



WEB COPY

W.P.No.23819



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

AND

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUNDAR

W.P. No.23819 of 2025 and W.M.P.No.26807 of 2025

A. Andrew Carol

Petitioner

vs.

1. The Commissioner
Coimbatore Corporation
Town Hall
Coimbatore 641 001

2. The Town Planner
Coimbatore Corporation
Town Hall
Coimbatore 641 001

Respondents

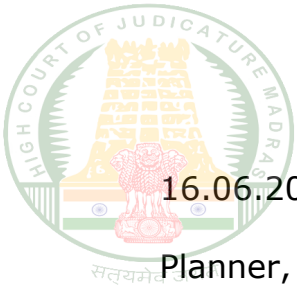
Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pertaining to the impugned notice dated 16.06.2025 under reference no.7905/2024/H1/S issued by the second respondent and quash the same as illegal.

For petitioner Mr. A.E. Ravichandran
For respondents Mr. N. Velmurugan
 Standing Counsel

ORDER

(made by M. SUNDAR, J.)

Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed praying for issue of a writ of certiorari *qua* a 'notice dated



16.06.2025 bearing reference No.7905/2024/H1/S issued by R2 (Town Planner, Coimbatore Corporation)' [hereinafter 'impugned notice' for the sake of convenience and clarity].

2. Mr. A.E. Ravichandran, learned counsel for writ petitioner, adverting to the impugned notice, submits that impugned notice is addressed to one Pushpalatha; that Pushpalatha is writ petitioner's spouse; that impugned notice does not call upon noticee to show cause and therefore, it is not a show cause notice (SCN), much less a show cause notice within the meaning of Section 128(1)(b) of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' [hereinafter 'TNULB Act' for the sake of brevity], though the impugned notice, in the caption, specifically refers to Section 128(1)(b) of the TNULB Act.

3. Issue notice to respondents.

4. Mr. N. Velmurugan, learned Standing Counsel for Coimbatore Corporation, accepts notice for both respondents and submits, on instructions, that land set apart for public purpose has been encroached upon by noticee *qua* impugned notice and the writ petitioner, by putting up a



residential house which is hindering traffic and causing hazard to public health.

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5. A perusal of the case file, in the light of the eco system *i.e.*, scheme of statute *qua* the TNULB Act, we find that the matter turns on short technical points. Therefore, with the consent of learned counsel for both sides, captioned main WP was taken up and heard out.

6. After hearing out the captioned main WP, we have no hesitation in writing that the impugned notice deserves to be dislodged (set aside) by issuing a writ of certiorari and the reasons are as follows:

(i) Section 128 of the TNULB Act, as amended *vide* Tamil Nadu Act 35 of 2022 with effect from 13.04.2023, 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



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within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of 15 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.'

The impugned notice straightaway calls upon the noticee to remove the alleged encroachment within 15 days without calling up the noticee to show cause in 15 days. To be noted, if the noticee responds to the SCN by way of a representation, R1 (Commissioner) should pass 'final orders' by 'considering' representation. The impugned notice not being an SCN and being a notice which straightaway calls upon the noticee to remove the alleged encroachment in 15 days is clearly not in conformity with Section 128(1)(b) of the TNULB Act, though the caption to the impugned notice refers to Section 128(1)(b); and

(ii) The impugned notice has been issued by R2. A careful perusal of Section 128 makes it clear that power of



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resorting to Section 128 is vested in the 'Commissioner'. The word 'Commissioner' is a term of art, *i.e.*, a defined term defined *vide* Section 2(7) of the TNULB Act which 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 Office of the Town Panchayat;'

In the case on hand, we are concerned with Section 2(7)(a). R2, indisputably, is not 'Commissioner' with the meaning of the TNULB Act. This takes us to the question as to whether 'Commissioner' has delegated his powers to holder of any municipal office. In this regard, sub-section (4) of Section 57 of the TNULB Act is relevant and the same reads as follows:

- '57. Power of Commissioner of Municipality.--- (1)
- (2)
 - (3)
 - (4) The Commissioner may delegate any of the powers, duties or functions conferred or imposed upon or vested in him by or under this Act to the holder of any municipal office in accordance with such guidelines as may be prescribed.'



