



W.P.Nos.4315 & 4360 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**

and

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**W.P.Nos.4315 & 4360 of 2025**

and

**W.M.P.Nos.4829 & 4873 of 2025**

1. S.Subhashini  
W/o.A.Umapathy

2. A.Umapathy  
S/o.M.Alagarsamy

...Petitioners  
in W.P.No.4315 of 2025

1. A.Umapathy  
S/o.M.Alagarsamy

2. S.Subhashini  
W/o.A.Umpathy

...Petitioners  
in W.P.No.4360 of 2025

Vs

1. The Commissioner  
Coimbatore City Municipal Corporation  
Coimbatore - 641 001.

2. The Assistant Commissioner  
East Zone

Page Nos.1/18



W.P.Nos.4315 & 4360 of 2025

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3. The Assistant Executive Engineer (Planning)  
East Zone  
Coimbatore City Municipal Corporation  
Coimbatore - 641 001.
4. The Assistant Town Planning Officer  
East Zone  
Coimbatore City Municipal Corporation  
Coimbatore - 641 001.

...Respondents  
in both WPs

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the 1st respondent, leading to the issuance of the order bearing No.11243/2021/H2(E) dated 27.01.2025 and quash the same.

|                             |   |                                      |
|-----------------------------|---|--------------------------------------|
| For Petitioners in both WPs | : | Mr.B.Aravind Srevatsa                |
| For Respondents in both WPs | : | Mr.K.M.D.Muhilan<br>Standing Counsel |

### **ORDER**

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

Two writ petitioners in the captioned two 'Writ Petitions' {hereinafter 'WP' in singular and 'WPs' in plural for the sake of brevity} are spouses.



W.P.Nos.4315 & 4360 of 2025

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2. Captioned WPs have been filed with certiorari prayers assailing an order dated 27.01.2025 bearing reference No.11243/2021/H2(E) made by R1 [The Commissioner, Coimbatore City Municipal Corporation, Coimbatore - 641 001] {hereinafter 'impugned order' for the sake of brevity, convenience and clarity}. The impugned order has been made under proviso to Section 128(1)(b) of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity).

3. The subject matter of the captioned two main WPs is a 'piece of land in Uppilipalayam Village, Coimbatore South Taluk, Coimbatore District' {hereinafter 'said land' for the sake of brevity, convenience and clarity} purchased by writ petitioners vide two sale deeds, one sale deed dated 16.04.2010 (Document No.3115 of 2010) and another sale deed dated 26.08.2011 (Document No.8394 of 2011), both on the file of Singanallur Sub-Registrar's Office. In one sale deed, both writ petitioners are purchasers and in another sale deed one of the spouses is purchaser. One sale deed pertains to 6400 sq.ft and another sale deed pertains to 3200 sq.ft totalling 9600 sq.ft.



W.P.Nos.4315 & 4360 of 2025

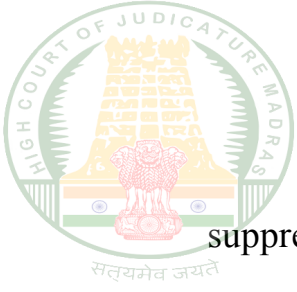
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4. Said land is part of an unapproved layout in the name and style of 'Krishna Nagar' and unapproved layout comprises of 8 survey numbers namely, 134/1, 134/2, 134/3, 134/4, 135/1, 135/2, 125/3 and 135/4, all in Uppilipalayam Village, Coimbatore South Taluk, Coimbatore District.

5. As already alluded to supra, the impugned order has been made under proviso to Section 128(1)(b) of TNULB Act and Mr.B.Arvind Srevatsa, learned counsel on record for writ petitioners submits that impugned order *inter alia* is perverse, arbitrary and it proceeds on the premise (without any basis) that said land has been earmarked for the purpose of public well vide unapproved layout.

6. Issue notice to respondents.

7. Mr.K.M.D.Muhilan, learned Standing Counsel accepts notice for all four respondents and submits, on instructions that the captioned WPs are third set of WPs on the same subject. The second writ petitioner in W.P.No.4315 of 2025 and first writ petitioner in W.P.No.4360 of 2025 (Mr.A.Umapathy, Son of Mr.M.Alagarsamy) is a former employee of Coimbatore Corporation, he took 'Voluntary Retirement' {'VR'} as Public Relation Officer and regularization for said land has been obtained



W.P.Nos.4315 & 4360 of 2025

suppressing the fact that the said land is set apart for public well and it is

WEB COPY கிருஷ்ணா நகர் பொது இடம் (Krishna Nagar Public Place).

