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W.P.No.18317 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2025

CORAM

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

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.18317 of 2025

and

W.M.P.No.20522 of 2025

R.Kalyani

W/o.M.Rajendran

... Petitioner

VS.

The State

Rep. by the Commissioner

Mettur Municipality

Mettur Dam

Salem District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, challenging the impugned order dated 06.05.2025 vide proceedings Na.Ka.No.4484/2022/EP1 which was issued by the respondent herein and to quash the same and consequently, direct the respondent not to disturb the possession of the property of the petitioner at T.S.No.20 in Mettur Municipality, Mettur Dam without following the due process of law.



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For Petitioner : Mr.R.Thirumoorthy
For Respondent : Mr.T.K.Saravanan
Additional Government Pleader

ORDER

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

Subject matter of captioned 'writ petition' [hereinafter 'WP' for the sake of brevity] is alleged encroachment in 'Ward No.A, Block No.31, T.S.No.20, Mettur Municipality, Mettur Dam' [hereinafter 'said land' for the sake of convenience and clarity].

2. Captioned WP *inter alia* impugns 'a notice dated 06.05.2025 issued by the respondent (Commissioner, Mettur Municipality, Mettur Dam)' [hereinafter 'impugned notice' for the sake of convenience and clarity] under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' [hereinafter 'the TNULB Act' for the sake of brevity]. By the impugned notice, the petitioner has been *inter alia* directed to remove the alleged encroachment made by her in the said land.



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3. Mr.R.Thirumoorthy, learned counsel on record for the writ petitioner and Mr.T.K.Saravanan, learned Additional Government Pleader for the respondent are before us.

4. Before we proceed further, we deem it appropriate to extract and reproduce Section 128 of the TNULB Act (in its entirety) as it stands today and the same reads as under:

'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.

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



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reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year.'

(underlining made by us for ease of reference)

5. Though the impugned notice reads that the impugned notice is one under Section 128 of TNULB Act, as matter on hand pertains to immovable structure, writ petitioner should be given 15 days time to respond to impugned notice and thereafter, the respondent should pass final orders considering such response. However, the impugned notice straightaway calls upon the writ petitioner to remove the alleged encroachment.

6. In such view of the matter, the impugned notice is directed to be treated as a 'show cause notice' ('SCN') served on the writ petitioner today and the petitioner shall send a response to the impugned notice within a period of fifteen days from today, i.e., on or before 02.07.2025. The response to be sent by the petitioner shall be considered and final order shall be passed by the respondent on its own merits and in accordance with law within a period of two weeks therefrom *i.e.*, on or before 16.07.2025. Further, the final order so passed shall be served on the writ petitioner within a period of five working days from the date of the final order. If the



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final order to be passed by the respondent is going to be adverse to the writ petitioner, the same shall be kept in abeyance for a fortnight from the date of service of the final 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 said order. If the writ petitioner does not do so within a fortnight from the date of service of the said order, the final order so passed by the respondent will be resuscitated and put into motion. If the final order to be passed by the respondent ends up in favour of the writ petitioner, that would be curtains on the matter.

7. Captioned WP stands disposed of in the aforesaid manner. Consequently, captioned writ miscellaneous petition stands disposed of as closed. There shall be no order as to costs.

(M.S.J.,)

(H.C.J.,)

18.06.2025

Index : Yes / No

Neutral Citation : Yes

Speaking / Non-speaking

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

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To

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