



W.P.No.3688 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

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CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P.No.3688 of 2023
& W.M.P.No.3784 of 2023

1.E.Reshma
W/o.J.Mohammed Rafi

2. Thasneem Farhana
W/o.Mohammed Salik

... Petitioners

vs.

1. The Assistant Commissioner (I/c)
Division 4, Tiruppur Corporation
Tiruppur Corporation Office, Tiruppur

2. The Commissioner
Tiruppur City Municipal Corporation
cum Managing Director
Tiruppur Smart City Limited
Tiruppur - 641 604

... Respondents

(R2 suo motu impleaded vide this order)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the respondent dated 03.02.2023 and quash the same.

For Petitioners : Mr.N.A.Nasir Hussain



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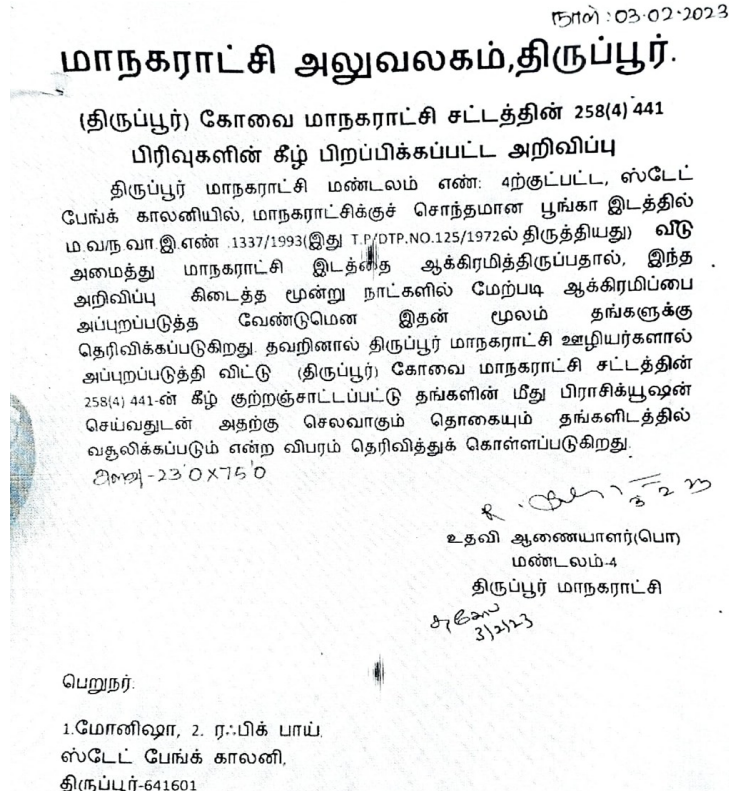
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For Respondents : Mr.Kritheeshwaran
for Mr.Abishek Murthy
Standing counsel for
Tiruppur Municipal Corporation

ORDER

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

Captioned main 'Writ Petition' ['WP' for the sake of brevity] has been filed with a prayer for issue of writ of a certiorari qua a 'notice dated 03.02.2023 issued by the Assistant Commissioner, Tiruppur Corporation' [hereinafter 'impugned notice' for the sake of convenience and clarity]. A scanned reproduction of the impugned notice is as follows:





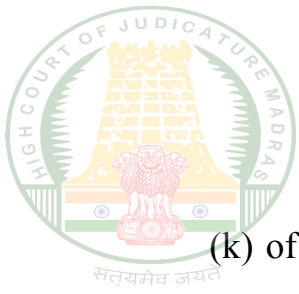
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2. Mr.N.A.Nasir Hussain, learned counsel for writ petitioners

adverting to the impugned notice, submits that it is not a case of encroachment but learned Standing Counsel for respondent Corporation submits to the contrary and asserts that it is a case of encroachment. We express no view or opinion one way or the other on this contestation in the light of the order which we propose to make.

3. Impugned notice has been issued by sole respondent under Sections 258(4) and 441 of 'the Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981)' read with 'the Tiruppur City Municipal Corporation Act, 2008 (Tamil Nadu Act, 7 of 2008)' [collectively 'said Acts' and individually '1981 Act' and '2008 Act' for the sake of convenience and clarity].

4. The Tamil Nadu Urban Local Bodies Act, 1998, (Tamil Nadu Act 9 of 1999) [hereinafter 'the TNULB Act' for the sake of brevity] kicked in on 13.04.2023. In and vide Section 200 of TNULB Act, which is captioned '**Repeal and saving**', said Acts have been repealed vide Section 200 (1)(d)&



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(k) of TNULB Act and all things done, made, instituted prior to kicking in of TNULB Act i.e., prior to 13.04.2023 stand saved vide Section 200(3)(e),

which reads as follows:

'200. Repeal and Saving.- (1) The following Acts are hereby repealed, namely:-

(2)

(3) Notwithstanding such repeal.-

(a)

(b)

(c)

(d)

(e) all things done, made, instituted, executed and appointed by the municipal corporations, municipalities, town panchayats under the relevant Acts referred to in sub-section (1) before the [commencement of the Tamil Nadu Urban Local Bodies (Amendment) Act, 2022] shall be deemed to have been done, made, instituted, executed or appointed, as the case may be, by the municipal corporations, municipalities and town panchayats deemed to have been constituted under the provisions of this Act.'