8. Owing to the nature of the matter, considering the facts and circumstances of the case, main WPs were taken up with the consent of learned counsel on both sides.

9. Learned counsel for writ petitioners contended that the impugned order proceeds on the basis that said land has been set apart for being a public well without any basis.

10. It was submitted by learned State Counsel that original promoter one Mr.Krishnamma Naidu had not given any plot number to said land and spaces for public purposes such as roads and public well were earmarked in unapproved layout which is for 121 plots.

11. We find that the impugned order traces the flow of events and it has noticed that after the demise of original promoter, his legal heirs granted Power of Attorney to a Power Agent authorizing the sale of the public well also and power agent by suppressing material facts fraudulently obtained a regularization on 31.12.2006. Therefore, the point that the impugned order proceeds on the basis that said land has been earmarked for



W.P.Nos.4315 & 4360 of 2025

public well without any basis does not find favour with this Court.

WEB COPY 12. The next point contended was regarding cancellation of regularization qua said plot. The regularization dated 27.12.2006 has been placed before us and we find that the plot number is blank in the same. However, a notice in June of 2024 signed by R1 on 24.06.2024 was issued with regard to removal of encroachment as well as cancellation of regularization of said land. This notice was assailed by writ petitioners vide W.P.Nos.19168 & 19174 of 2024 and these two WPs along with writ miscellaneous petitions came to be disposed of by this Court by a common order dated 12.07.2024 wherein, notice was not set aside but it was directed to be treated as 'Show Cause Notice' {'SCN'}. This is owing to the language in which Section 128(1)(b) of TNULB Act is couched. Directions given by this Court are contained in paragraph No.10 of the order dated 12.07.2024 in W.P.Nos.19168 and 19174 of 2024 and the same reads as follows:

*'10. In the light of the narrative thus far, the following order is passed :*

*(i) Impugned notices both bearing reference न.क.गण.11243/2021/गं/1(क) issued in the June of 2024, signed by R1 (the Commissioner, Coimbatore Municipal Corporation, Coimbatore - 641 001) on 24.06.2024 are now to be treated as*



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W.P.Nos.4315 & 4360 of 2025

*'Show Cause Notices' {hereinafter 'SCNs' for the sake of brevity} within the meaning of Section 128(1)(b) of TNULB Act;*

*(ii) Writ petitioners shall be treated as noticees and writ petitioners shall send their responses to SCNs within seven days from today i.e., on or before 19.07.2024;*

*(iii) Thereafter, R1 shall consider the responses and take a call on its own merits and in accordance with law, untrammelled by this order;*

*(iv) Take a call means either drop the proceedings or proceed with the removal of encroachment and it includes any other action permissible in law i.e., more particularly, TNULB Act and TNULB Rules therein;*

*(v) In the light of proviso to Section 128(1)(b) of TNULB Act, if any representation is received within seven days window provided supra, R1 shall consider the same before passing final orders;*

*(vi) We make it clear that all the rights and contentions of both sides are preserved qua Statutory drill under TNULB Act / TNULB Rules and further proceedings, if any and if that be so;*

*(vii) While considering the responses to impugned notices which have now become SCNs, we make it clear that it is open to R1 to hold personal hearing, if deemed necessary which in turn will depend on the nature of responses. We also actually make it clear for the sake of specificity that as it is not imperative for R1 to hold personal hearing and it is only discretionary and it will depend on the nature of responses to SCNs. This limb is owing to language in which Section 128(1)(b) of TNULB Act and proviso thereat are*



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W.P.Nos.4315 & 4360 of 2025

*couched as the same only provide for being show caused and does not make for personal hearing statutorily imperative.'*

