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W.P.No.5519 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.5519 of 2025

and

W.M.P.No.6084 of 2024

D.Chandrasekaran
S/o.Devaraj

...Petitioner

Vs

1. The Commisioner of Land Administration
Chepauk, Chennai-600 005.
2. The Commissioner
Gudiyattam Municipality
Municipal Office
Gudiyattam - 632 602
Vellore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the entire records of the 2nd respondent's notice of eviction dated 29.01.2025 in Na.Ka.No.00055/2025/F1 and quash the same insofar as the eviction of the

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petitioner is concerned from the land situated in T.S.No.210/2 Ward No.5, Block No.3, Gudiyattam Town for an extent of 263.50 sq.ft out of 797 sq.ft.

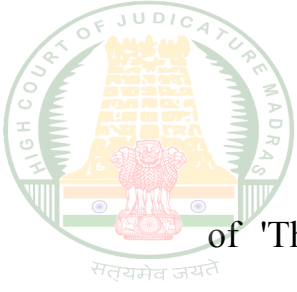
For Petitioner : Mr.S.Vijayakumar
For Respondents : Mr.M.S.Arasakumar
Government Advocate, for R1
Mr.T.K.Saravanan
Additional Government Pleader,
for R2

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 with a certiorari prayer assailing a 'notice dated 29.01.2025 bearing reference Na.Ka.No.00055/2025/F1 issued by R2 [the Commissioner, Gudiyatham Municipality]' {hereinafter 'impugned notice' for the sake of brevity, convenience and clarity}.

2. Adverting to impugned notice, Mr.S.Vijayakumar, learned counsel for writ petitioner submits that writ petitioner has not been show-caused though the impugned notice says that it has been issued under Section 128



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of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)'

WEB COPY (hereinafter 'TNULB Act' for the sake of convenience and clarity).

3. Issue notice to respondents.

4. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1 and Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R2.

5. Learned Additional Government Pleader submits that there is alleged encroachment and that has necessitated the impugned notice.

6. Owing to the limited scope of the captioned main WP, main WP was taken up in the Admission Board with the consent of learned counsel on both sides.

7. Section 128 of TNULB Act reads as follows:

*'128. Power to remove encroachment from public place. - (1)
The Commissioner may, -*



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(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.'

8. A careful perusal of Section 128 of TNULB Act makes it clear that R2 has powers to invoke the provision and the term 'Commissioner' has 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)



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(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 of the town panchayat; '

9. A careful perusal of Section 128 of TNULB Act and the language in which it is couched, it comes to light that writ petitioner ought to have been show-caused vide 'Show Cause Notice' {'SCN'} returnable in seven days. To be noted, this is vide Section 128(1)(b) of TNULB Act.

10. In the light of the obtaining legal position, it will suffice if the impugned notice is treated as SCN and the writ petitioner is given an opportunity.

11. In the light of the narrative thus far, following order is made:

(a) Impugned notice dated 29.01.2025 bearing reference Na.Ka.No.00055/2025/F1 issued by R2 [the



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Commissioner, Gudiyatham Municipality] shall now be treated as SCN within the meaning of Section 128(1)(b) of TNULB Act;

(b) Afore-referred SCN shall now be construed to have been served on writ petitioner today (19.02.2025);

(c) It is open to writ petitioner to respond / send a representation within seven days from today i.e., on or before 26.02.2025;

(d) If writ petitioner sends response / representation to SCN, R2 shall consider the same and pass 'final orders' within the meaning of proviso to Section 128(1)(b) of TNULB Act;

(e) Final orders of R2 shall be served on writ petitioner under due acknowledgment within three working days from the date of the order;

(f) Any coercive action shall be subject to and depending on final orders to be made by R2 in the aforesaid manner;



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(g) If writ petitioner does not respond to SCN within seven days from today i.e., on or before 26.02.2025, it is open to authorities to proceed with the matter pursuant to impugned notice.

Captioned main WP disposed of in the aforesaid manner. As we have held that coercive action, if any shall be subject to final orders of R2 vide proviso to Section 128(1)(b) of TNULB Act, captioned writ miscellaneous petition becomes otiose and the same is disposed of as closed. There shall be no order as to costs.

[M.S.,J.]

[K.G.T.,J.]

19.02.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

1. The Commissioner of Land Administration
Chepauk, Chennai-600 005.
2. The Commissioner
Gudiyattam Municipality

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Municipal Office
Gudiyattam - 632 602, Vellore District.



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

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