



WP No. 13733 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **12-06-2025**

Delivered on : **19.06.2025**

CORAM

THE HONOURABLE MR JUSTICE M. SUNDAR

AND

THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 13733 of 2025

AND

WMP.No.15424 of 2025

K.Thilagaraj

..Petitioner

Vs

The Commissioner,
Madurantakam Municipality,
Chengalpattu District.

..Respondent

Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of certiorarified mandamus, calling for the records relating to the order dated 03.04.2025 passed by the respondent herein in Na.Ka.No.61/2024/F1, quash the same and consequential direction, directing the respondent herein not to dispossess the petitioner from Door No.23/1, Old Taluk Office Road, Madurantakam Town & Taluk, Chengalpattu District situated in Survey No. 1008/1A Part and 1007/Part now Town Survey No.37, Block 40, Ward-A without due process of law.

For Petitioner: Mr.G.Magesh Kumar

For Respondent: Mr.P.Srinivas, Standing Counsel



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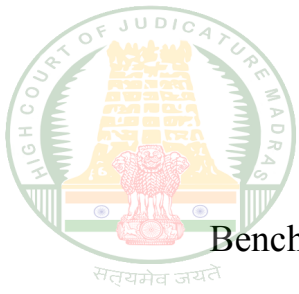
ORDER

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HEMANT CHANDANGOUDAR, J.

The petitioner challenges the order dated 03.04.2025, whereby he has been directed to remove the encroachment in T.S. No. 37, Block No. 40, Ward A, situated within the limits of Madurantakam Municipality. As per the Town Survey Land Register (TSLR), the said property corresponds to old Survey Nos. 1008/1A (part) and 1007 (part) (hereinafter referred to as “the property” for the sake of brevity).

2. The petitioner claims that his deceased father was in possession and enjoyment of the said property, and after his demise, the petitioner has been in possession and enjoyment thereof. He further states that he is an advocate by profession. According to the petitioner, the said property is classified as ‘Grama Natham’ in the revenue records. The respondent Municipality had issued an order dated 10.10.2024 directing the removal of the alleged encroachment on the said property. Being aggrieved, the petitioner filed W.P. No. 34445 of 2024 before this Court. The Division



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Bench of this Court, by order dated 26.11.2024, disposed of the writ petition with a clarification that the impugned order shall be treated as a show cause notice. The petitioner was preserved the right to submit a reply to the show cause notice, and upon such reply, if any, the respondent Municipality was preserved the right to pass appropriate orders under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as “the TNULB Act”).

3. Pursuant to the order passed by this Court, the petitioner submitted a representation to the respondent Municipality, stating that the said property is classified as Grama Natham and, therefore, the proceedings initiated by the respondent Municipality lack authority, as the provisions of the TNULB Act are not applicable. After considering the representation submitted by the petitioner, the respondent Municipality passed the impugned order.

4. Learned counsel for the petitioner advanced the following two-fold submissions:



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4.2. Secondly, it was submitted that Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023 mandates that in cases involving eviction from municipal land, the competent authority is required to proceed only in accordance with the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. Consequently, the impugned order passed by the respondent Municipality, without resorting to the procedure prescribed under the 1975 Act, is without legal authority and hence, is not legally sustainable in the eyes of law.



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5. 1 In response, Mr. P. Srinivas, learned Standing Counsel appearing for the respondent Municipality, submitted that the subject property has been classified as a Public Street in the Town Survey Land Register following the UDR (Updation of Revenue Records) process. He further contended that, even assuming for a moment that the property is classified as Grama Natham, it nonetheless falls within the ambit of the definition of a public place. Therefore, the petitioner's contention that Section 128(1)(b) of the TNULB Act cannot be invoked in respect of the said property is without merit.

5.2 He further submitted that Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023, being a piece of subordinate legislation, cannot override Section 128(1)(b) of the TNULB Act, which empowers the Commissioner to remove encroachments in relation to streets or public places. According to the learned counsel, the overlap referred to in Rule 319 pertains only to lands or buildings vested in or belonging to the Municipality, and not to public streets or places falling under Section 128.



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6. After considering the submissions of the learned counsel for both parties, the central issue that arises for consideration is:

Whether the impugned order passed by the respondent Municipality under Section 128(1)(b) of the TNULB Act is without authority?

7. Before delving into the issue, it is necessary to reproduce the relevant provisions of the TNULB Act and Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023.

TNULB Act:

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 of public place or the land.