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'Municipal Office' is also a term of art *i.e.*, a defined term the same having been defined by sub-section (21) of Section 2 of the TNULB Act which reads as follows:

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

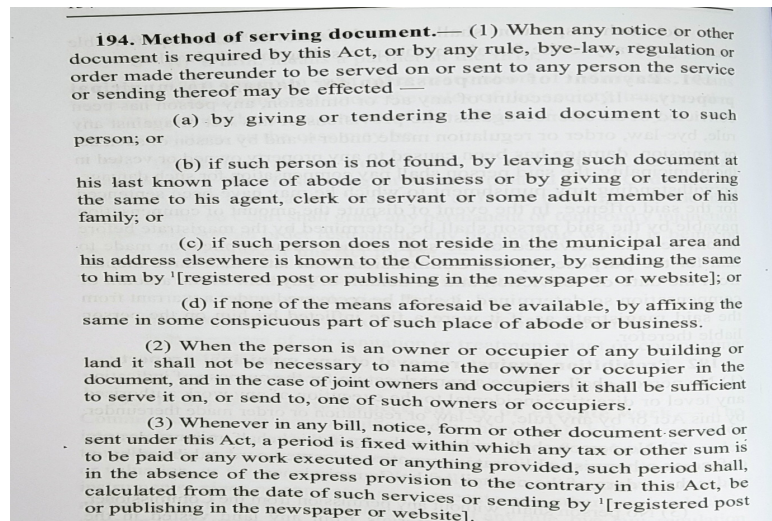
- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)
- (11)
- (12)
- (13)
- (14)
- (15)
- (16)
- (17)
- (18)
- (19)
- (20)
- (21) "municipal office" means the principal office of the municipality'

In the case on hand, we leave open the question as to whether R2 qualifies as 'holder of any municipal office' within the meaning of Section 57(4) and as to whether R1 has delegated his powers under Section 128 to R2 in accordance with Section 57(4). The reason why we are embarking upon this is, even on an extreme demurrer *i.e.*, even if there is a delegation and even if R2 qualifies as 'holder of municipal office', the impugned notice is not an SCN within the meaning of Section 128 of the TNULB Act.



7. Before writing the operative part of this order, this Court deems it appropriate to advert to Section 194 of the TNULB Act as learned counsel for writ petitioner submits that the impugned notice has straightaway been affixed though the noticee as well as writ petitioner is available for service. In this regard, learned Standing Counsel for respondents enters upon a contestation and submits that affixture became imperative.

8. This Court, without entering upon an adjudication *qua* this contestation, deems it appropriate to write that it will suffice to further write that if another SCN under Section 128 of the TNULB Act is issued, the same shall be served by adhering to Section 194 of the TNULB Act, a scanned reproduction of which is as follows:





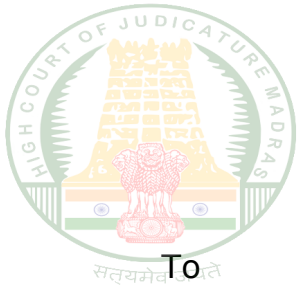
9. This Court has taken judicial notice of the obtaining position that the language in which Section 194 is couched, makes it clear that it applies to service of 'any notice' or 'other document'. An SCN under Section 128 will obviously qualify as 'any notice'.

10. This Court also deems it appropriate to write that all the rights and contentions of the respondents are preserved to issue an SCN afresh by a competent authority with regard to the same subject matter, if so advised and if so desired. If a fresh SCN is issued, all the rights and contentions of the noticee/writ petitioner stand preserved for sending a representation and with regard to final orders to be made after considering the representation.

11. *Ergo*, the sequitur is, captioned main WP is allowed by issue of a writ of certiorari quashing the impugned notice dated 16.06.2025 bearing reference No.7905/2024/H1/S issued by R2, albeit with preservation of rights and contentions in the manner set out *supra*. Consequently, captioned writ miscellaneous petition thereat has become otiose and the same is disposed of as closed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
01.07.2025

cad
Index : Yes/No
NC : Yes



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To

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Coimbatore Corporation
Town Hall
Coimbatore 641 001
2. The Town Planner
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M. SUNDAR, J.

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HEMANT CHANDANGOUDAR, J.

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