



W.P.No.6351 of 2025

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

(Order of the Court was made by M.SUNDAR, J.)

Captioned matter is listed today under the cause list caption 'FOR BEING MENTIONED' inasmuch as the year i.e., '2025' beneath the signature part of the order dated 24.02.2025, disposing of the captioned matter, has been inadvertently typed as '2024'.

2. Today, Mr. P.Mahadevan, learned counsel for writ petitioner, Dr.T.Seenivasan, learned Special Government Pleader for R1 and R2, Mr.Babu Muthu Meeran, learned Additional Public Prosecutor for R3 and Mr.M.S.Arasakumar, learned Government Advocate for R4 are before this Court.



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and

K. GOVINDARAJAN THILAKAVADI, J.

gpa

3. The aforereferred counsel on either side agreed to have the aforementioned correction made.

4. Accordingly, the year wrongly typed as '2024' beneath the signature part of the order dated 24.02.2025, shall read as '2025'. In all other aspects, the order dated 24.02.2025 remains the same. Therefore, this order will now be made as 'Addendum' and Corrigendum / Erratum to 24.02.2025 order already pronounced in open court and already uploaded. This order will now be uploaded as 'ADDENDUM' to / along with order made by this Court on 24.02.2025 and the Registry shall issue certified copies accordingly.

gpa

(M.S.J.) (K.G.T.,J.)
10.03.2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

CORAM

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

W.P.No.6351 of 2025 and W.M.P. No.6986 of 2025

Gnanachandran

Petitioner

vs.

1. The Secretary to Government
Municipal Administration
Fort St. George
Chennai 600 009
2. The Commissioner
Cuddalore Corporation
Cuddalore 607 001
3. The Commissioner of Police
Cuddalore Corporation
Cuddalore 607 001
4. The Collector
Cuddalore District
Cuddalore 607 001

Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a writ of mandamus for free flow of traffic to
restrain the respondent Corporation to construct shops in
S.No.449/1A2 which obstructs the free flow of traffic in the public
road which is adjoining the petitioner's property entry gate and out
gate.



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For petitioner	Mr. P. Mahaadevan
For RR 1 & 2	Dr. T. Seenivasan Special Government Pleader
For R3	Mr. M. Babu Muthu Meeran Additional Public Prosecutor
For R4	Mr. M.S. Arasakumar Government Advocate

ORDER

[made by M.SUNDAR, J.]

Subject matter of captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) is 'land comprised in Town Survey No.449/1A2 situate in Ward No.6, Block No.16 in Cuddalore Corporation' (hereinafter 'said land' for the sake of convenience and clarity).

2. Mr. P. Mahaadevan, learned counsel for writ petitioner, very fairly submits that writ petitioner has been visited with a notice 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). This notice dated 26.09.2023 bearing reference Na.Ka.No.6322/2014/F1 shall hereinafter be referred to as 'said notice' for the sake of convenience and clarity.



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3. A scanned reproduction of said notice is as follows:

கடலூர் மாநகராட்சி

நக.எண். 6322/2014/எப்1 நாள் 26/09/2023

வ.எண். 1

தமிழ்நாடு நகர்ப்புற உள்ளாட்சிகளின் சட்டம் 1998 (திருத்தப்பட்டது 2022) பிரிவு,
128-ன் கீழ் ஆக்கிரமிப்பு அகற்ற பிறப்பிக்கப்படும்
அறிவிப்பு

கடலூர் மாநகராட்சி, பழைய மாவட்ட ஆட்சித்தலைவர் அலுவலக சாலை, வார்டு - 6,
பிளாக் 16, நகரளவு எண் 449/1A 2 பகுதி, என உள்ள இடத்தில் சுமார் 810 ச.மீ பரப்பளவில் (9மீ X 90மீ) அமைத்து
ஆக்கிரமிப்பு செய்துள்ளீர்கள்.

எனவே, இந்த அறிவிப்பைப் பெற்று கொண்டு 7 (ஏழு) தினங்களுக்குள் மேற்படி
ஆக்கிரமிப்பை தாங்களாகவே அப்புறப்படுத்திக் கொள்ளுமாறு அறிவிக்கப்படுகிறது.

