



W.P.No.28032 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2025

CORAM

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

and

THE HONOURABLE MR. JUSTICE **HEMANT CHANDANGOUDAR**

**W.P.No.28032 of 2025**

**and**

**W.M.P. Nos.31420 and 31421 of 2025 in W.P.No.28032 of 2025**

M.Vijayan

Petitioner

vs.

The Commissioner,  
Coimbatore Municipality,  
Coimbatore District.

Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the file of the respondent in proceedings Na.Ka.No.4875/2025 H.1(M) dated 11.06.2025 and quash the same as illegal, incompetent and without jurisdiction.

|                |    |                                                                   |
|----------------|----|-------------------------------------------------------------------|
| For Petitioner | .. | Mr.M.Ashwin Kumar<br>of M/s.Sarvabhauman Associates<br>(Law Firm) |
| For Respondent | .. | Mr.D.Ferdinand,<br>Standing Counsel                               |



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## 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 seeking issue of a writ of certiorari assailing the 'proceedings dated 11.06.2025 bearing reference Na.Ka.No.4875/2025 H.1(M) made by Town Planner, Coimbatore Corporation'. This proceedings shall hereinafter be referred to as 'impugned proceedings' for the sake of brevity, convenience and clarity.

2. The impugned proceedings alleges that the writ petitioner has caused encroachment in OSR land (OSR - Open Space Reservation) set apart for children play area in CK colony which is situate in Survey Ward No.K(11), Block No.36, T.S.Nos.1279/44, 1279/43, 1279/42, 1279/69, 1279/20, 1279/21, Ward No.48 of Central Zone, Coimbatore District.

3. Short point is the mechanism put in place vide Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)'



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[hereinafter 'TNULB Act' for the sake of brevity] more particularly Section 128(1)(b) and the proviso thereat has not been adhered to.

4. Issue notice.

5. Mr.D.Ferdinand, learned standing counsel for Coimbatore Corporation accepts notice for respondent and submits that the writ petitioner was called upon to produce documents in and by a communication dated 21.04.2025 (cited as No.1 in the impugned proceedings) and the impugned proceedings came to be made thereafter.

6. We find that the scope of the main WP is very limited and therefore with the consent of learned counsel on both sides, main WP is taken up in the Admission Board.

7. We carefully considered the impugned proceedings and the rival submissions.

8. In the impugned proceedings, Reference No.2 talks about a summon for enquiry dated 29.04.2025 but learned counsel for writ petitioner submits that no such enquiry notice was received by the writ



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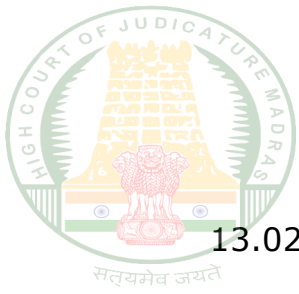
petitioner.

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9. The impugned proceedings refers to three orders as Reference Nos.3, 4 and 5 and they are (i) order of Madras High Court dated 12.04.2007 made in W.A.Nos.156 of 2000 and 45 of 2003 (Reference No.3), (ii) order of Hon'ble Supreme Court dated 13.02.2023 made in Civil Appeal No.1890-91/2010 (Reference No.4) and (iii) order of Madras High Court dated 04.01.2010 made in W.P.Nos.23980 of 2005 and 25371 of 2002 (Reference No.5).

10. As regards Reference No.3, order dated 12.04.2007 made in W.A.Nos.156 of 2000 and 45 of 2003, the same has been reported in **(2007) 3 MLJ 990 [Sri Devi Nagar Residences Welfare Assn. Vs. Subbathal]**. That does not pertain to the writ petitioner but it emphasises the importance of public parks and the general principle that an area set apart for development of public parks as per the approved layout cannot be used or transferred for other purposes. Obviously there can be no quarrel over this general proposition.

11. As regards order of Hon'ble Supreme Court dated



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13.02.2023 made in Civil Appeal No.1890-91/2010 (Reference No.4 according to the impugned proceedings) emphasizes the aforereferred principle. The order dated 04.01.2020 made in W.P.Nos.23980 of 2005 and 25371 of 2002 (Reference No.5 in the impugned proceedings) emphasises aforereferred principle and says that reservation under the sanctioned lay out creates an obligation qua the owner of the land and the Corporation in the nature of a trustee to protect the interest of public.

12. We have referred to the aforereferred orders as the same have been cited and mentioned in the impugned proceedings and this has been done with the intention of capturing details of the impugned order and obtaining position completely and comprehensively.

13. Reverting to the challenge to the impugned proceedings, we find that 21.04.2025 notice calling upon the writ petitioner to produce documents has been issued by the City Planner of Coimbatore Corporation resorting to The Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) and it is clearly not a show cause notice (SCN) within the meaning of Section 128 much less Section 128(1)(b) of TNULB Act.

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14. Be that as it may, the concluding paragraph of the impugned proceedings says that Section 128 will be resorted to but in the same breath it also says that encroachment would be removed without show causing the writ petitioner.

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

*15.1 Impugned proceedings is neither dislodged nor sustained on merits but it is now left open to be met by the writ petitioner when the sole respondent issues a SCN under Section 128(1)(b) of TNULB Act;*

*15.2 Sole respondent shall issue a SCN under Section 128(1)(b) of TNULB Act as expeditiously as the business of sole respondent permits but in any event within three weeks from today i.e., on or before 19.08.2025;*

*15.3 SCN shall give fifteen days time to the writ petitioner to respond (as mandated in the proviso itself);*



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*15.4 If the writ petitioner responds to the  
aforereferred SCN, the same shall be considered by the  
sole respondent and 'final orders' within the meaning of  
proviso to Section 128(1)(b) of TNULB Act shall be made;*

*15.5 'Final orders' made in the aforesaid manner shall  
be served on the writ petitioner under due  
acknowledgment within seven working days from the date  
of the final orders;*

*15.6 Coercive action (if any and if that be so) will be  
subject to and depending on the final orders to be made  
by the sole respondent in the aforesaid manner;*

*15.7 All the rights and contentions of writ petitioner  
are preserved to respond when show caused and that will  
include contentions raised in the captioned main WP.*

16. Captioned main WP is disposed of in the aforesaid manner  
with aforementioned directives, observations and preservation of



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rights. In the light of the directive of this Court regarding coercive action (if any and if that be so), captioned WMPs for injunction and stay have become otiose and the same are disposed of as closed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)  
29.07.2025

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

The Commissioner,  
Coimbatore Municipality,  
Coimbatore District.

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

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