



W.P.No.12431 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.12431 of 2025

and

W.M.P. No.14023 of 2025 in W.P. No.12431 of 2025

1.P.Anand,
Proprietor of Coffee Break,
S/o. N.Panneer Selvam,
B1-315, Manchester Grand Apartment,
M.G. Road, Avarampalayam,
Coimbatore – 641 006.

2.Kavitha Seerappan
3.A.K.Seerappan

... Petitioners

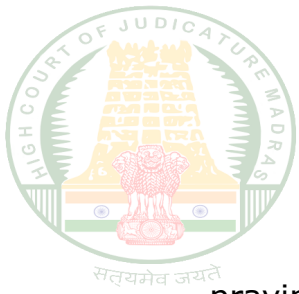
Vs.

1.The District Collector,
Office of the District Collectorate,
Coimbatore.

2.The Commissioner,
Coimbatore Corporation,
Coimbatore.

3.The Town Planning Officer,
Coimbatore Corporation,
Coimbatore.

... Respondents



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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order having reference Na.Ka.No.special/2025/H1(N) dated Nil.03.2025 passed by the second respondent and quash the same and consequently direct the respondents not to interfere with the petitioners' peaceful possession and enjoyment of the property under the name and style of "Coffee Break" situated in SF Nos.341 and 342, Sowripalayam Village, Ward No.28, North Zone, Coimbatore Corporation.

For Petitioners : Mr.R.Bharath Kumar

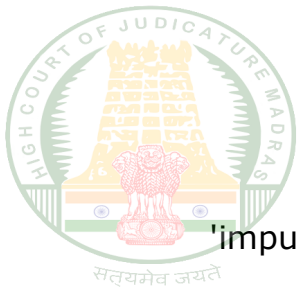
For Respondents : Mr.M.S.Arasakumar,
Government Advocate for R1
Mr.N.Velmurugan,
Standing Counsel for R2 and R3

ORDER

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

Captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed with a prayer for issue of a writ of certiorarified mandamus.

2. In and vide certiorari limb, an 'order signed by R2 (Commissioner, Coimbatore Corporation, Coimbatore) on 27.03.2025 bearing reference Na.Ka.No.special/2025/H1(N)' (hereinafter

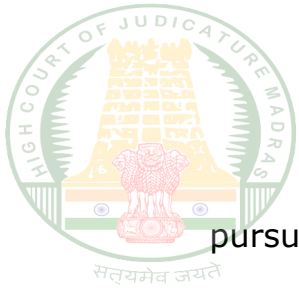


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'impugned order' for the sake of convenience and clarity) has been called in question. As regards the mandamus limb, a consequent direction has been sought qua respondents seeking to restrain the respondents from interfering with petitioners' 'property under the name and style "Coffee Break" situate in SF Nos.341 and 342, Sowripalayam Village, Ward No.28, North Zone, Coimbatore Corporation' (hereinafter 'said property' for the sake of convenience and clarity).

3. Mr.R.Balasubramanian, learned counsel on record for writ petitioners, who is before us submits that the writ petitioners were visited with a notice dated 09.08.2024 from R2, the same was assailed in this Court by the writ petitioners in an earlier writ petition being W.P.No.24407 of 2024 and the same came to be disposed of (along with WMPS thereat) by this Division Bench in and by an order dated 09.01.2025.

4. Short point that is urged by the learned counsel for the writ petitioners (notwithstanding myriad grounds in the writ affidavit) in his campaign against the impugned order is that the writ petitioners



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pursuant to 09.01.2025 order in W.P.No.24407 of 2024 sent a detailed representation dated 14.01.2025 but the impugned order has not considered the contents of the representation.

5. Issue notice to respondents.

6. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1 and Mr.N.Velmurugan, learned Standing Counsel for Coimbatore Corporation accepts notice for R2 and R3.

7. Learned Standing counsel for Coimbatore Corporation submits that the impugned order made by R2 is under proviso to Section 128(1)(b) of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity).

8. This Court finds that the legal perimeter within which the captioned main WP should perambulate is very limited. To put it differently, the legal landscape of the captioned matter is limited and therefore with the consent of learned counsel on both sides, main WP is taken up in the Admission Board.

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9. Section 128 of TNULB Act as amended on and from 06.01.2025 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, 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



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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.'

