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W.P.No.8251 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

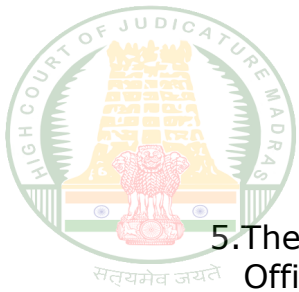
W.P.No.8251 of 2025
and
W.M.P. No.9261 of 2025 in W.P. No.8251 of 2025

Sundari

... Petitioner

Vs.

- 1.The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
Regional Office – Central,
No.36B, Pullah Avenue,
Shenoy Nagar, Chennai – 600 030.
- 2.The Executive Engineer,
Corporation of Chennai,
Zone No.7, Zonal Office,
Ambattur, Chennai – 600 053.
- 3.The District Collector,
Collectorate, Chennai District,
Chennai – 600 001.
- 4.The District Revenue Officer,
Singaravelan Maaligai,
Chennai – 600 001.



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5.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Ambattur Division, Anna Nagar,
Chennai – 600 040.

6.The Tahsildar,
Ambattur Taluk Office,
Ambattur, Chennai – 600 053.

7.The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai – 600 003.

8.Vijayalakshmipuram Thittapaguthi
Kudiyurppu Manai Yrimaiyalagal Sangam
Reg. No.163/2017 rep. By its Secretary
R.Rajasekar, S/o.Raja Prabal,
No.13, Ambedkar Street,
Vijayalakshmipuram, Ambattur,
Chennai – 600 053.

... Respondents

(R7 and R8 impleaded suo motu vide
order dated 11.03.2025 in W.P.No.8251 of 2025)

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorari to call for the records relating to
the notice dated 22.02.2025 in Z.O.7.C.No.00443/2025 issued by the
first respondent and quash the same.



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For Petitioner : Mr.Vijay Narayan,
Senior Counsel
for Mr.K.Rajasekaran

For Respondents : Mr.E.C.Ramesh,
Standing Counsel
for R1, R2 and R7
Mr.T.K.Saravanan,
Additional Government Pleader
for R3 to R6
Mr.C.Prakasam for R8

ORDER

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

The protagonist of the captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has sought issue of a writ of certiorari. To be noted, a notice dated 22.02.2025 bearing reference Z.O.7.C.No.00443/2025 issued by R1 [Regional Deputy Commissioner (Central), Greater Chennai Corporation, Chennai] has been assailed in the captioned main WP. This '22.02.2025 notice bearing reference Z.O.7.C.No.00443/2025 issued by R1' shall henceforth be referred to as 'impugned notice' for the sake of convenience and clarity.

2. Mr.Vijay Narayan, learned senior counsel instructed by Mr.K.Rajasekaran, learned counsel on record for writ petitioner



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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), it is wholly without jurisdiction as Section 128 vests only 'Commissioner' with powers to issue notice under Section 128.

3. Issue notice.

4. Mr.E.C.Ramesh, learned standing counsel accepts notice for R1 and R2 and Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R3 to R6.

5. Learned standing counsel for Greater Chennai Corporation (GCC) who has accepted notice for R1 and R2 very fairly submitted that Commissioner of GCC has not delegated his powers under Section 128 to R1 and in any event there is no provision under TNULB Act enabling the Commissioner to delegate his powers much less his powers under Section 128 of TNULB Act. This makes the legal drill at hand fairly simple but from the submissions made at the bar, it comes



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to light that there is a tussle between the writ petitioner and an entity which goes by the name 'Vijayalakshmipuram Thittapaguthi Kudiyrppu Manai Yrimaiyalagal Sangam' (hereinafter 'said Sangam' for the sake of convenience and clarity) and there are as many as six earlier writ petitions all pertaining to such tussle.

6. We are concerned with two parcels of lands and they are: (a) Survey Nos.150, 152, 153, 108/2, 148 and 154 (hereinafter 'I Parcel of Land' for the sake of convenience and clarity) and (b) Survey numbers presently Town Survey No.127/2 which was previously Survey Nos.168/3E1 and 168/3F1 (hereinafter 'II Parcel of Land' for the sake of convenience and clarity). To be noted, all the aforesaid survey numbers are in Oragadam Village (Block No.43), Ambattur Taluk, Chennai District.