13. Post aforementioned 12.07.2024 order, writ petitioners sent response dated 19.07.2024 but without passing any order under proviso to Section 128(1)(b) of TNULB Act, the Commissioner proceeded with removal of encroachment and therefore, writ petitioners came before this Court for second time vide W.P.Nos.22762 and 22767 of 2024 and these two WPs along with writ miscellaneous petitions came to be disposed of by a common order dated 20.01.2025 wherein it was made clear that R1 - the Commissioner should pass final orders in accordance with proviso to Section 128(1)(b) of TNULB Act. The operative portion of 20.01.2025 order in W.P.Nos.22762 and 22767 of 2024 is paragraph No.10 and the same reads as follows:

*'10. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:*

*i. R1 (Commissioner, Coimbatore Municipal Corporation) shall now pass final orders in accordance with proviso to Section 128(1)(b) of TNULB Act within one week from*



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W.P.Nos.4315 & 4360 of 2025

today, i.e., on or before 27.01.2025 by considering the aforementioned 19.07.2024 representation (scanned and reproduced in our earlier proceedings) as 'representation' within the meaning of proviso to Section 128(1)(b);

ii. The order passed in the aforementioned manner shall be duly served on both the writ petitioners under due acknowledgment within three working days from the date of the order;

iii. If the aforementioned order of R1 is in favour of the writ petitioners, that would be the curtains on the matter but if it is adverse to the writ petitioners, the order shall be kept in abeyance for 10 days from the date of service of the order on the writ petitioners. As there are two writ petitioners, 10 days will be computed from the latter date in respect of two writ petitioners if service is not made on them on the same day;

iv. The aforementioned window of 10 days is provided for the writ petitioners to assail the order (if adverse to the writ petitioners) if so advised and if so desired;

v. Though obvious, we make it clear that R1 shall pass final orders in accordance with proviso to Section 128(1)(b) of TNULB Act untrammelled by this order and this proceedings. In other words, R1 shall pass orders vide relevant provisions of TNULB Act on the merits of the representation of writ petitioners (representation dated 19.07.2024) and in accordance with law; and

vi. Learned Additional Advocate General and Senior Advocate very fairly submitted that status quo as of today will be



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W.P.Nos.4315 & 4360 of 2025

*maintained between today and lapsing of aforementioned 10 days window period (if R1 passes an adverse order). This submission is recorded. Likewise, the submission that the board now placed in the property in question will be removed forthwith, is recorded but with a rider that further action will depend on final orders to be made by R1.'*

14. As the original notice issued in June of 2024 (signed on 24.06.2024) by R1 talks about both removal of encroachment and cancellation of regularization, we find that writ petitioners have been given adequate opportunity to respond, they have responded on 19.07.2024 and after considering the response, the impugned order has been made. Therefore, this point also does not find favour with this Court.

15. It was submitted that the impugned order does not assign reasons for cancellation of regularization. Three paragraphs in the impugned order are relevant and the same are as follows:

*'The regularization scheme applied exclusively to house plots. However, the power agent by misrepresenting the earmarked public Well to be a plot in the said layout, fraudulently obtained a regularization order for an extent of 105' x 80' (8,400 ft<sup>2</sup>) by suppressing critical facts. This order was secured without proper*



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W.P.Nos.4315 & 4360 of 2025

verification of the revenue records, which clearly specifies the subject land as 'கிருஷ்ணா நகர் பொது இடம்' (Krishna Nagar Public Place).'

One Mr.Arputharaj, petitioners Mr.Umapathy Mrs.Subhashini and their representative advocate vide their representations cited as 10, 11, 13 and 15 have failed to explain the basis in which the said power agent had obtained the regularization order cited as 3 above. Therefore, the said regularization order cited as 3 above is liable to be cancelled with immediate effect.

.....

Therefore, it is hereby ordered that the said regularization order obtained for the public purpose site, cited as 3 above is cancelled with immediate effect.'

16. A careful perusal of the aforementioned portion of the impugned order brings to light that sufficient reasons have been given. As already alluded to supra, we find that the regularization order does not contain even a plot number.

17. The next point that was contended is that regularization is pursuant to a Government Order being G.O.Ms.No.59 dated 25.07.2006 and the impugned order proceeded on the basis of two different cut off dates for regularization, i.e., 19.01.2006 and 31.12.2006. In our considered view,



*W.P.Nos.4315 & 4360 of 2025*

this hardly matters as the regularization has been cancelled by giving reasons particularly on the basis that regularization has been obtained by suppression of fact that original unapproved layout was set apart for public well. As already alluded to supra, we find that regularization dated 27.12.2006 does not even contain plot number and this buttresses the narrative that the original promoter Mr.Krishnamma Naidu did not assign any plot number to said land.