10. Proviso to Section 128(1)(b) of TNULB Act makes it clear that the Commissioner 'shall consider' the representation received before passing 'final orders'. To be noted, learned Standing Counsel for Coimbatore Corporation has made it clear that the impugned order has been made by R2 under proviso to Section 128(1)(b) of TNULB Act. This means that the impugned order is 'final orders' within the meaning of proviso to Section 128(1)(b) of TNULB Act. This further means that 14.01.2025 representation sent by first writ petitioner should have been considered in making the impugned order.

11. A careful perusal of the impugned order brings to light that



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there is only a cursory reference to representation of first writ petitioner and the conclusion that the representation is rejected. Date of the representation has not been mentioned in the body of the order though Sl. No.7 in *பார்வை* refers to a representation dated 29.01.2025.

12. Learned Standing Counsel for Coimbatore Corporation submits that 14.01.2025 representation has been received by the office of R2 on 20.01.2025. Thereafter, another representation dated 29.01.2025 has been received from the writ petitioners. Learned counsel for writ petitioners submits that the writ petitioners have not sent any representation dated 29.01.2025 as Section 128(1)(b) of TNULB Act provides only for a fortnight and the judicial order dated 09.01.2025 made in W.P.No.24407 of 2024 also talks about a representation on or before 16.01.2025, it will suffice if the 14.01.2025 representation is considered in its entirety. A scanned reproduction of 14.01.2025 representation is as follows:



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By Regd. Post with Ack. Due.

14.01.2025

From

P. Anand,
Proprietor of Coffee Break,
S/o. N.Panneer Selvam,
B1-315, Manchester Grand Apartment,
M.G.Road, Avarampalayam,
Coimbatore – 641006.

To

The Commissioner,
Coimbatore Corporation,
Coimbatore.

Dear Sirs,

Sub: Submissions of Representation – Reg:

Ref: (1) Order having reference Na.Ka.No.2024/H1 (N) dated 09.08.2024 issued by you under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 – reg:
(2) Order dated 09.01.2025 passed by Hon'ble Madras High Court in W.P.No.24407/2024.

1. I state that I am in occupation of a private property premises being a part of Site No. 40 forming part of Approved Layout having reference No. L.P.D.M/DT.P. No. 77/65, situated in SF Nos. 341 and 342, Sowripalayam Village, Ward No.28, North Zone, Coimbatore Corporation having taken on lease from its owners (1) Kavitha Seerappan, W/o. C.Palanichamy and (2)



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A.K.Seerappan, S/o. Karuppanna Gounder, both residing at B-117, Manchester Grand Apartment, Avarampalayam Road, Coimbatore - 641006.

2. I state that I am carrying on the business of "Coffee & Bakery Shop" in the said leased premises.
3. I state that while that being so, I got an order having reference Na.Ka.No.2024/H1 (N) dated 09.08.2024 from you under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 calling upon me to remove the encroachment within 7 days when such leased premises is admittedly situated within a part of Site No. 40 forming part of Approved Layout having reference No. L.P.D.M/DT.P. No. 77/65, situated in SF Nos. 341 and 342, Sowripalayam Village, Ward No.28, North Zone, Coimbatore Corporation.
4. I state that the said order further stated that the failure to remove the alleged encroachment by me would result in imprisonment for a minimum period of 1 year and a maximum period of 3 years and also a fine of Rs.50,000/- in terms of Sec. 128(2) of the said Act.
5. I state that being aggrieved with the order passed by you, I have preferred a writ petition before the Hon'ble High Court of Madras in W.P.No.24407/2024 and the Hon'ble High Court of Madras by its order dated 09.01.2025 was pleased to dispose of the said writ petition.

The order states as follows:

"Considering the submissions made on both sides, we are inclined to dispose of the writ petition with the following directions:



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- (a) *The writ petitioner shall send a representation/reply in response to the impugned notice within seven days from today i.e., on or before 16/01/2025;*
 - (b) *After receiving the representation from the writ petitioner, the Commissioner shall pass orders on its own merits and in accordance with law;*
 - (c) *We make it clear that we are not expressing any view or opinion on the merits of the matter;*
 - (d) *The writ petitioner is at liberty to submit all his defence before the Commissioner by way of representation. With the above directions, the Writ Petition is disposed of."*
6. I state that pursuant to the orders passed by the Hon'ble High Court of Madras in W.P.No.24407/2024, I hereby make this representation to you as follows:
7. I state that I am in occupation of private property premises being taken on lease by me from the owners (1) Kavitha Seerappan, W/o. C.Palanichamy and (2) A.K.Seerappan, S/o. Karuppanna Gounder as aforesaid for running the business of "Coffee & Bakery Shop" and such premises is situated within a part of Site No. 40 forming part of Approved Layout having reference No. L.P.D.M/DT.P. No. 77/65, situated in SF Nos. 341 and 342, Sowripalayam Village, Ward No.28, North Zone, Coimbatore Corporation.
8. I state that you failed to mention in the order as to which site No. in the 1965 approved layout has been allotted for public purpose and belonged to you and which has been encroached by me.



