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*W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **T.VINOD KUMAR**

W.P.Nos.18101 and 28379 of 2025
and
W.M.P. No.20252 of 2025 in W.P. No.18101 of 2025
and
W.M.P. No.31775 of 2025 in W.P. No.28379 of 2025
and
Cont. P. No.685 of 2025

R.Josephine	..	Petitioner in W.P. No.18101 of 2025
P.J.Josephine	..	Petitioner in W.P. No.28379 of 2025
Shanthi Nagar Residents Welfare Association, 15/15F, Shanthi Nagar 2 nd Street, Krishnagiri – 635 001 rep. By its Secretary J.Rathinamani	..	Petitioner in Cont. P. No.685 of 2025

Vs.



*W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025*

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1.The District Collector,
Krishnagiri,
Krishnagiri – 635 115.

2.The Commissioner,
Krishnagiri Municipality,
Krishnagiri – 635 115.

... Respondents in
both WPs

1.Thiru.Dinesh Kumar, I.A.S.,
The District Collector,
Office of the District Collector,
Krishnagiri District,
Krishnagiri – 635 001.

2.Thiru.T.Krishnamoorthy,
The Commissioner,
Krishnagiri Municipality,
Krishnagiri.

... Respondents in
Cont. P. No.685 of 2025

Prayer in W.P. Nos.18101 and 28379 of 2025: Writ Petitions

filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pertaining to the proceedings in Na.Ka.No.2751/21/F1 dated 02.05.2025 and Na.Ka.No.2151/2021/F1 dated 18.07.2025 respectively issued by the second respondent and quash the same.



*W.P.Nos.18101 and 28379 of 2025
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Prayer in Cont. P. No.685 of 2025: Contempt Petition filed under Section 11 of The Contempt of Courts Act, 1971 to punish the respondents for the wilful disobedience of the orders passed by this Court in W.P.No.13203 of 2022 dated 08.02.2024.

For Petitioner : Mr.V.Subramanian
in both WPs

Mr.D.Ashok Kumar
in Cont. P. No.685 of 2025

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 in both WPs
and Cont. P. No.685 of 2025

Mr.T.Balaji,
Standing Counsel for R2
in both WPs
and Cont. P. No.685 of 2025

COMMON ORDER

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

This common order will govern the captioned main two 'Writ Petitions' [hereinafter 'WPs' for the sake of brevity] and captioned 'Writ Miscellaneous Petitions' (hereinafter 'WMPs' for the sake of brevity) and captioned Contempt Petition.

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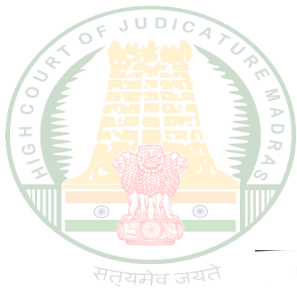


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2. Mr.V.Subramanian, learned counsel on record for writ petitioner in both WPs, Mr.D.Ashok Kumar, learned counsel for petitioner in captioned contempt petition, Mr.T.K.Saravanan, learned Additional Government Pleader for R1 in the captioned WPs and contempt petition and Mr.T.Balaji, learned standing counsel for R2 in the captioned WPs and contempt petition are before us and with the consent of learned counsel, main two WPs and main Contempt Petition were taken up and heard out.

3. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 30.07.2025. A scanned reproduction of the same is as follows:



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W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025

WP No. 28379 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-07-2025

CORAM

THE HONOURABLE MR JUSTICE M. SUNDAR
AND
THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 28379 of 2025
&
W.M.P.No.31775 of 2025

P J Josephine
W/o. John Richard, Door No. 17/5
Rayappa Mudalis Treet,
Krishnagiri 635 001.

... Petitioner(s)

Vs

1. District Collector
Krishnagiri,
Krishnagiri District -635 115.

2.The Commissioner
Krishnagiri Municipality,
Krishnagiri - 635 115.

...Respondent(s)

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W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025

WP No. 28379 of 2025

For Petitioner(s): Mr.V.Subramanian

For Respondents: Mr.T.K.Saravanan
Additional Government Pleader for R1

Mr.T.Balaji
Standing counsel for R2

ORDER

(Order of the Court was made by M.Sundar., J.)