7. This Court is informed that the I and II Parcels of Lands lie adjacent to each other. While writ petitioner alleges that said Sangam has encroached upon I Parcel of Land, which has been classified as தெரு (Street), said Sangam alleges that the writ petitioner has encroached upon II Parcel of Land, which is classified as சாலை (Road).

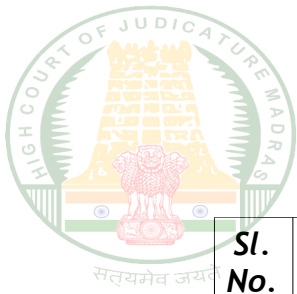


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8. As alluded to supra, there are as many as six earlier writ petitions and the details by way of a tabulation is as follows:

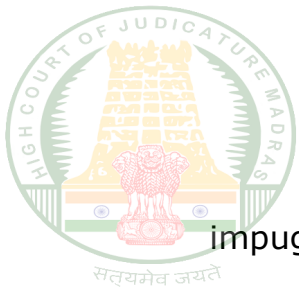
Sl. No.	W.P.No.	Writ Petitioner	Prayer	Date and Nature of order
1	6195 of 2019	Ms.Sundari (writ petitioner before us)	To mandamus the official respondents to conduct survey, remove encroachments as regards I Parcel of Land	18.03.2024 - Official respondents were directed to conduct survey, consider objections if any, look into revenue records, identify encroachers and remove them within a period of twelve weeks.
2	25195 of 2022	Ms.Sundari (writ petitioner before us)	Requesting for change of enquiry officer (RDO)	19.09.2022 - enquiry officer was directed to act in a fair manner.
3	26960 of 2022	Said Sangam	To remove alleged encroachment by Ms.Sundari in II Parcel of Land	18.03.2024 - official respondents were directed to conduct survey in respect of Government land, identify encroachment and then remove the same within a period of twelve weeks.
4	34492 of 2022	Ms.Sundari (writ petitioner)	The proceedings dated 07.12.2022	22.12.2022 - Writ petitioner relegated



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Sl. No.	W.P.No.	Writ Petitioner	Prayer	Date and Nature of order
		before us)	made by jurisdictional RDO cancelling patta in favour of writ petitioner assailed.	to alternate remedy of filing revision before DRO.
5	13100 of 2023	Said Sangam	Order of DRO dated 31.03.2023 bearing reference Na.Ka.No.J8/2876/2023 made in revision restoring patta in favour of Ms.Sundari is under challenge.	18.03.2024 - certiorari qua DRO order neither issued nor negatived. Official respondents were directed to conduct survey, look into objections, revenue records and remove encroachment if any within a period of twelve weeks.
6	39805 of 2024	Ms.Sundari (writ petitioner before us)	An initial notice dated 19.12.2024 and a follow up communication dated 23.12.2024 from jurisdictional Tahsildar assailed.	27.12.2024 - writ petition dismissed

9. As already alluded to supra, captioned main WP is the 7th writ petition and it has been filed assailing the impugned notice. As captured supra, learned standing counsel for GCC has fairly submitted that R1 does not have jurisdiction to issue the impugned notice. Learned standing counsel for GCC has also submitted that the



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impugned notice will be withdrawn and a fresh notice by competent authority viz., Commissioner of GCC will be issued within a fortnight from today. This submission is recorded.

10. Be that as it may, before writing the operative portion of this order, for the sake of convenience of all concerned and to ensure that errors in notice/s to be issued do not creep in (as is the case now), we deem it appropriate to set out the obtaining legal position more particularly with regard to Section 128.

11. TNULB Act kicked in on and from 01.08.2000.

12. When TNULB Act kicked in on 01.08.2000, Section 128 read 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



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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.'

13. After coming into force on 01.08.2000, TNULB Act was amended by 'Tamil Nadu Urban Local Bodies (Amendment) Act, 2024 [Act 24 of 2024]' which shall be referred to as 'I Amending Act'. This I Amending Act consists of only two Sections, it came into force on 15.03.2024 and it did not amend Section 128 (to be noted, it amended



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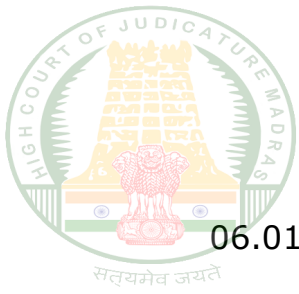
only Section 3).