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9. Further I state that there is no reference to issuance of show cause notice to me before passing the impugned order directing removal of encroachment.

10. I have been carrying on Coffee & Bakery shop business in leased out premises in Site No.40 in the approved layout owned by (1) Kavitha Seerappan, W/o. C.Palanichamy and (2) A.K.Seerappan, S/o. Karuppanna Gounder and admittedly the same is not allotted for public purpose as per approved layout and as confirmed by the findings of the competent civil courts.

11. I state that I am not an encroacher of any public property or property vested with any Local Body. As stated, I have entered into a lease deed with the said owners on 01.12.2022 for a period of 3 years in respect of private property premises being Ground Floor admeasuring an extent of 120 sq.ft. approximately situated at No.16-C, Shanthi Nagar, Avarampalayam Road, Coimbatore - 641006 (hereinafter referred to as "Leased Premises") wherein I have been carrying on my Coffee & Bakery Shop Business since December, 2022.

12. I state that my leased premises measuring 120 sq. ft is built in private property being Site No.40 which is an approved site as per the Approved Layout having reference No. L.P.D.M/DT.P. No.77/65, situated in SF Nos. 341 and 342, Sowripalayam Village, Ward No.28, North Zone, Coimbatore Corporation.



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13. I state that the Site No.40 in the Approved Layout is originally owned by one Rangasamy Gounder who purchased the same vide Sale Deed dated 27.10.1980 bearing Doc. No. 5593/1980 on the file of Sub-Registrar Office, Coimbatore from one Balakrishna Naidu. The said Rangasamy Gounder executed a Will dated 02.02.2000 whereby he bequeathed the said property in favour of his grandson K.K.Surendran. The said Rangasamy Gounder died on 01.03.2008. I state that the said K.K.Surendran who got the property under the said Will also got patta in his favour. Later on the said K.K.Surendran sold the said property to and in favour of Mrs. Kavitha Seerappan, wife of Palanisamy Chellappan by way of sale deed dated 04.09.20220 registered as Doc. No.2685/2020 in the office of the Sub-Registrar, Peelamedu.
14. I state that it is pertinent to note that in respect of a portion of lands in the Site No.40 and some other lands, a gift deed came to be executed by Shanthi Nagar Site Owners Association represented by its President in favour of Coimbatore City Municipal Corporation. The then owner of the Site No.40 Rangasamy Gounder challenged the said gift deed which purported to gift a portion of lands in Site No.40 and some other lands in favour of you.
15. I state that the said owner Rangasamy Gounder filed a suit in O.S.No.951/2000 on the file of the District Munsif Court, Coimbatore and the defendants in the said suit were (i) Coimbatore City Municipal Corporation, and (ii) Shanthi Nagar Site Owners Association.



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16. I state that in the said suit, the following issues were framed, namely,

- (1) Whether suit property is the reserved site in the approved layout;
- (2) Whether the plaintiff purchased the reserved site as pleaded by the defendants.
- (3) Whether the plaintiff is entitled to a declaratory relief in respect of gift deed.
- (4) Whether the plaintiff is entitled to permanent injunction as sought for and
- (5) To what other relief the parties are entitled to?.

17. I state that the District Munsif Court, Coimbatore while answering the Issue Nos. 1 to 3, refused to grant a Declaratory decree in respect of the entire gift deed as the gift deed involves a portion of plaintiff's lands and also other lands. However, the trial Court held that the said gift deed is not binding upon the plaintiff and granted a permanent injunction in favour of the plaintiff/owner Rangasamy Gounder. The Trial Court also held that the plaintiff/owner Rangasamy Gounder had built a house in the Site No.40 as early as in the year 1980 itself and had been in possession and enjoyment of the site and the building erected thereon in the year 1980. The Trial Court also observed that pursuant to the said gift deed, you had not taken possession of the said portion of lands belonging to the plaintiff/owner Rangasamy Gounder and covered under the said gift deed and had not undertaken any development activity in the said portion of lands nor monitored the said portion of land and hence the gift deed in so far as the plaintiff/owner Rangasamy Gounder's lands is concerned is not valid. The Trial Court also



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held that the you was unable to prove that the suit property is a reserved site and hence the suit property is owned by the plaintiff/owner Rangasamy Gounder who purchased the same under a Sale Deed dated 27.10.1980 bearing Doc. No.5593/1980 on the file of Sub-Registrar, Coimbatore. I state that for issue no. 4, the Trial Court observed that the suit property cannot be said to be a reserved site as claimed by you and answered in favour of the plaintiff/owner Rangasamy Gounder.