This is round four qua writ jurisdiction as regards subject matter of captioned writ petition. The details of the earlier writ petitions in a tabulation is as follows:

Sl.No.	Writ Petition Number	Prayer and other details	Status
1	W.P.No.13203 of 2022	Filed by one Shanthi Nagar Residents Welfare Association with 'Removal of Encroachment' ['RoE'] for the sake of brevity] qua T.S.No.29 in Krishnagiri Town	Disposed of by another Division Bench vide order dated 08.02.2024 <i>inter alia</i> recording the stated position of the Municipality that encroachments will be removed within two weeks

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W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025

WP No. 28379 of 2025

Sl.No.	Writ Petition Number	Prayer and other details	Status
2	W.P.No.29664 of 2024	Filed by writ petitioner in captioned writ petition (Ms.Josephine) assailing a notice dated 23.09.2024 issued by R2 and calling upon the writ petitioner to remove encroachment within seven days	Disposed of on 14.10.2024 by one another Division Bench <i>inter alia</i> quashing 23.09.2024 notice on the ground that R2 (Commissioner of Municipality) before us does not have jurisdiction
3	W.P.No.18101 of 2025	Writ petitioner before us (Josephine) assailed a notice dated 02.05.2025 issued by R2 before us. No provision of law mentioned but notice calls upon the writ petitioner to remove encroachment.	Vide 14.05.2025 order, Vacation Bench, a) granted interim order which is operating and b) directed W.P.No.18101 of 2025 to be posted along with C.P.No.685 of 2025

2. Mr.T.Balaji, learned Standing counsel for R2 submits that afore-referred 02.05.2025 notice, which has been assailed vide W.P.No.18101 of 2025 has since been withdrawn. This submission is recorded.



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WP No. 28379 of 2025

3. Now the following points are made:

i) Writ petitioner counsel advertg to TSLR Extract

[Extract from the Town Survey Land Register] submits that writ petitioner has put up a dwelling house in 'Old S.No.772/P, Ward A, Kattikanapallai, Boganapalli, Krishnagiri Town, Krishangiri Taluk and Krishangiri District' [hereinafter 'said writ petitioner's land' for the sake of brevity and convenience] and not in 'T.S.No.29, Krishangiri District' [hereinafter 'said land' for the sake of brevity].

ii) The correlation between S.No.772/P and T.S.No.29

(if any) is not readily available before us today.

4. Issue notice.



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& Cont. P.No.685 of 2025

WP No. 28379 of 2025

5. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 and Mr.T.Balaji, learned Standing counsel accepts notice for R2.

6. The Judicial order made on 14.05.2025 reads as follows:

W.P.No.18101 of 2025



G.R.SWAMINATHAN, J.
and
V.LAKSHMINARAYANAN, J.

(Order of the Court was made by
G.R.SWAMINATHAN, J.,)

Admit.

2. Mr.L.S.M.Hasan Fizal, learned Additional
Government Pleader, accepts notice for R1.
Mr.T.Balaji, learned counsel, accepts notice for R2.
Post along with Cont P.No.685 of 2025.

[G.R.S.,J.] [V.L.N.,J.]
14.05.2025
(1/3)

7. List captioned WP and captioned WMP thereat along with
W.P.No.18101 of 2025 along with WMP/WMPs thereat and Contempt
Petition No.685 of 2025 day-after-tomorrow in the Admission Board i.e.,
Motion List.

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W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025

WP No. 28379 of 2025

8. The impugned notice in the captioned WP refers to Section 128 of 'Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' {hereinafter 'TNULB Act' for the sake of brevity} and *prima facie* case regarding jurisdiction made out. Therefore, there shall be an order of interim stay as prayed for in captioned W.M.P.No.31775 of 2025 until further order.

List on 01.08.2025.


[M.S.,J.] 
[H.C.,J.]
30-07-2025

gpa

To

1. The District Collector
Krishnagiri, Krishnagiri District 635 115.

2. The Commissioner
Krishnagiri Municipality, Krishnagiri 635 115.



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4. The aforereferred 30.07.2025 proceedings/order shall now be read as an integral part and parcel of this order. This also means that the short forms, abbreviations and short references used in the earlier proceedings/order will continue to be used in the instant order also for the sake of convenience and clarity.

5. The aforereferred proceedings captures factual matrix in a nutshell, gives the list of earlier matters and the trajectory the captioned matters have taken thus far. It also captures the bone of contention. Therefore, we are not dilating on the same again.