மேற்படி ஆக்கிரமிப்புகளை தாங்கள் அப்புறப்படுத்தத் தவறினால் மேற்படி சட்டப்பிரிவு
128 (2)-ன் படி தங்கள் மீது நீதிமன்றத்தில் குற்றச்சாட்டு செய்யப்படும், தவிர மேற்படி சட்ட பிரிவின் படி மேற்படி
ஆக்கிரமிப்பினைக் கடலூர் மாநகராட்சி ஆட்களை கொண்டு அப்புறப்படுத்தி அதனால் ஏற்படும் எல்லா செலவுகளும்
மேற்படி சட்ட பிரிவுகளின் படி தங்களிடமிருந்து வசூல் செய்யப்படும் எனவும் அறிவிக்கப்படுகிறது.

ஆணையருக்கு
கடலூர் மாநகராட்சி.

பெறுநர்
திரு.ஆர்.ஞானசந்திரன்,
மாவட்டத்தலைவர்,
தமிழ்மாநில காங்கிரஸ்,
நேரு பவன்,
கடலூர்.

26/9/23 26/9/23



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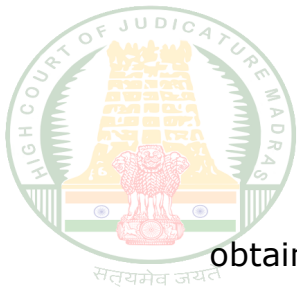
4. Learned counsel submits that writ petitioner, as noticee *qua* said notice, has responded *vide* a representation dated 12.10.2023 but no orders have been made by R2 (Commissioner, Cuddalore Corporation) and under such circumstances, captioned main WP has been filed.

5. Issue notice to respondents.

6. Dr. T. Seenivasan, learned Special Government Pleader, accepts notice for RR 1 and 2, Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor, accepts notice for R3 and Mr.M.S.Arasakumar, learned Government Advocate, accepts notice for R4.

7. Learned State counsel for R4 submits, on instructions, that the prayer in the captioned main WP is to mandamus (restrain) Cuddalore Corporation from constructing shops in said land on the ground that the same will obstruct free flow of traffic adjoining the entry gate and out gate of writ petitioner's property.

8. We carefully considered the submissions and the



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obtaining position.

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9. Section 128 of TNULB 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.'

10. From a reading of the aforementioned provision, it is clear that said notice has been issued under Section 128(1)(b).



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Section 128(1)(b) provides for a noticee being show caused *vide* a show cause notice (hereinafter 'SCN' for the sake of brevity) returnable in seven days but the said notice, as would be evident from the scanned reproduction *supra*, instead of show causing the writ petitioner, has directly called upon the writ petitioner to remove the alleged encroachment.

11. However, writ petitioner has responded to said notice *vide* a representation dated 12.10.2023 about which also there is allusion *supra*.

12. If the said notice had been issued as SCN, the writ petitioner ought to have responded within seven days but as it has not been issued as SCN, we hold that it shall now be construed as SCN and as it is being construed as SCN now and as the writ petitioner has already sent a representation, we deem it appropriate to construe writ petitioner's 12.10.2023 representation to have been sent post SCN and not just post said notice.

13. The above means that R2 should now pass 'final orders' *vide* proviso to Section 128(1)(b).



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14. Learned counsel for writ petitioner submits that notwithstanding the prayer in captioned main WP, it will serve the purpose and satisfy the prayer of the writ petitioner if R2 passes 'final orders' in the aforesaid manner.

15. Learned State Counsel for R4 submits that R2 will now pass 'final orders' as expeditiously as the business of R2 permits. This submission is recorded.

16. Let the same be done and let a copy of 'final orders' be served on the writ petitioner under due acknowledgment within five working days from the date of making of 'final orders' under/within the meaning of proviso to Section 128(1)(b).

17. Captioned WP stands disposed of 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.)
24.02.2024

cad
Index : Yes / No



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Neutral Citation : Yes / No
Speaking order / Non-speaking order

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To:

1. The Secretary to Government
Municipal Administration
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Chennai 600 009
2. The Commissioner
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Cuddalore 607 001
3. The Commissioner of Police
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Cuddalore District
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