



W.P.No.4867 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2025

CORAM

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

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

W.P.No.4867 of 2025
and
W.M.P.No.5396 of 2025 in W.P.No.4867 of 2025

J.K.S.Sathathunisa

.. Petitioner

VS.

1.The District Collector,
Krishnagiri Collectorate,
Krishnagiri District.

2.The Revenue Divisional Officer,
Revenue Division Office,
Krishnagiri.

3.The Tahsildar,
Tahsildar Office,
Krishnagiri.

4.The Executive Officer,
Kaveripattinam Town Panchayat,
Krishnagiri District.

5.N.Mohamed John

.. Respondents

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Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the fourth respondent and quash the impugned order of the fourth respondent dated 24.12.2024 vide Na.Ka.No.794/2024/A1 as the same is illegal and ultra vires and consequently direct the respondents 1 to 4 to consider the representation of the writ petitioner dated 30.12.2024 and 27.01.2025 and as the property in S.No.612/21 of Kaveripattinam Village is petitioner's property by restoring the revenue records as stood prior to UDR survey.

For Petitioner : Ms.Chitra Sampath,
Senior Counsel
for Mr.T.S.Baskaran

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R4

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 24.12.2024 bearing reference Na.Ka.No.794/2024/A1 issued by R4 [the Executive



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Officer, Kaveripattinam Town Panchayat, Krishnagiri District]' (hereinafter 'impugned notice' for the sake of brevity, convenience and clarity).

2. Ms.Chitra Sampath, learned senior counsel instructed by Mr.T.S.Baskaran, learned counsel on record for writ petitioner, adverting 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 senior counsel's say.

3. Issue notice.

4. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for official respondents *i.e.*, R1 to R4.

5. The scope of captioned main WP is substantially narrow,



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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.

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]:



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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.'

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, R4 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



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of the town panchayat; '

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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 R4 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. A representation dated 30.12.2024 has since been submitted by the writ petitioner, R4 shall pass final orders.

10. Accordingly, the following order is made:

- i. Impugned notice issued by R4 shall now be treated as a SCN under Section 128(1)(b) of TNULB Act;
- ii. The representation dated 30.12.2024 sent by the writ petitioner shall be considered and final orders



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shall be made as per proviso to Section 128(1)(b) of TNULB Act.

- iii. Though obvious, we make it clear that any coercive action will be subject to / depending on final orders to be made by R4 *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, R4, while passing final orders, shall do so untrammelled by the observations made in this order.

11. Captioned WP stands disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned Writ Miscellaneous Petition (WMP) thereat is disposed of as closed. There shall be no order as to costs.

[M.S., J.]

[K.G.T., J.]

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Index : Yes / No

Neutral Citation : Yes / No

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To

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Krishnagiri Collectorate,

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Krishnagiri District.

2.The Revenue Divisional Officer,
Revenue Division Office,
Krishnagiri.

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3.The Tahsildar,
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