6. We shall first deal with captioned W.P.No.18101 of 2025 and W.M.P.No.20252 of 2025 thereat as the legal drill is simple and straight forward. The reason is W.P.No.18101 of 2025 has been filed with a prayer seeking issue of writ of certiorari assailing a notice dated 02.05.2025 bearing reference Na.Ka.No.2751/21/F1 made by R2 thereat i.e., Commissioner of Krishnagiri Municipality. Mr.T.Balaji, learned counsel for Commissioner, Krishnagiri Municipality submits that this 02.05.2025 notice bearing reference Na.Ka.No.2751/21/F1 stands withdrawn. We record this stated position and give a closure to



W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025

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captioned W.P. No.18101 of 2025 and W.M.P. No.20252 of 2025 thereat without expressing any opinion or view on the merits of the matter one way or the other.

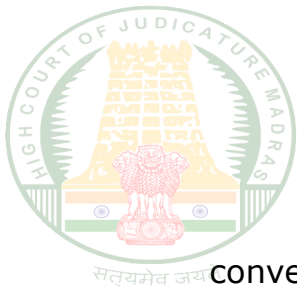
7. As regards W.P.No.28379 of 2025 and W.M.P. No.31775 of 2025 thereat are concerned, Mr.V.Subramanian, learned counsel for writ petitioner vehemently contended that R2 thereat i.e., Commissioner of Krishnagiri Municipality lacks jurisdiction to issue 'notice dated 18.07.2025 bearing reference Na.Ka.No.2151/2021/F1' (hereinafter 'impugned 128 notice' for the sake of convenience and clarity). The fulcrum of argument of learned counsel is impugned 128 notice has been issued on the premise that T.S.No.29 is a waterbody i.e., tank and if that be the case, proceedings can be initiated only under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' [hereinafter 'Tanks Act' for the sake of brevity]. Furthering his argument in this direction, learned counsel placed reliance on an earlier order made by a Division Bench of this Court to which one of us (M.Sundar, J) was a party i.e., **Prabhujothi case** being order dated 09.12.2024 in W.P.No.35063 of 2024 wherein the question as to whether a distinction



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can be made *inter se* waterbodies by saying that waterbodies irrigating less than 40 hectares will stand governed by 'The Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' {hereinafter 'TN Panchayats Act' for the sake of convenience and clarity} by PWD Code ('PWD' denotes 'Public Works Department'). This Court took the view that TN PWD Code cannot supersede Statute or Rules. To be noted, though learned counsel for writ petitioner has placed before us a compilation dated 01.08.2025 consisting of two orders only ***Prabhujothi case*** was pressed into service. We are of the considered view that ***Prabhujothi case*** does not come to the aid of the writ petitioner in his campaign qua proposition that Commissioner lacks authority/jurisdiction to issue a notice under Section 128 with regard to tank. First reason is, in ***Prabhujothi case***, the question was whether a Statute or Rules made thereunder cannot be amended much less superseded by TN PWD Code by saying that waterbodies irrigating less than 40 hectares will be governed by another statute (Tamil Nadu Panchayats Act) and not Tanks Act. The second point is ***Prabhujothi case*** was rendered on 09.12.2024 prior to 06.01.2025 when 'Tamil Nadu Urban Local Bodies (Second Amendment) Act, 2024 [Act 25 of 2024]' kicked in (hereinafter 'TNULB Amending Act' for the sake of



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convenience and clarity). In and vide Section 25 of TNULB Amending Act, Section 128 of TNULB Act has been amended and the amended Section 128 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 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



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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.'

*(underlining and double underlining
made by this Court for ease of
reference and emphasis)*

8. A careful perusal of aforesaid Section 128 as obtaining today (on and from 06.01.2025) makes it clear that ***Prabhujothi case*** though on a different point (as alluded to supra) cannot be relied on at all for the proposition that is being canvassed by learned counsel as post ***Prabhujothi case***, other waterbodies, tank and other water resources have been brought within the statutory ambit of Section 128 on and from 06.01.2025. This reason is clear as day light as the amended Section 128 makes it clear that Commissioner can resort to Section 128 with regard to waterbodies and tanks too.

9. Therefore, it is clear that on and from 06.01.2025, Commissioner of local body and officer of Public Works Department



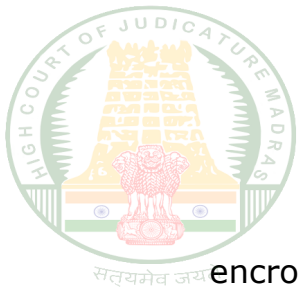
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within the meaning of sub-section (2) of Section 6 of Tanks Act have concurrent jurisdiction. In the light of the discussion and dispositive reasoning, we have no hesitation in writing that the argument that Commissioner lacks jurisdiction to resort to Section 128 with regard to tanks is no argument and deserves to be rejected. To be noted, as already alluded to supra, impugned 128 notice is clearly post 06.01.2025 as it is dated 18.07.2025.

