



W.P. No.12192 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR
AND

THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P.No.12192 of 2025 and W.M.P.No.13756 of 2025

K. Kaliammal

Petitioner

vs.

The Commissioner
Namakkal Corporation
Namakkal

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the entire records pertaining to the impugned order passed by the respondent in Na.Ka.15/2025/F1 dated 13.03.2025 and quash the same as it is issued without jurisdiction, by considering the petitioner's representation dated 19.03.2025.

For petitioner

Mr. R.Vivek

For respondent

Mr. Rajamathivanan

ORDER

(made by K. GOVINDARAJAN THILAKAVADI, J.)

The notice dated 13.03.2025 issued by the respondent under Section 128 of the amended Tamil Nadu Urban Local Bodies Act, 1998 (for short "The TNULB Act") is put to challenge in this writ petition.

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2. The germane facts in a nutshell, leading to the filing of this writ petition, are as follows:

The petitioner, an octogenarian, has been in possession of part of the property in Survey No.351, Town Survey No. 262/1, Ward – C, Block No.4, Namakkal Municipality. When the petitioner was visited with notices in the year 1977 issued by the Revenue Department to remove encroachment on the ground that she had encroached on Vaikal Poramboke, she filed a declaration and injunction suit in O.S.No.273 of 1977 before the District Munsif Court, Namakkal, which was dismissed on 08.07.1990. Thereagainst, she preferred A.S.No.115 of 1980 before the Sub Court, Namakkal, which was also dismissed on 17.02.1981. However, on she approaching the Tahsildar concerned narrating her case, the Tahsildar, exercising his powers under Revenue Board Standing Order 26(8)(1), ultimately, *vide* order dated 20.06.1983, held that the negligible encroachment made by her be



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ignored. When things stood thus, after 27 years, to be precise, in the year 2010, she was asked by the Revenue authorities to remove the alleged encroachment made by her. Aggrieved, she moved W.P.No.486 of 2010 which was allowed *vide* order dated 08.03.2011 by recognizing the order passed by the Tahsildar on 20.06.1983. Notwithstanding the same, since she was disturbed, she filed O.S.No.232 of 2013 before the Additional District Munsif Court, Namakkal, seeking permanent injunction, which was decreed on 29.04.2021. While so, on 28.01.2025, she was served with a notice under Section 128 of the TNULB Act, assailing which, she filed W.P.No.5568 of 2025. In the said writ petition, this very Bench, *vide* order dated 21.02.2025, directed the respondent to pass final orders by considering her reply dated 04.02.2025. When such was the situation, the respondent issued order dated 13.03.2025 under Section 128 of the TNULB Act to remove the alleged encroachment, as stated in the opening paragraph. Challenging the same, this writ petition has been filed.



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3. The main plank of contention of the learned counsel for the petitioner is that without following the procedure contemplated under Section 128(1)(b) of the TNULB Act, the impugned order has come to be passed and hence, on this short ground itself, the impugned order is liable to be quashed and the respondent should be directed to consider the petitioner's representation dated 19.03.2025 and pass orders as per Section 128(1)b of the TNULB Act.

4. For the sake of ready reference, Section 128(1)(b), as it stands today, is reproduced below:

'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 within 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:



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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 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.'

5. From a bare perusal of the impugned order, this Court finds that there is merit and substance in the contention of the learned counsel for the petitioner that the impugned order has been passed directing removal of alleged encroachment straightaway, without following the procedure contemplated in this regard and in fact, the learned Standing Counsel for the respondent Corporation also concedes the same.



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6. Under such circumstances, the impugned order is directed to be treated as a show cause notice served on the petitioner today and the petitioner's representation dated 19.03.2025 shall be considered and final orders shall be passed by the respondent on merits and in accordance with law within a period of two weeks from today. Further, the decision so taken shall be served on the petitioner within a period of five working days. If the final orders to be passed by the respondent ends up in favour of the petitioner, that would be curtains on the matter. If it happens to the contrary, the same shall be kept in abeyance for a fortnight enabling the petitioner to approach the appropriate forum seeking redressal of her grievance .

This writ petition stands disposed of with the above directions.

Connected W.M.P. stands closed. No costs.

(M.S., J.) (K.G.T.,J.)
04.04.2025

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Index:Yes/No
Internet:Yes/No
NC: Yes/No

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and

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