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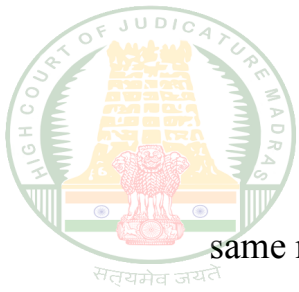
5. Before we proceed further, we deem it appropriate to record two submissions made by learned State counsel and they are as follows:

i) Reference to sub-section (4) of Section 258 of 1981 Act in the impugned notice is incorrect and the same should read as Section 258(1). Quoting wrong provision will not denude the powers as long as the power is traceable to a provision in the Statute and therefore, we read the said provision as Section 258(1);

ii) Commissioner of local body has powers under Section 18 of 1981 Act to delegate his powers and there is delegation of powers to sole respondent qua impugned notice.

6. Narrative thus far means that the impugned notice survives the certiorari challenge but the same will now be treated as a show-cause notice under Section 128(1)(b) of TNULB Act.

7. Before we proceed further, we deem it appropriate to extract Section 128 (in its entirety) of the TNULB Act as it stands today and the



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same reads as under:

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'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, public place, water body, tank, other water resources or any land belonging to or vested with the municipality with the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching street, public place, water body, tank, other water resources or any 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 fifteen 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, water body, tank, other water resources 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.'

(underlining made by us for ease of reference)



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8. This Court having set out the obtaining statutory position, proceeds to consider the simple point that writ petitioners have not been show caused. We deem it appropriate to write that it will serve the purpose if the impugned notice is directed to be treated as a 'show cause notice' [hereinafter 'SCN' for the sake of convenience and clarity] under Section 128(1)(b) of TNULB Act. We do so.

9. The impugned notice has been called in question on the short point that the impugned notice has been issued without show causing the writ petitioners. As the matter on hand pertains to immovable structure, writ petitioners should be given 15 days time to respond to impugned notice and thereafter, the Commissioner, Tiruppur Corporation, should pass final orders considering such response but this procedure has been given a go by. Since the Commissioner, Tiruppur Corporation, is not arrayed as a party to the captioned WP, the Commissioner, Tiruppur Corporation is *suo motu* impleaded as R2 and Mr.Kritheeshwaran learned counsel representing Mr.Abishek Murthy, Standing counsel for Respondent Corporation accepts notice for R2 also.



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WEB COPY 10. In the light of the narrative, discussion and dispositive reasoning thus far and the obtaining statutory position, the following order is made:

(i) Impugned notice is not set aside but the same shall now be treated as an SCN under Section 128(1)(b) of TNULB Act;

(ii) SCN under Section 128(1)(b) of TNULB Act shall be construed to have been served on the writ petitioners today (23.06.2025);

(iii) The above means that the writ petitioners/noticees can send a response/ representation to SCN within fifteen days from today *i.e.*, on or before 08.07.2025;

(iv) On writ petitioners sending such a response/representation within the aforementioned timeline, R2 shall pass 'final orders' *vide* proviso to Section 128(1)(b) of TNULB Act;

(v) The final orders so passed shall be served on the writ petitioners within five working days from the date of the final



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orders;

(v) If the writ petitioners do not send a response/representation to SCN within aforementioned timeline, it will be open to R2 to proceed further in accordance with the same in a manner known to law;

(vi) If the final orders to be passed by R2 ends up in favour of the writ petitioners, that would be curtains on the matter;

(vii) If it happens to the contrary, in other words, if the final orders to be passed by R2 are going to be adverse to the writ petitioners, the same shall be kept in abeyance for a fortnight from the date of service of the final orders on the writ petitioners so as to provide a window to the writ petitioners to assail the said order if permissible in law or to seek judicial review of the said order;

(viii) If the writ petitioners do not take recourse to either of the aforesaid two options within a fortnight from the date of service of the final orders, the final orders so passed by R2 will be resuscitated and put into motion;



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(ix) Though obvious, we make it clear that coercive action, if any, shall be subject to and depending on final orders to be made by R2 under proviso to Section 128(1)(b) of TNULB Act.

Captioned WP stands disposed of in the aforesaid manner. Consequently, captioned writ miscellaneous petition stands disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

23.06.2025

(1/2)

Index : Yes

Neutral Citation : Yes

Speaking

gpa

To

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