



W.P.No.34445 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

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

W.P.No.34445 of 2024
and
W.M.P.No.37318 of 2024
in
W.P.No.34445 of 2024

K.Thilagaraj
S/o.Krishnaraj

... Petitioner

Vs.

The Commissioner
Madurantakam Municipality
Chengalpattu District.

... Respondent

Prayer :

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorarified Mandamus to call for the records
relating to the order dated 10.10.2024 passed by the respondent herein in
Na.Ka.No.61/2024/F1, quash the same and consequential direction directing

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the respondent herein to not to dispossess the petitioner from Door No.23/1,
Old Taluk Office Road, Madurantakam Town & Taluk, Chengalpattu
District situate in Survey No.1008/1A Part and 1007/Part now Town Survey
No.37, Block 40, Ward-A without due process of law.

For Petitioner : Mr.G.Mageshkumar
For Respondent : Mr.T.K.Saravanan
Government Advocate

ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed assailing a 'letter dated 10.10.2024 bearing reference Na.Ka.No.61/2024/F1 issued by sole respondent' {hereinafter 'impugned letter' for the sake of brevity}.

2. A scanned reproduction of the impugned letter is as follows:



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5. Mr.T.K.Saravanan, learned Government Advocate accepts notice for respondent.

6. Mr.T.K.Saravanan, learned State Counsel submits that there is an encroachment and therefore, the impugned letter has been issued.

7. A careful perusal of impugned letter brings to light that it has been issued under Section 128 of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'TNULB Act' for the sake of brevity}.

8. Section 128 of TNULB Act reads as follows:

'128. Power to remove encroachment from public place. -

(1) The Commissioner may, -

(a) remove without any notice any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching street or public place or the [land belonging to or vested with the municipality] with the municipal limit;

(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



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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.

(2) Whoever makes any encroachment in any land or space (not being private property) in any public street or any [land belonging to or vested with the municipality] within the municipal limit, shall, on conviction, be punished with imprisonment which shall not be less than one year but which may extend to three years and with fine which may extend to [fifty thousand rupees]:

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

9. In the case on hand, the impugned letter says that it is under Section 128 of TNULB Act. Obviously under Section 128(1)(b) of TNULB Act to be precise. This means that as per the proviso to Section 128(1)(b) of TNULB Act, if a representation made post notice, the same has to be considered and Commissioner of Local Body concerned should pass final orders.



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10. In the light of the narrative thus far, the following order is passed:

(i) The prayer is for Certiorarified Mandamus. The certiorari limb is dismissed but with a clarification that the impugned letter shall now be treated as a 'Show Cause Notice' {'SCN'};

(ii) In the light of the language in which Section 128(1)(b) of TNULB Act is couched, the writ petitioner can send a representation (if so advised and if so desired) within 7 days from today i.e., on or before 03.12.2024;

(iii) If the representation is sent by writ petitioner (in response to impugned letter which is now being sustained by us) the same shall be considered and final orders shall be made by the Commissioner of Madurantakam Municipality;

(iv) All rights and contentions of writ petitioner are left open as regards sending representation in response to the impugned letter;



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(v) Any further action shall be subject to and depending

on final orders which the Commissioner of Madurantakam Municipality will make in the aforesaid manner.

11. As regards mandamus limb of the prayer, suffice to observe that the impugned letter being treated as SCN and permitting the writ petitioner to send a representation on which order shall be made will address the mandamus limb of the prayer.

Captioned WP disposed of in the aforesaid manner (dismissing the certiorari limb and addressing the mandamus limb). Consequently, connected Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

mk

To

The Commissioner
Madurantakam Municipality
Chengalpattu District.

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