



W.P.No.3342 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.3342 of 2025

and

W.M.P.No.3709 of 2025

S.Vetrivel
S/o.Shanmugam

...Petitioner

Vs

1. The Tahsildhar
Vandavasi Taluk
Thiruvannamalai District.

2. The Executive Officer
Desur Town Panchayat
Vandavasi Taluk
Thiruvannamalai District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records and to quash the impugned notice cum order 20.01.2025 bearing Na.Ka.No.237/2024 passed by the 2nd respondent as the same being arbitrary, against principle of nature justice and contrary to provision of law and consequently,

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directing the 2nd respondent to consider the representation of petitioner dated 25.01.2025 for passing necessary order.

For Petitioner : Mr.V.Meenakshi Sundaram
For Respondents : 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 *inter alia* assailing a notice dated 20.01.2025 bearing reference Na.Ka.No.273/2024 issued by R2 [The Executive Officer, Desur Town Panchayat, Vandavasi Taluk, Thiruvannamalai District]' {hereinafter 'impugned notice for the sake of brevity, convenience and clarity'}.

2. Mr.Meenakshi Sundaram, learned counsel on record for writ petitioner submits that the impugned notice has been issued under Sections 128(1)(b) and 128(2) 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 directly calls upon the writ petitioner to remove

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alleged encroachment is learned counsel's say.

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3. Issue notice.

4. Mr.T.K.Saravanan, learned Government Advocate, accepts notice for both respondents and learned State Counsel submits, on instructions that writ petitioner has responded to impugned notice vide communication dated 24.01.2025, the same will be treated as response / representation and orders will be made by R2.

5. To be noted, 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] within 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



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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.'

6. It is also to be noted that Section 128 of TNULB Act talks about 'Commissioner' and 'Commissioner' is defined under sub-section (7) of Section 2 of TNULB Act and clause (b) of sub-section (7) of Section 2 of TNULB Act makes it clear that R2 is 'Commissioner' within the meaning of TNULB Act.

7. It is submitted by learned State Counsel that R2 will consider 24.01.2025 representation of the writ petitioner (in response to impugned notice which has now been treated as 'Show Cause Notice' {'SCN'}) and pass final orders under proviso to Section 128(1)(b) of TNULB Act as



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expeditiously as the business of R2 permits but in any event, within four weeks from today i.e., on or before 03.03.2025. We make it clear that a copy of final order of R2 shall be duly served on writ petitioner under due acknowledgment within five working days from the date of the order.

8. As the requirement to show cause the writ petitioner is satisfied, captioned WP is disposed of as closed recording the stated position of learned State Counsel. Though obvious, we make it clear that any coercive action will be subject to / depending on final orders to be made by R2 vide proviso to Section 128(1)(b) of TNULB Act.

9. We notice from the case file that a suit in 'O.S.No.75 of 2024 on the file of Principal District Munsif Court, Vandavasi' {hereinafter 'said suit' for the sake of brevity, convenience and clarity} has been filed by writ petitioner. The said suit thus, pertains to land which is the subject matter of impugned notice and R2 has been arrayed as D8 in the said suit. Though R2 has been added as D8, learned counsel submits that said suit is primarily vide a complaint against private defendants D1 to D6 and therefore, *de hors* the said suit or any orders thereat, writ petitioner will stand bound by final orders to be made by R2.



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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 Tahsildhar
Vandavasi Taluk
Thiruvannamalai District.
2. The Executive Officer
Desur Town Panchayat
Vandavasi Taluk
Thiruvannamalai District.



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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

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