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W.P.No.5008 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.5008 of 2025
and
W.M.P.No.5554 of 2025 in W.P.No.5008 of 2025

M.Jothi

.. Petitioner

vs.

- 1.The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai – 600 003.
- 2.The Regional Deputy Commissioner (South),
Greater Chennai Corporation,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai – 600 020.
- 3.The Zonal Officer,
Zone – 11, Greater Chennai Corporation,
Valasaravakkam, Chennai – 600 087.
- 4.Tahsildar,
Nolambur,
Ambattur Industrial Estate,
Chennai – 600 037.

Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records of the impugned order made by the first respondent in his proceedings in Notice No.Z.O.XI.C.No.E1/3362/2024 dated 30.01.2025 and quash the same.

For Petitioner : Mr.R.Thamaraiselvan
For Respondents : Mr.D.B.R.Prabhu,
Standing Counsel for R1 to R3
Mr.T.K.Saravanan,
Additional Government Pleader
for 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 30.01.2025 bearing reference Notice No.Z.O.XI.C.No.E1/3362/2024 issued by R1 [Commissioner, Greater Chennai Corporation]' (hereinafter 'impugned notice' for the sake of brevity, convenience and clarity).



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2. Mr.R.Thamaraiselvan, learned counsel on record for writ petitioner, advertng to the impugned notice, submitted that the impugned notice has been issued under Section 128(b) '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 fifteen days, is learned counsel's say. Learned counsel pointed out that impugned notice has been issued under Section 128(b) of TNULB Act.

3. Issue notice.

4. Mr.D.B.R.Prabhu, learned Standing Counsel accepts notice for R1 to R3 and Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R4.

5. Learned Standing Counsel for Greater Chennai Corporation submits, on instructions that a typographical / inadvertent secretarial



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error has crept in in impugned notice and instead of Section 128(1)(b) of TNULB Act, Section 128(b) of TNULB Act has been typed. In other words, learned counsel submits that the impugned notice is one under Section 128(1)(b) of TNULB Act.

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

7. 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;



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(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.'

8. 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, R1 should pass an order (final orders) considering such



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response.

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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 enabling the writ petitioner to send a representation along with supporting documents (if so advised and if so desired) within seven days from today *i.e.*, by 21.02.2025 and that if the same is done, R1 shall pass final orders.

10. Accordingly, the following order is made:

- i. Impugned notice issued by R1 shall now be treated as a SCN under Section 128(1)(b) of TNULB Act that has been served on the writ petitioner today (14.02.2025);
- ii. Noticee/writ petitioner (if so advised and if so desired) shall send a representation within seven days from today, *i.e.*, on or before 21.02.2025;



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- iii. If the writ petitioner/noticee does not send a representation within aforesaid timeline and if no other representation is received, it is open to the respondents to proceed (post 21.02.2025) *qua* removal of immovable structure which is subject matter of impugned notice;
- iv. If the noticee/writ petitioner sends a representation within the aforesaid time frame, it is open to the respondents to proceed in accordance with law;
- v. Though obvious, we make it clear that any coercive action will be subject to / depending on final orders to be made by R1 *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, R1, while passing final orders, shall do so untrammelled by the observations made in this order.



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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.]

14.02.2025

Index : Yes / No

Neutral Citation : Yes / No

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To

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