10. Our other reason is, Section 11 of Tanks Act makes it clear that the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force. Therefore, it does not override TNULB Act.

11. Reverting to the case on hand, we find that impugned 128 notice is not happily worded. The reason is Section 128, more particularly the language in which Section 128(1)(b) is couched makes it clear that the noticee should be given an opportunity to show cause. Noticee should be given fifteen days (post 06.01.2025) to show cause. On the contrary, the impugned 128 notice though gives 15 days time, calls upon the noticee/writ petitioner to directly remove the



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encroachment without show causing him. Therefore, we are of the considered view that it will serve the ends of justice if we write that the impugned 128 notice shall now be construed as Show Cause Notice (SCN) within the meaning of Section 128(1)(b) of Amended TNULB Act and that the noticee/writ petitioner is given 15 days time from today i.e., upto 15.08.2025 to show cause and therefore direct the Commissioner to pass 'final orders' after considering the representation/response of writ petitioner vide proviso to Section 128(1)(b).

12. The above means that the time line mentioned by the learned State counsel which has been recorded in the 08.02.2024 order in W.P. No.13203 of 2022 made by another Hon'ble Division Bench now stands altered. The sequitur of the timeline standing altered is, the contempt petition deserves to be closed for the present.

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



W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025

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13.1 Impugned 128 notice (impugned in W.P. No.28379 of 2025) being notice dated 18.07.2025 bearing reference Na.Ka.No.2151/2021/F1 shall now be construed as SCN within the meaning of Section 128(1)(b) of Amended TNULB Act;

13.2 The writ petitioner/noticee shall now have 15 days time i.e., time upto 15.08.2025 to respond to the aforereferred SCN and send a representation;

13.3 The writ petitioner in W.P. No.13203 of 2022 viz., Shanthi Nagar Residents Welfare Association rep. By its Secretary Mr.J.Rathinamani is also at liberty to send a representation as proviso to Section 128(1)(b) talks about 'any representation' but this representation also shall be sent within 15 days from today i.e., on or before 15.08.2025;

13.4 In the representation, if issues regarding correlation of survey or localising the above waterbody



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W.P.Nos.18101 and 28379 of 2025
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qua T.S. No.29 are raised, it is open to the Commissioner to resort to a joint survey after putting on notice the writ petitioner in W.P. No.28379 of 2025 as well as W.P. No.13203 of 2024, by the revenue authorities. This directive is owing to the peculiar facts and circumstances of the case and therefore this limb of the directive will not serve as a precedent in all and every case;

13.5 Thereafter, the Commissioner shall pass 'final orders' within the meaning of proviso to Section 128(1)(b) by taking into account the representation of the writ petitioners and/or any other person as proviso to Section 128(1)(b) makes it clear that any representation has to be considered and final orders has to be made;

13.6 Coercive action (if any and if that be so) qua writ petitioner Ms.Josephine shall be subject to and depending on the outcome of the 'final orders' to be made by the Commissioner under proviso to Section 128(1)(b).



W.P.Nos.18101 and 28379 of 2025
& Cont. P.No.685 of 2025

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14. Captioned two WPs are disposed of as closed *albeit* with aforementioned directives, observation and preservation of rights. Captioned contempt petition is disposed of as closed for the present and therefore the respondents will stand purged of contempt. In the light of this Court making it clear that coercive action (if any and if that be so) will be subject to 'final orders' to be made by the Commissioner of Krishnagiri Municipality under proviso to Section 128(1)(b), captioned WMPs pale into insignificance and the same are disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (T.V.K.,J.)
01.08.2025

Index : Yes / No
Neutral Citation : Yes / No
mmi

To

1.The District Collector,
Krishnagiri,
Krishnagiri – 635 115.

2.The Commissioner,
Krishnagiri Municipality,
Krishnagiri – 635 115.

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**M.SUNDAR, J.,
and
T.VINOD KUMAR, J.,**

mmi

**W.P.Nos.18101 and 28379 of 2025
and Cont. P. No.685 of 2025**

01.08.2025