances, ordinary voiceless citizen are forced to tolerate such illegalities committed by political parties or communal, language or ethnic

groups. The majority right thinking citizen are the victims and their normal life are being affected to such an extent. Many Poor people lost their properties, and huge damages were caused to the public properties. Therefore, the Government of the day is expected to initiate quick and effective actions in such circumstances, where any mischief is committed and damage or loss is caused to the properties.

35. The voiceless majority citizen are tolerable even while their fundamental rights are violated. They are forced to suffer, which results in an unconstitutionality, for which, the State is accountable and bound to initiate action against all such persons, who are responsible for such violations of fundamental rights of the common citizen. While conducting procession, free access to the schools, offices are prevented. Some occasions, it is absolutely prevented. Our great Nation has witnessed on several occasions, people could not able to reach their offices. The Ambulance services were unable to be operated, result in death of the patients, who required urgent medical attention. People are almost frustrated with such illegal activities of such groups and undoubtedly, the right of a common man

to lead a peaceful life, which is enunciated under the Constitution must be ensured by the Government of the day, irrespective of the political party.

36. The ambitions of the political party cannot be achieved by misleading the people or by causing infringement of the rights of the citizen. Members of the political party are thriving hard to come into power. Therefore, the conduct, integrity and behaviour of such members of the political party are of paramount importance for the purpose of running an effective and efficient Government, which is the mandate under the Indian Constitution. It is to be reminded of that no fundamental right is absolute and every such right is subject to restrictions. Under Article 51-A of the Indian Constitution, it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. It is the duty to uphold and protect the sovereignty, unity and integrity of India. Duty to defend the country and render national service when called upon to do so is also an important duty. More importantly, citizen has the duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious,

linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

37. In spite of the duties of citizen enumerated in Indian Constitution, the Political parties mostly glorifying their rights and not reminding their duties. This results in commission of offences and unconstitutionality. In every sphere, when a right is claimed, the duty is to be reminded of. Rights and duties are inseparable under the Indian Constitution. Any citizen claiming any right, must fulfill his duty first, then alone, the right will have sense in the constitutional perspectives. Agitations, processions, assembly, demonstrations, and what not, are being conducted by Political parties or communal, language or ethnic groups, claiming their rights. Under those circumstances, it is the duty of the leaders to remind their duties towards the society and failure would result in action. The political parties of communal, language and ethnic groups and its leaders are duty bound to ensure that the cadres of their respective party or group maintain discipline, while performing such agitations, demonstrations etc., by respecting the public rights of every citizen.

38. In view of serious infringement of rights in the society, the Act was enacted. Thus, the Act must be effectively implemented by the State machinery to ensure that public rights are protected and the tax payers' money is preserved and utilized for public welfare. The public properties are secured from the tax payers' money. Thus, the Government is accountable and answerable for such damage or loss, if any committed by an act of any person.

39. Though the Act was enacted in the year 1992, the effective implementation of the Act is not visible in the State of Tamil Nadu. 29 years lapsed, it is not made clear in how many cases, compensations are granted, despite the fact that damages or losses are established. Thus, this Court is of an opinion, atleast hereafter, the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, shall be implemented scrupulously by the authorities in order to protect the public properties.

40. The possible reason for slow implementation of the Act is that a

particular political party or group during commission of such offensive acts may be in alliance with the ruling party of the Central or State Governments. On some occasions, there may be some consensus between the groups of the communal, language or ethnic groups. The consensus, collusion, understanding, alliance, all must stand beyond the scope of the provisions of the Act as the Act is for the welfare of the common man and to protect the Constitutional rights of the citizen of this Great Nation. Thus, ineffective or non-implementation of the provisions of this Act also result in denial of fundamental right to the citizen and property damaged or loss caused is the taxpayers' money. In such an event, the Government would be committing an unconstitutionality by not initiating actions for recovery of compensation.

41. The executives and their independent functioning are ensured under the Constitution of India. Thus, if such offences are committed by the members of the Political party, which is the Ruling party of the Central or State Governments, then the Executives are bound to act independently for the purpose of invoking the provisions of the Act. The independency of the

executives are protected under the Constitution of India. In many circumstances, the non-understanding of the independency of the executives result in collusion and denial of right to the public at large. Thus, executive independence and performance of their lawful duties protected under the Constitution must be exercised by the competent authorities. In such circumstances, where the political parties or communal, language or ethnic grounds are in consensus or in understanding or in alliance or otherwise.

