



W.P.No.3276 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.3276 of 2025

and

W.M.P.No.3635 of 2025

1. C.Natesan
S/o.Chinnu Pandaram

2. C.Muthusamy
S/o.Chinnu Pandaram

...Petitioners

Vs

1. The District Collector
Namakkal District.

2. The District Revenue Officer
Namakkal District.

3. The Revenue Divisional Officer
Namakkal, Namakkal District.

4. The Tahsildar
Rasipuram Taluk
Namakkal District - 637 407.



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5. The Executive Officer
R.Pudhupatti Town Panchayat
Rasipuram Taluk
Namakkal District - 637 407.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relevant to impugned notice in Na.Ka.252/2024 dated 15.11.2024 issued by the 5th respondent herein and quash the same and consequently, direct the 2nd respondent herein to pass appropriate orders on the appeal dated 26.12.2024 made by the petitioners herein.

For Petitioners : Mr.T.Sundaravadanam
For Respondents : Mr.T.K.Saravanan
Government Advocate
for R1 to R5

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} has been filed *inter alia* assailing a 'notice dated 15.11.2024 bearing reference Na.Ka.252/2024 issued by R5 [the Executive Officer, R.Pudhupatti Town Panchayat, Rasipuram Taluk, Namakkal District - 637



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407]' {hereinafter 'impugned notice' for the sake of brevity, convenience and clarity}.

2. Mr.T.Sundaravadanam, learned counsel on record for writ petitioners submitted that Section 178 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) deals with non-removal of solid waste or debris by industrial units, whereas even according to impugned notice neither the writ petitioners are industrial units / persons carrying on industrial activities nor is it a case of non-removal of solid waste or debris. Learned counsel pointed out that impugned notice has been issued under Sections 178(1)(b) and (2) of TNULB Act.

3. Issue notice.

4. Mr.T.K.Saravanan, learned Government Advocate, accepts notice for all five respondents and submits, on instructions that a typographical / inadvertent secretarial error has crept in in impugned notice and instead of



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Section 128 of TNULB Act, Section 178 of TNULB Act has been typed. In other words, learned counsel submits that the impugned notice is one under Section 128(1)(b) of TNULB Act.

5. The scope of captioned main WP is substantially narrow, legal drill on hand is very limited and therefore, with the consent of learned counsel on both sides, main WP is taken up in the Admission Board i.e., Motion List.

6. In the facts and circumstances of case on hand, we find that inadvertent secretarial / typographical error in the impugned notice does not nullify the same. It does not denude R5 of his authority to act under TNULB Act.

7. Before we proceed further, we deem it appropriate to extract and reproduce entire Section 128 of TNULB Act and the same reads as follows:

'128. Power to remove encroachment from public place. - (1)

The Commissioner may, -

(a) remove without any notice any movable temporary



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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 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.'

8. If the impugned notice is one under Section 128(1)(b) of TNULB



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Act, writ petitioners should be given seven days time to respond to impugned notice and thereafter, R5 should pass an order based on such representation. To be noted, Section 128 of TNULB Act talks about 'Commissioner'. We are now concerned with Town Panchayat. Sub-section (7) of Section 2 of TNULB Act, defined 'Commissioner' and the same reads as follows:

'2. Definitions. - In this Act, unless the context otherwise requires-

(1)

(2)

(3)

(4)

(5)

(6)

(7) "Commissioner" means -

(a) in relation to a municipal corporation and municipal council, the Commissioner of the municipal corporation or municipal council, as the case may be; and

(b) in relation to a town panchayat, the Executive Officer of the town panchayat; '

9. A careful perusal of clause (b) of sub-section (7) of Section 2 of



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TNULB Act makes it clear that Executive Officer of Town Panchayat is the 'Commissioner' within the meaning of TNULB Act. Therefore, the power of R5 to issue a notice under Section 128(1)(b) of TNULB Act is clear.

10. Reverting to the case on hand, learned counsel for writ petitioners pointed out that writ petitioners have already responded to the impugned notice vide communication dated 21.12.2024. Learned counsel made a request that the impugned notice may now be treated as a 'Show Cause Notice' {'SCN'}, writ petitioners' response to the same dated 21.12.2024 may please be treated as representation within the meaning of Section 128(1)(b) of TNULB Act. This request is fair and the same is acceded to. This means that R5 should now pass final orders under proviso to Section 128(1)(b) of TNULB Act by considering the representation of writ petitioners i.e., representation / response dated 21.12.2024.

11. Learned State Counsel submits that final orders will be passed by R5 as expeditiously as the business of R5 would permit but in any event within a fortnight from today i.e., by 17.02.2025. This submission is recorded.

12. The sum sequitur of the narrative thus far is, writ petitioners have



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been show caused, writ petitioners have responded vide response dated 21.12.2024 and it is now for R5 to pass final orders vide proviso to Section 128(1)(b) of TNULB Act, which according to learned State Counsel will be done within a fortnight.

Recording the stated position of learned State Counsel, captioned main WP is disposed of as closed. Consequently, captioned Writ Miscellaneous Petition thereat is also disposed of as closed. There shall be no order as to costs.

[M.S.,J.]

[K.G.T.,J.]

03.02.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

To

1. The District Collector
Namakkal District.
2. The District Revenue Officer
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