18. I state that aggrieved with the decree and judgment dated 28.04.2004 passed in O.S.No.951/2000 by the District Munsif Court, Coimbatore, the you preferred an appeal in A.S.No.77/2006 on the file of IInd Additional Sub-Court, Coimbatore and the said appeal came to be dismissed on 26.10.2006. I state that the said Decree of dismissal had not been challenged by you till now and hence the said decree became final.

19. I state that when the facts are so as stated above, your action in issuing the impugned order to me and calling upon me to remove the encroachment within 7 days as per Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 when admittedly I am in occupation of leased premises taken on lease from the owners is highly arbitrary, illegal, mala fide and issued with no application of mind and with scant regard to the orders of the civil courts in which the you is a party.

20. As stated supra, I filed a writ petition challenging the said order against you and the Hon'ble High Court of Madras passed an order on 09.01.2025 in W.P.No. 24407/2024



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directing me to submit a fresh representation to you within 7 days. The copy of the order of Hon'ble High court is not yet made ready and the same will be sent to you as soon as received.

21. In the light of the above facts, I hereby request you to drop further proceedings pursuant to the said order having reference Na.Ka.No.2024/H1 (N) dated 09.08.2024 issued by you under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998. Please afford me personal hearing and I will explain all the orders which are in my favour.

Thanking you,
Yours faithfully,

(P. Anand)
Proprietor of Coffee Break,

- Enc: (1) Copy of the status report downloaded from e-court in Writ Petition No. 24407/2024 and
(2) Copy of the civil court judgement and decree
(3) Lease deed in my favour
(4) Sale deeds for site no.40

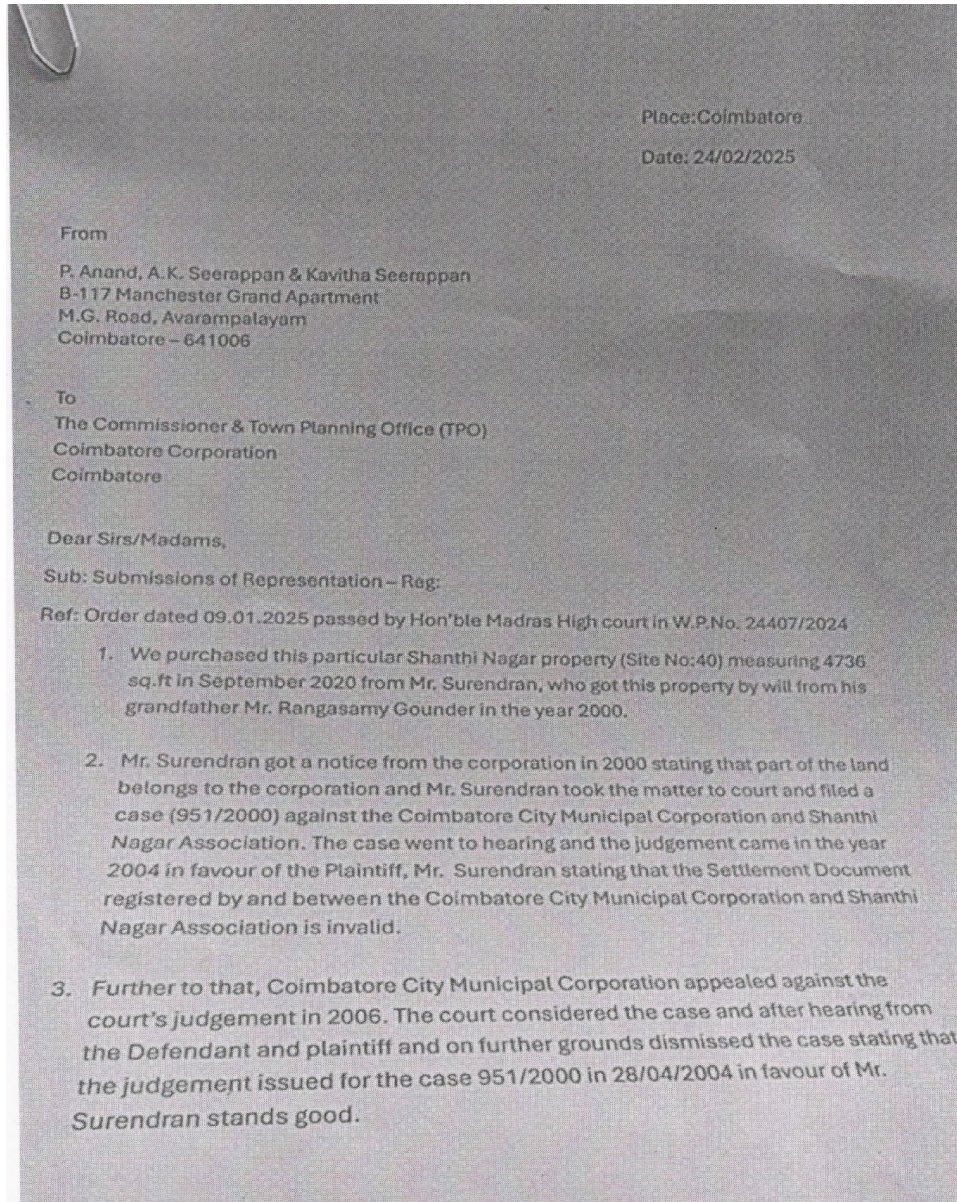
13. Though the above is the obtaining statutory position, we make a departure (making it clear that it will not serve as a precedent). We record that another representation dated 24.02.2025

