



W.P.No.17399 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.17399 of 2025

and

W.M.P. No.19723 of 2025 in W.P. No.17399 of 2025

A.Padmarajan

... Petitioner

Vs.

1.The Collector,
Thiruvannamalai District,
Thiruvannamalai.

2.District Revenue Officer,
Thiruvannamalai District,
Thiruvannamalai.

3.Tasildhar,
Arani Taluk, Arani,
Thiruvannamalai District – 632 301.

4.Commissioner,
Arani Municipality,
Arani, Thiruvannamalai District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the entire records of the final notice issued by the fourth respondent in Na.Ka.No.3034/2015/F1 dated 21.04.2025 and quash the same.

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For Petitioner : Mr.T.Sivagnanasambandan
For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader

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 *inter alia* assailing a 'final notice dated 21.04.2025 bearing reference Na.Ka.No.3031/2015/F1 issued by R4 [Commissioner, Arani Municipality]' (hereinafter 'impugned notice' for the sake of brevity, convenience and clarity).

2. Mr.T.Sivagnanasambandan, learned counsel on record for writ petitioner, advertng to the impugned notice, submitted that the impugned notice has been issued under Section 128(1) and (2) of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) but it has not called upon the writ petitioner to show cause in fifteen days. On the contrary, it straightaway calls upon the writ petitioner to remove



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alleged encroachment within seven days, is learned counsel's say.

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3. Issue notice.

4. Mr.T.K.Saravanan, learned Additional Government Pleader, accepts notice for all four respondents.

5. The scope of captioned main WP is substantially narrow, legal drill on hand is very limited and therefore, with the consent of learned counsel on both sides, main WP is taken up in the Admission Board.

6. Before we proceed further, we deem it appropriate to extract and reproduce Section 128 of TNULB Act in its entirety and the same 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***



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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 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.'

7. If the impugned notice is one under Section 128 of TNULB



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Act, as matter on hand pertains to immovable structure, writ petitioner should be given fifteen days time to respond to impugned notice and thereafter, R4 should pass an order (final orders) considering such response. To be noted, Section 128 of TNULB Act talks about 'Commissioner'. Sub-section (7) of Section 2 of TNULB Act, defines the term 'Commissioner' and the same reads as follows:

'2. Definitions. - In this Act, unless the context otherwise requires-

- (1)
- (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; '

8. A careful perusal of clause (a) of sub-section (7) of Section 2 of TNULB Act makes it clear that 'Commissioner of Municipal Corporation' is the 'Commissioner' within the meaning of TNULB Act. Therefore, the power of R4 to issue a notice under Section 128(1)(b) of TNULB Act is clear.



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9. In the light of the narrative thus far, we are of the considered view that it would be appropriate to take up the main WP and write that the impugned notice shall now be treated as a 'show cause notice' ('SCN' for the sake of brevity) under Section 128(1)(b) of TNULB Act enabling the writ petitioner to send a representation along with supporting documents (if so advised and if so desired) within fifteen days from today *i.e.*, by 17.06.2025 and that if the same is done, R4 shall pass final orders.

10. Accordingly, the following order is made:

- i. Impugned notice issued by R4 shall now be treated as a SCN under Section 128(1)(b) of TNULB Act;
- ii. Noticee/writ petitioner (if so advised and if so desired) shall send a representation within fifteen days from today, *i.e.*, on or before 17.06.2025;
- iii. If the writ petitioner/noticee does not send a representation within aforesaid timeline and if no other representation is received, it is open to the official respondents to proceed (post 17.06.2025) *qua* removal of immovable structure which is subject matter of impugned notice;



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- iv. If the writ petitioner/noticee sends a representation within aforesaid timeline, the same shall be considered and final orders shall be made as per proviso to Section 128(1)(b) of TNULB Act;
- v. Though obvious, we make it clear that any coercive action will be subject to / depending on final orders to be made by R4 *vide* proviso to Section 128(1)(b) of TNULB Act. We also make it clear that we have not expressed any view or opinion on the merits of the matter and therefore, R4, while passing final orders, shall do so untrammelled by the observations made in this order;
- vi. If the order made by R4 in the aforesaid manner is adverse to the writ petitioner, the same shall be kept in abeyance for a fortnight from the date of service of the order on the writ petitioner so as to provide a window to the writ petitioner to assail the said order (if permissible in law) or to seek judicial review of the order. If the writ petitioner does not do so within a fortnight from the date of service of the order, the order passed by R4 will be resuscitated and put into motion. If the order is in favour of the writ petitioner, that will be the curtains on the matter.



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11. Captioned WP stands disposed of with the aforementioned observations and directives in the aforesaid manner. Consequently, captioned writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
03.06.2025

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

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Thiruvannamalai District,
Thiruvannamalai.
- 2.The District Revenue Officer,
Thiruvannamalai District,
Thiruvannamalai.
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Thiruvannamalai District – 632 301.
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**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

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