18. It was next contended that the impugned order has usurped Civil Court powers as it refers to Will of Krishnamma Naidu and it has gone into the testament. We are of the considered view that the impugned order has been passed after taking into account the detailed response of writ petitioners dated 19.07.2024 and writ petitioners have not placed the unapproved layout or any other document to demonstrate that said land was not set apart for public well. Therefore, we are of the view that the reference to Will in the impugned order cannot be construed as usurpation of powers of civil Court. This point does not cut ice with this Court.

19. It was submitted that impugned order was a foregone (prejudged) conclusion but there were two sets of earlier writ petitions. In the first set of



W.P.Nos.4315 & 4360 of 2025

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writ petitions, notices were directed to be treated as SCNs and writ petitioners were given adequate opportunity to respond. In the second set of writ petitions, action was without passing final order in accordance with the proviso to Section 128(1)(b) of TNULB Act and therefore, we interfered to put the clock back and made it clear that R1 should pass an order in accordance with proviso to Section 128(1)(b) of TNULB Act. In this view of the matter, it cannot be gainsaid that the impugned order is a prejudged conclusion.

20. The next point argued was that the impugned order is perverse and arbitrary. In the light of the trajectory the matter has taken or in other words, the dispositive reasoning in the previous point i.e., writ petitioners being show caused, given adequate opportunity both regarding removal of encroachment as well as cancellation of regularization and impugned order being passed thereafter, that too, strictly in accordance with Section 128 of TNULB Act, leaves us with the considered view that the impugned order is not vitiated either by perversity or arbitrariness. To be noted, Section 128 of TNULB Act reads as follows:

*'128. Power to remove encroachment from public place. - (1)*



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W.P.Nos.4315 & 4360 of 2025

*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.'*

21. This Court also finds that the impugned order has strictly adhered



*W.P.Nos.4315 & 4360 of 2025*

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to orders of this Court as is evident from conclusion paragraph which says that the impugned order is kept in abeyance for a period of 10 days from the date of service and we have made this provision in our earlier order to enable writ petitioners to assail the impugned order, if it is adverse to writ petitioners. Writ petitioners have done that and have now come before us. There are two aspects of this point, one is, writ petitioners have been given adequate / ample opportunity and second is, orders of this Court have been strictly and scrupulously adhered to.

22. Notwithstanding very many averments and grounds in the writ affidavit, writ petitioners' campaign against the impugned order was predicated on points that have been set out supra and therefore, we have dealt with the points that were canvassed before us.

23. In the light of the narrative, discussion and dispositive reasoning thus far, we find that there is no reason to interfere qua the impugned order much less accede to certiorari prayer.

25. Before concluding, we record the stated position of both sides that said land had some plantations, security camp and it is vacant land as of today.



W.P.Nos.4315 & 4360 of 2025

**WEB COPY** Ergo, the sequitur is captioned WPs fail and the same are dismissed.

Consequently, captioned 'Writ Miscellaneous Petitions' {hereinafter 'WMPs' for the sake of brevity} thereat also perish with the main WPs. In other words, captioned WMPs are also dismissed. There shall be no order as to costs.

[M.S.,J.]

[K.G.T.,J.]

07.02.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

*mk*

To

1. The Commissioner  
Coimbatore City Municipal Corporation  
Coimbatore - 641 001.
2. The Assistant Commissioner  
East Zone  
Coimbatore City Municipal Corporation  
Coimbatore - 641 001.
3. The Assistant Executive Engineer (Planning)  
East Zone  
Coimbatore City Municipal Corporation  
Coimbatore - 641 001.
4. The Assistant Town Planning Officer  
East Zone

Page Nos.16/18



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Coimbatore City Municipal Corporation  
Coimbatore - 641 001.

*W.P.Nos.4315 & 4360 of 2025*





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*W.P.Nos.4315 & 4360 of 2025*

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

*mk*

**W.P.Nos.4315 & 4360 of 2025**

**07.02.2025**  
**(2/2)**

Page Nos.18/18