



W.P.No.5433 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.5433 of 2025

and

W.M.P.No.5983 of 2025

Karthikeyan
S/o.Late Rajan

...Petitioner

Vs

1. The Commissioner
Coimbatore Municipal Corporation
Coimbatore - 641 001.
2. The Assistant Planning Officer
East Division,
Coimbatore Corporation
Coimbatore.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of proceedings Nil dated 31.01.2025 on the file of the 2nd respondent and quash the same as illegal, incompetent and wholly without jurisdiction.



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For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mr.S.Kirubanandam
For Respondents : Mr.D.R.Arunkumar
Standing Counsel

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity, convenience and clarity} has been filed assailing a 'notice dated 31.01.2025 issued by R2 [The Assistant Planning Officer, East Division, Coimbatore Corporation, Coimbatore]' {hereinafter 'impugned notice' for the sake of brevity, convenience and clarity}.

2. Mr.V.Raghavachari, learned Senior Counsel, instructed by Mr.S.Kirubanandam, counsel on record for writ petitioner submits that the impugned notice is one wholly without jurisdiction as R2 is not vested with powers under 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) to issue the impugned notice.



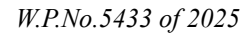
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WEB COPY 3. Issue notice to respondents.

4. Mr.D.R.Arunkumar, learned Standing Counsel for Coimbatore Corporation accepted notice for both respondents and fairly conceded that R2 does not have authority and is not vested with powers to issue impugned notice.

5. Owing to the fair stand taken by learned Standing Counsel for respondents, legal drill at hand has become fairly simple. Therefore, with the consent of learned counsel on both sides, main WP was taken up in the Admission Board.

6. A scanned reproduction of the impugned notice issued by R2 as placed before us is as follows:





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7. A careful perusal of impugned notice brings to light that R2 has made it clear that it has been issued under Section 128 of TNULB Act.

8. 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] 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.'

9. A careful perusal of Section 128 of TNULB Act makes it clear that a notice under Section 128 of TNULB Act can be issued only by 'Commissioner'. The Commissioner is a term of art. In other words, Commissioner is a defined term having been defined vide sub-section (7) of Section 2 of TNULB Act which 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



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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 of the town panchayat; '

10. In the case on hand, considering that the matter pertains to Coimbatore Corporation, Commissioner would be Commissioner within the meaning of Section 2(7)(a) and R2 is obviously not the commissioner.

11. The narrative, discussion and dispositive reasoning thus far makes it clear that impugned notice is wholly without jurisdiction. Therefore, we are acceding to certiorari prayer on this short point without expressing any view or opinion on the merits of the matter.

12. The sequitur of not expressing any view or opinion on the merits of the matter is, it is now open to R1 to issue notice afresh under Section 128 of TNULB Act (if so advised and if so desired). After notice under Section 128 of TNULB Act is issued, considering the nature of the matter, it obviously has to be a 'Show Cause Notice' {'SCN'} within a meaning of Section 128(1)(b) of TNULB Act. Therefore, we make it clear that all rights and contentions of writ petitioner also stand preserved (untrammelled by this order) on being show-caused vide notice by R1. Thereafter, the matter will



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be dealt with on its own merits and in accordance with law untrammelled by this order.

Captioned WP allowed albeit with aforementioned preservations. Consequently, connected Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

[M.S.,J.]

[K.G.T.,J.]

17.02.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk



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- To
1. The Commissioner
Coimbatore Municipal Corporation
Coimbatore - 641 001.
 2. The Assistant Planning Officer
East Division,
Coimbatore Corporation
Coimbatore.



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and
K.GOVINDARAJAN THILAKAVADI, J.,

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ADDENDUM

W.P.No.5433 of 2025

M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

ORDER

(made by M.SUNDAR, J.)

Captioned matter is listed today under the cause list caption 'FOR BEING MENTIONED', inasmuch as, at paragraph 6 of order dated 17.02.2025 allowing the writ petition, page no.46 of typed set of papers has been inadvertently scanned and reproduced, instead of page no.45 of typed set of papers. A scanned reproduction of Page no.45 of the typed set of papers which should appear at paragraph 6 of order dated 17.02.2025 is as follows:



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கோவைப்புத்தூர் மாநகராட்சி
விழக்கு மண்டலம்
நாள். 21.01.2025.

தமிழ்நாடு நகர்ப்புற உள்வாங்கிசெய்தல் சட்டம் 1998 (திருத்தப்பட்டு 2022) பிரிவு,
128-ல் கீழ்க் ஆக்கிரமிப்பு ஆகற்ற பிறர்சேகப்படுத்தும்
அறிவிப்பு

கோவைப்புத்தூர் மாநகராட்சி விழக்கு மண்டலம், உட்பிரிவினாமைகள் கிராமம், வார்டு
எண்.54, நகராங்கு வார்டு எண்.23, ரீயல்கு எண்.11, நகராங்கு எண்.07, தேவாதி நகர், நகராங்கு
ஆகனங்குகளில் படி, கிள்க்கள் புறம்போக்கு (வாங்கு) க்கு உள்ள இடத்தில், 2730 சதுர
புறமளவில், வணிக அட்டை சிபெண்டி சீட்டு அமைத்து ஆக்கிரமிப்பு செய்துள்ளார்கள்.

எனவே இந்த அறிவிப்பைப் பெற்றுக் கொண்டு 15 நாட்களுக்குள் மேற்படி
ஆக்கிரமிப்பை நாங்கனாகவே அப்பாற்படுத்திக் கொள்ளுமாறு அறிவிக்கப்படுகிறது.

மேற்படி ஆக்கிரமிப்புகளை தாங்கள் அப்பாற்படுத்தத் தவறினால் தமிழ்நாடு நகர்ப்புற
உள்வாங்கிசெய்தல் சட்டப்பிரிவு 128(2) -ல் பா தங்கள் கீது நீதிமன்றத்தில் குற்றங்கண்டு
செய்யப்படும் மேலும் ஆக்கிரமிப்பினை - அட்டை கொண்டு அப்பாற்படுத்தி, அதுவால் ஏற்படும்
எல்லா செலவுகளும் மேற்படி சட்ட பிரிவுகளின்படி தாங்களிடமிருந்து கருத் செய்யப்படும் என
அறிவிக்கப்படுகிறது.

மேற்படி,
நகராங்கு அங்கையன்,
தெரு குறையன்,
80/A, 6 வது வீதி,
லட்சுமிபுரம்,
தேவாங்கு அங்கையன்,
கோவைப்புத்தூர்,
தொலைபேசி எண் - 99441 41593

ம. தனி நகர திட்டமிடுதல்,
விழக்கு மண்டலம்
கோவைப்புத்தூர் மாநகராட்சி,
21/1/25

2. Today, Mr. S. Kirubanandam, learned counsel for writ petitioner and Mr. D.R. Arunkumar, learned Standing Counsel for respondents, are present before us.

4. The aforementioned counsel on either side agreed to have the aforementioned correction made. In all other aspects, the order dated 17.02.2025 remains the same. Therefore, this order will now be made as 'Addendum' and Corrigendum / Erratum to 17.02.2025 order already pronounced in open court and already uploaded. This order



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will now be uploaded as 'ADDENDUM' to / along with order made by this Court on 17.02.2025 and the Registry shall issue certified copies accordingly.

(M.S., J.) (K.G.T., J.)
06.03.2025

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M. SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

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