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to or vested with the municipality] within the municipal limit, after issuing a show cause notice for such removal, returnable with a period of seven days from the date



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of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.

Rule 319:

“319. Occupation of a municipal land or building or of a land or building vested in the municipality without a licence or lease.—

If the occupation of a municipal land or building or of a land or building vested in the municipality is without a licence or lease, or continues beyond the period of the said licence or lease, the occupant shall be liable to be evicted under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Tamil Nadu Act 1 of 1976).”

8. A conjoint reading of the aforementioned provisions makes it abundantly clear that Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998 (TNULB Act) empowers the Commissioner to initiate proceedings for the removal of any immovable structure, whether permanent or temporary, that encroaches upon a street, public place, or land belonging to or vested in the Municipality, provided such property is situated within



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the municipal limits. The exercise of this power is, however, subject to the issuance of a show cause notice and consideration of any representation submitted in response thereto.

9. In contrast, Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023 is a procedural provision that specifically governs situations involving unauthorised occupation of municipal land or buildings, or land or buildings vested in the Municipality, regardless of whether such occupation arose through a licence, lease, or otherwise. The Rule mandates that such unauthorised occupants shall be evicted only in accordance with the procedure laid down under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

10. To put the legal position differently, Rule 319 is applicable only in cases where a person is in occupation of land or a building vested in or belonging to the Municipality—that is, property which is in the legal possession or ownership of the municipal body. It does not apply to cases where a person is found to be encroaching upon a public street or public



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place, which fall under the ambit of Section 128(1)(b). The statutory scheme, therefore, draws a clear distinction between unauthorised occupation of municipal property (governed by Rule 319 and the 1975 Act) and encroachment upon streets or public places (governed by Section 128 of the parent Act).

11. Another contention raised by the petitioner is that the impugned order refers to both Section 128 of TNULB Act and Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023, and therefore, according to the petitioner, the appropriate and exclusive remedy available to the respondent Municipality for evicting the petitioner was under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

12. This contention, however, is untenable and devoid of merit for the simple and well-settled legal principle that an order cannot be invalidated merely on the ground of erroneous or superfluous reference to a provision of law, so long as the authority passing the order is otherwise competent and the source of power can be legitimately traced to a valid statutory provision.



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removal of immovable structures encroaching upon a street or public place.

Even if the order incidentally or mistakenly refers to Rule 319, such reference does not vitiate the legality of the action, especially when the impugned order can be legitimately sustained under Section 128.

13. Moreover, it is a well-settled principle of statutory interpretation that in the event of any inconsistency or contradiction between a parent statute and the subordinate or delegated legislation framed thereunder, the provisions of the parent statute shall prevail. Subordinate legislation, such as rules, regulations, or notifications, is made under the authority delegated by the statute and must conform to the substantive provisions of the Act.

14. The petitioner has produced revenue records to support the contention that the subject property is classified as Grama Natham. In response, the respondent Municipality has placed on record an extract from the Town Survey Land Register (TSLR), which indicates that the subject



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property has been classified as a Public Street, pursuant to the Updation of Revenue Records (UDR) process.

15. It is not in dispute that the subject property is located within the municipal limits, and hence, the control, maintenance, and administration of the said property fall within the statutory responsibilities of the respondent Municipality. Accordingly, for the purposes of determining the nature and classification of the land, the TSLR entry reflecting the post-UDR status as a Public Street assumes greater evidentiary value, particularly in matters relating to municipal regulation and enforcement.

16. In light of the foregoing discussion and upon careful consideration of the rival submissions, we are of the considered view that the petitioner, having encroached upon a public street situated within the municipal limits, is not entitled to claim protection under Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023. The respondent Municipality, being vested with statutory authority under Section 128(1)(b) of the Tamil Nadu Urban Local Bodies Act, 1998, was well within its jurisdiction in



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issuing the impugned order for removal of the encroachment, after affording an opportunity to the petitioner to submit a reply to the show cause notice.

We, therefore, find no infirmity or illegality in the impugned action taken by the respondent Municipality.

17. Accordingly, we do not find any substance or merit in the present writ petition. The writ petition is, therefore, dismissed as being devoid of merit. There shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

[M.S.,J.] [H.C., J]

19 .06.2025

Index : Yes/

Internet : Yes

Neutral Citation : Yes

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To

The Commissioner,
Madurantakam Municipality,
Chengalpattu District.



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**M. SUNDAR, J.
and
HEMANT CHANDANGOUDAR, J**

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Pre-delivery order in
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