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14. After 15.03.2024, there was a Second Amendment Act viz., Act 25 of 2024 which went by the title 'Tamil Nadu Urban Local Bodies (Second Amendment) Act, 2024 [Act 25 of 2024]' (hereinafter II Amending Act for the sake of convenience and clarity). This II Amending Act consists of 38 Sections and it amends Section 2, Section 3, inserts Section 3A, amends Sections 32, 44, 78, 82, 83, 84, 97, 116, 117-B, 117-G, 117-L, 117-M, 117-O, 117-P, 117-S, 117-T, 118, 119, 120, 122, 128, 133, 135, 137, 145, 155, 161-A, 170, 173, 175, 194, 198, inserts Section 199-A and amends Section 200.

Of the aforementioned 38 Sections in the aforementioned Second Amendment Act, sub-section (1) of Section 36 alone came into force vide Section 1(2)(a) on and from 13.04.2023. The remaining sections which form part of the conditional legislation regime vide Section 1(2)(b) kicked in on and from 06.01.2025 when State Government notified the other Sections.

15. The above means that Section 128 of TNULB Act which we are concerned with has been amended on and with effect from



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06.01.2025. Amended Section 128 reads as follows:

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'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, public place, water body, tank, other water resources or any land** belonging to or vested with the municipality with the municipal limit;*

*(b) remove any immovable structure whether permanent or of temporary nature encroaching **street, public place, water body, tank, other water resources or any 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 **fifteen 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, water body, tank, other water resources or any land** belonging to or vested with the municipality*



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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.'

16. Owing to the facts and circumstances of the case, we implead the Commissioner, Greater Chennai Corporation, Rippon Building, Chennai – 600 003 as R7 and Mr.E.C.Ramesh, learned standing counsel for GCC accepts notice for R7 also. We also implead Vijayalakshmipuram Thittapaguthi Kudiyurppu Manai Yrimaiyalagal Sangam Reg. No.163/2017 rep. by its Secretary R.Rajasekar, S/o.Raja Prabal, No.13, Ambedkar Street, Vijayalakshmipuram, Ambattur, Chennai – 600 053 as R8 and Mr.C.Prakasam, learned counsel present in Court accepts notice for R8.

17. We take up the main WP in the Admission Board with the consent of learned counsel for all the parties.



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18. In the light of the narrative, discussion and in the light of submissions of both sides which have been captured supra, the following order is made:

18.1 The impugned notice being notice dated dated 22.02.2025 bearing reference Z.O.7.C.No.00443/2025 issued by R1 stands withdrawn i.e., effaced in the light of the stated position of learned standing counsel for GCC;

18.2 A fresh Show Cause Notice (SCN) under Section 128(1)(b) of TNULB Act shall be issued by the Commissioner of GCC within a fortnight from today i.e., on or before 25.03.2025. In the aforereferred fresh SCN, writ petitioner shall be the noticee and R8/said Sangam shall be marked a copy;

18.3 The writ petitioner/noticee shall respond to the SCN within 15 days from the date of receipt of the show cause notice, if so advised and so desired;



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18.4 R8/said Sangam shall send a representation qua fresh show cause notice, if so advised and so desired;

18.5 Commissioner of GCC (R7) shall consider the writ petitioner's response (if any) to fresh SCN as well as representation of R8 (if any) and pass 'final orders' vide proviso to Section 128(1)(b) of TNULB Act;

18.6 We have not expressed any view or opinion as regards the allegations and counter allegations qua encroachment. Therefore, R7/ Commissioner shall now consider the writ petitioner's response (if any) to the fresh show cause notice and representation of R8/said Sangam (if any) on its own merits and in accordance with law;

18.7 The orders made by Commissioner of GCC (R7) in the aforesaid manner shall be served on



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the writ petitioner as well as R8/said Sangam within five working days from the date on which the order is made.

19. Captioned WP is disposed of 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.)
11.03.2025

Index : Yes / No
Neutral Citation : Yes / No
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P.S.: *Though captioned WP is disposed of, list under the cause list caption 'FOR COMPLIANCE' (regarding issue of fresh notice under Section 128(1)(b) of TNULB Act) on 02.04.2025.*

To

1.The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
Regional Office – Central,
No.36B, Pullah Avenue,
Shenoy Nagar, Chennai – 600 030.

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Zone No.7, Zonal Office,
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- 7.The Commissioner,
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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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