



WEB COPY



W.P. No.4740 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P. No.4740 of 2025 and W.M.P. No.5260 of 2025

N.Banumathi

Petitioner

vs.

The Commissioner
Gudiyattam Municipality
Gudiyattam Town
Vellore District 632 602

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the respondent dated 02.12.2024 made in Na.Ka.No.2001/2024/F-1 and quash the same.

For petitioner Mr. K.Venkatasubban
for M/s.Sarvabhauman Associates

For respondent Dr. T. Seenivasan
Special Government Pleader

ORDER

[made by M.SUNDAR, J.]

Captioned main 'writ petition' (hereinafter 'WP' for the sake of brevity) has been filed assailing a 'notice dated 02.12.2024 bearing

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reference Na.Ka.No.2001/2024/F-1 issued by sole respondent [Commissioner, Gudiyattam Municipality]' (hereinafter 'impugned notice' for the sake of convenience and clarity).

2. Mr. K. Venkatasubban, learned counsel on record for writ petitioner, advertng to the impugned notice, submitted that the impugned notice has been issued under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) but it has not called upon the writ petitioner to show cause in seven days. On the contrary, it straightaway calls upon the writ petitioner to remove alleged encroachment within 15 days, is learned counsel's say.

3. Issue notice.

4. Dr. T. Seenivasan, learned Special Government Pleader, accepts notice for respondent.

5. The scope of captioned main WP is substantially narrow, legal drill on hand is very limited and therefore, with the consent of



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learned counsel on both sides, main WP is taken up in the Admission Board *i.e.*, Motion List.

6. Before we proceed further, we deem it appropriate to extract and reproduce Section 128 of TNULB Act in its entirety 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 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]:



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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.'

7. If the impugned notice is one under Section 128 of TNULB

Act, as matter on hand pertains to removal of steps, writ petitioner should be given seven days time to respond to impugned notice and thereafter, respondent should pass an order (final orders) considering such response.

8. In the light of the narrative thus far, we are of the considered view that it would be appropriate to take up the main WP and write that the impugned notice shall now be treated as a 'show cause notice' ('SCN' for the sake of brevity) under Section 128(1)(b) of TNULB Act enabling the writ petitioner to send a representation along with supporting documents (if so advised and if so desired) within seven days from today *i.e.*, by 19.02.2025 and that if the same is done, respondent shall pass final orders.

9. Accordingly, the following order is made:

- i. Impugned notice issued by respondent shall now be treated as a SCN under Section 128(1)(b) of TNULB Act;



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- ii. Noticee/writ petitioner (if so advised and if so desired) shall send a representation within seven days from today, *i.e.*, on or before 19.02.2025;
- iii. If the writ petitioner/noticee does not send a representation within aforesaid timeline and if no other representation is received, it is open to the respondent to proceed (post 19.02.2025) *qua* removal of steps which is subject matter of impugned notice.
- iv. If the writ petitioner/noticee sends a representation within aforesaid timeline, the same shall be considered and final orders shall be made by respondent as per proviso to Section 128(1)(b) of TNULB Act.
- v. Though obvious, we make it clear that any coercive action will be subject to / depending on final orders to be made by respondent *vide* proviso to Section 128(1)(b) of TNULB Act. We also make it clear (though obvious) that we have not expressed any view or opinion on the merits of the matter and therefore, respondent, while passing final orders, shall do so untrammelled by the observations made in this order.



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10. Captioned WP stands disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
13.02.2025

cad
Index : Yes/No
NC : Yes/No



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To
The Commissioner
Gudiyattam Municipality
Gudiyattam Town
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M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

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