



W.P.No.35858 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

Coram

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

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

**W.P.No.35858 of 2024**

**&**

**W.M.P.No.38723 of 2024**

S.Karthick Raja

S/o.Sundarraaj

... Petitioner

VS

1. The Chairman

Municipal Council

Namakkal

Namakkal District

2. The Municipal Commissioner

Komarapalayam Municipal Office

Komarapalayam

Namakkal District

3. The Revenue Divisional Officer

Tiruchengode

Namakkal District



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4. The Tahsildar  
Kumarapalayam  
Namakkal District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for records pertaining to order passed in Resolution No.36 dated 30.01.2024 by the Respondent no.1 herein and the subsequent eviction order in Na.Ka.No.2636/2023/F1 dated 05.08.2024 passed by the respondent No.2 herein and quash the same.

For Petitioner : Mr.P.Vetrivel

For Respondents : Mr.T.K.Saravanan  
Government Advocate for R1 to R4

### **ORDER**

(Order of the Court was made by K.RAJASEKAR, J.)

This writ of certiorari has been filed challenging Resolution No.36 dated 30.01.2024 of Respondent No.1 and the subsequent eviction order in Na.Ka.No.2636/2023/F1 dated 05.08.2024 passed by Respondent No.2 wherein eviction of writ petitioner from road was ordered.



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2. The petitioner claims that he owns a properties in T.S.No.109 and 117 of Ward -B, Block No.16 of Kumarapalayam Municipality ('said land' hereafter). He was served with a show-cause notice dated 18.08.2023, under Section 128(1)(b) of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' [hereinafter 'TNULB Act' for the sake of brevity] to remove the construction put up by him in said land. The petitioner filed an appeal before the first respondent herein and as no action has been taken by the first respondent, the petitioner filed a writ petition before this Court in W.P.No.28870 of 2023 and this Court, vide order dated 19.10.2023, disposed of the said writ petition directing the first respondent to dispose of the appeal within a period of four weeks. Pursuant to the order of this Court, the first respondent has passed an order dated 30.01.2024 in the appeal.

3. The learned counsel for writ petitioner submits that he has filed the appeal by invoking the wrong provision before the first respondent,



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the same was considered and disposed of by an Committee which has no jurisdiction to decide the issue involving encroachments. Based on the Resolution of above Committee, final notice has been issued. The learned counsel for the writ petitioner further submitted that he has wrongly filed the appeal before the Respondent No.1 and prays this Court to direct Respondent No.2, who is competent authority, to consider the reply of the petitioner to show-cause notice. He has also made endorsement that the appeal filed by him is incorrect and a scanned reproduction of the same is as follows:

It is humbly submitted that  
the appeal filed under Section  
244 of Tamil Nadu District Municipality  
Act is incorrect.

*[Signature]*  
MS/3383/2P  
Counsel for Petitioner  
3/12/24  
P. VETRIVEL



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4. Issue notice to respondents. Mr.T.K.Saravanan, learned

Government Advocate accepts notice for R1 to R4.

5. Learned State counsel submits that the impugned final eviction notice dated 05.08.2024 shall be construed as show-cause notice under Section 128(1)(b) of TNULB Act and after considering the representation of the petitioner, fresh orders will be passed in accordance with law by Respondent No.2.

6. Section 128(1)(b) of TNULB Act 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 or public place or the [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 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.'*



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7. The proviso to Section 128(1)(b) of TNULB Act mandates that, Commissioner shall consider any representation received before passing final orders.

8. In view of the narrative stated so far, we direct the petitioner to submit fresh representation within 7 days from the date of receipt of a copy of this order and second respondent to consider the petitioner's representation, if made and pass final orders within a period of one week thereafter.

9. We have not expressed any opinion on the merits of the claim of writ petitioner and with this observation, this writ petition is disposed of, preserving the rights of the writ petitioner. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[M.S., J]

[K.R.S., J]

03.12.2024

( $\frac{1}{2}$ )

Neutral Citation: Yes/No

Speaking order/Non-speaking order

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**M.SUNDAR,J.,**  
**and**  
**K.RAJASEKAR, J.,**  
  
**gpa**

To

1. The Chairman  
Municipal Council  
Namakkal  
Namakkal District
2. The Municipal Commissioner  
Komarapalayam Municipal Office  
Komarapalayam  
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4. The Tahsildar  
Kumarapalayam  
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**(1/2)**