



W.P.No.4629 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.4629 of 2025 and W.M.P.No.5132 of 2025

Arunachalam @ Sekar

Petitioner

vs.

1. The District Collector
Office of the Collector
Vengikal
Thiruvannamalai District
2. The Revenue Divisional Officer
Office of the Collector
Vengikal
Thiruvannamalai District
3. The District Revenue Officer
Office of the Collector
Vengikal
Thiruvannamalai District
4. The Tahsildar
Keezhpennathur Tahsildar Office
Keezhpennathur
Thiruvannamalai District
5. The Executive Officer
Vettavalam Panchayat
Thiruvannamalai District
6. D. Vinoth

Respondents

Page Nos.1/10



W.P.No.4629 of 2025

Writ Petition filed under Article 226 of the Constitution of India to

issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order dated 27.11.2024 in Na.Ka.No.365 of 2024 issued by the fifth respondent and quash the same and consequently, direct the fourth respondent to grant patta in favour of the petitioner for the property situated at No.6, Thandavarayan Street, Vettavallam Porur, Keezhpennathur Taluk comprised in S.No.221/98, Ward No.09 measuring about 2 cents.

For petitioners : Mr. R. Bhagawat Krishna

For RR 1 to 5 : Mr.T.K.Saravanan
Additional Government Pleader

O R D E R

[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 27.11.2024 bearing reference Na.Ka.No.365 of 2024 issued by R5 [the Executive Officer, Vettavalam Panchayat]' (hereinafter 'impugned notice' for the sake of brevity, convenience and clarity).



W.P.No.4629 of 2025

WEB COPY

2. Mr. R. Bhagawat Krishna, 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 seven days, is learned counsel's say.

3. Issue notice.

4. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for official respondents *i.e.*, RR 1 to 5.

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.



W.P.No.4629 of 2025

WEB COPY

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]:

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.'



W.P.No.4629 of 2025

WEB COPY

7. If the impugned notice is one under Section 128 of TNULB Act, as matter on hand pertains to immovable structure, writ petitioner should be given seven days time to respond to impugned notice and thereafter, R5 should pass an order (final orders) considering such response. To be noted, Section 128 of TNULB Act talks about 'Commissioner'. In the instant case, we are now concerned with a Town Panchayat. Sub-section (7) of Section 2 of TNULB Act, defines the term '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; '



W.P.No.4629 of 2025

WEB COPY

8. A careful perusal of clause (b) of sub-section (7) of Section 2 of TNULB Act makes it clear that 'Executive Officer of a 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.

9. 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, R5 shall pass final orders.

10. Accordingly, the following order is made:

- i. Impugned notice issued by R5 shall now be treated as a SCN under Section 128(1)(b) of TNULB Act;
- 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 official respondents to proceed (post 19.02.2025) *qua* removal of immovable structure 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 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 R5 *vide* proviso to Section 128(1)(b) of TNULB Act. We also make it clear that we have not expressed any view or opinion on the merits of the matter and therefore, R5, while passing final orders, shall do so untrammelled by the observations made in this order; and



WEB COPY



W.P.No.4629 of 2025

vi. We further make it clear (though obvious) that all the rights and contentions of private respondent are preserved for being canvassed before the authority concerned.

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

Neutral Citation : Yes / No

Speaking order / Non-speaking order



W.P.No.4629 of 2025

WEB COPY

To

1. The District Collector
Office of the Collector
Vengikal
Thiruvannamalai District
2. The Revenue Divisional Officer
Office of the Collector
Vengikal
Thiruvannamalai District
3. The District Revenue Officer
Office of the Collector
Vengikal
Thiruvannamalai District
4. The Tahsildar
Keezhpennathur Tahsildar Office
Keezhpennathur
Thiruvannamalai District
5. The Executive Officer
Vettavalam Panchayat
Thiruvannamalai District



WEB COPY



W.P.No.4629 of 2025

M.SUNDAR, J.

and

K.GOVINDARAJAN THILAKAVADI, J.

cad

W.P.No.4629 of 2025

13.02.2025

Page Nos.10/10