42. In respect of the case on hand, the writ petitioner has not established lack of jurisdiction or otherwise for the purpose of entertaining the writ petition. Admittedly, the notice of hearing is under challenge. Thus, the petitioner is at liberty to submit their objections, explanations, documents, evidences, etc., for the purpose of defending their case by availing the opportunities to be provided.

43. The present writ petition is pending for about 6 years. Thus, further delay would cause prejudice to either of the parties. In these circumstances, it is necessary that the enquiry must be conducted without any further delay.

Accordingly, the following orders are passed:

(1) The relief as such sought for in the present writ petition stands rejected.

(2) The first respondent is directed to continue the enquiry by following the procedures as contemplated and by affording opportunity to the writ petitioner and complete the enquiry in all respects and take a decision and pass orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.

(3) The petitioners are directed to co-operate for the early disposal of the enquiry proceedings by avoiding unnecessary adjournments. Even in case of adjournment on genuine grounds, the competent authority must record the reasons for such adjournments. In the event of non co-operation on the part of the parties, such non co-operation is to be recorded in the proceedings itself.

(4) The 1st respondent is directed to issue a Circular to all the District Collectors and District Superintendent of Police across the State of Tamil Nadu, to ensure immediate actions in the event of any damage or loss to the property under the Act, and failure if any, should be viewed seriously and

appropriate actions are to be initiated against the public authorities, who all are responsible and accountable for their lapses, negligence and dereliction of duties.

44. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2021

Index : Yes/No
Internet: Yes/No
Speaking Order : Yes/No
Sgl/kak

Note: Registry is directed to communicate the copy of this order to the learned Government Advocate, High Court, Madras.

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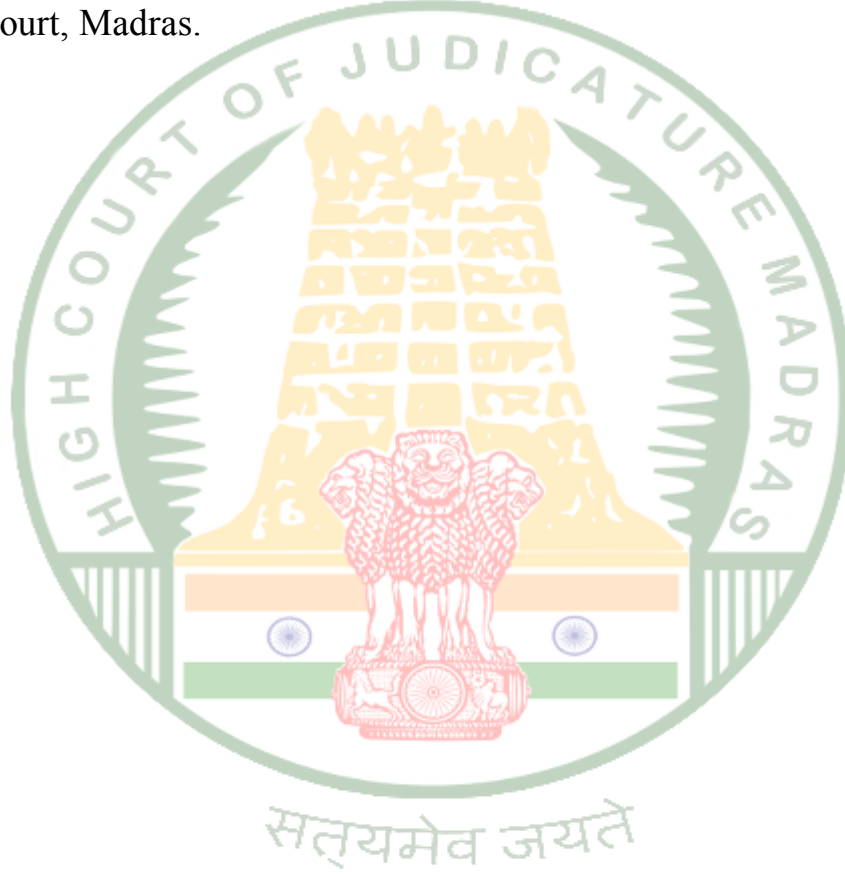
1. The Additional Chief Secretary /
Commissioner of Revenue Administration
Revenue Department - Administration Disaster
Management and Mitigation Department,

33/35

Ezhilagam, Chepauk, Chennai - 600 005.

2.The General Manager,
Metropolitan Transport Corporation,
(Chennai) Limited, Pallavan House,
Chennai - 600 002.

3.The Government Advocate,
High Court, Madras.



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S.M.SUBRAMANIAM, J.

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