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has been given by the first writ petitioner and a scanned reproduction of the same as placed before this Court by learned counsel for writ petitioners is as follows:





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When we approached with the idea of the purchasing the property, Mr. Surendran stated that the Corporation claims were not valid since the case by the Coimbatore City Municipal Corporation was dismissed and the Coimbatore City Municipal Corporation did not appeal the matter to the High Court against the judgement. He also stated that the time limit to appeal was lapsed, which convinced us.

With this trust, we purchased the property in 2020. But later, when we received the notice from the City Corporation, we were shocked and were put in lot of stress and had to appeal to the High Court to stop the Corporation order dated 09.08.2024.

We request you to kindly look at this case separately as this particular case is unique subject to different grounds and not to be looked at par with similar cases of this nature.

We request you to respect the adhere to court order 77/2006.

Please feel free to contact us for further clarification and do the needful in this regard.

Thanks

Kavitha Seerappan &

On behalf of P. Anand and A.K.Seerappan

14. Though we express our disapproval of such an approach of the writ petitioners, considering the facts and circumstances of the case and with the intention of ensuring that multiple tributary



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litigations do not emerge, we direct R2 (by making exception making it clear that it will serve as an exception and not as a precedent) to consider 24.02.2025 representation also.

15. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:

15.1 Impugned order signed by R2 on 27.03.2025 bearing reference Na.Ka.No.special/2025/H1(N) is set aside;

15.2 Impugned order is set aside on the sole point that representation dated 14.01.2025 (received by R2 office on 20.01.2025) has not been considered in its entirety. To put it differently, we have not expressed any view or opinion on the merits of the matter;

15.3 We now direct R2 to consider 14.01.2025 and 24.02.2025 representations (both scanned and reproduced supra) and pass orders afresh under proviso to Section 128(1)(b) of TNULB Act as expeditiously as the business of R2 would permit but in any event within eight weeks from today i.e., by 03.06.2025;



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15.4 The order made by R2 in the aforesaid manner shall be served on each of the writ petitioner under due acknowledgment within seven working days from the date of the order;

15.5 Though obvious we make it clear that coercive action (if any and if that be so) shall be subject to and depending on the orders to be made by R2 in the aforesaid manner.

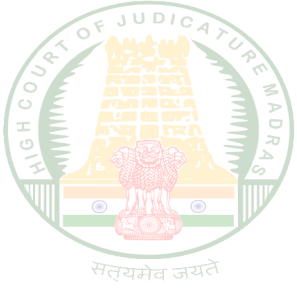
16. Captioned WP is disposed of in the aforesaid manner. As we have written that coercive action (if any and if that be so) shall be subject to orders to be made afresh by R2, captioned Writ Miscellaneous Petition (WMP) thereat has become otiose and the same is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
08.04.2025

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The District Collector,
Office of the District Collectorate,
Coimbatore.
- 2.The Commissioner,
Coimbatore Corporation,
Coimbatore.
- 3.The Town Planning Officer,
Coimbatore Corporation,
Coimbatore.

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

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