



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-08-2025

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THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 2820 of 2025

1. B.Mahalakshmi
W/o. Balakrishnan, Res. at No.371 D,
Tiruvallur Street, Periyar Nagar,
Vyasarpadi, Chennai - 039.

2.N. Balakrishnan
S/o. Narasimmalu, Res. at No.371 D,
Tiruvallur Street, Periyar Nagar,
Vyasarpadi, Chennai - 039.

Petitioner(s)

Vs

1. The Commissioner
Greater Chennai Corporation, Rippon
Building, Chennai - 003.

2.The Zonal Officer
Greater Chennai Corporation, Zone
No.4, No.266, Tiruvottiyur High Road,
Chennai - 021.

3.The Assistant Engineer
Greater Chennai Corporation, No.55,
Nattal Garden, 2nd Street, Ward No.44,
Division NO.11, Zone No.4, Perambur,
Chennai - 011.

Respondent(s)



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PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order passed in OS SR No.7138 of 2025 dated 27.06.2025 on the file of the I Assistant City Civil Court, Chennai by allowing the present CRP.

For Petitioner(s): Mr.P.Satheesh Kumar

For Respondent(s): Mr.A.C.Manibharathi
Standing Counsel
For Corporation Of Chennai

ORDER

The Civil Revision Petition has been filed to set aside the order passed in OS SR No.7138 of 2025 dated 27.06.2025 on the file of the I Assistant City Civil Court, Chennai.

2.Heard Mr.P.Satheesh Kumar, learned counsel for the petitioners and Mr.A.C.Manibharathi, learned Standing counsel for the Chennai Corporation.

3.The trial Court has rejected the suit even at the stage of maintainability /numbering of the suit invoking Order VII Rule 11 (a) r/w 151 C.P.C.

4.Mr.P.Satheesh Kumar, learned counsel for the petitioners states that the Court at the stage of numbering cannot conduct any roving enquiry and pass

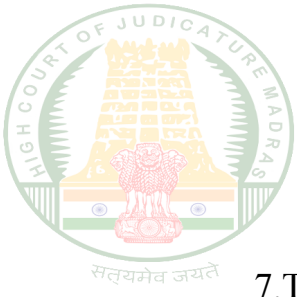


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any order touching the merits of the suit. In this regard, the learned counsel would take me through the plaint and also document that have been filed in support of the plaint seeking relief of Permanent Injunction to restrain the Corporation and its officials, from in any manner interfering with the peaceful possession and enjoyment of the plaintiffs except by due process of law.

5.I find that the plaintiffs allege in the plaint that they are in lawful possession of the property and in support of the factum of possession, they have also filed Ration Card, Electricity bills and also the registration certificate, which has been issued by the Central Government which refers to the suit property.

6.The learned counsel would therefore state that the court having found that even an encroacher can be dispossessed only by due process of law, the Court ought not to have rejected the plaint under Order VII Rule 11 (a) r/w 151 C.P.C.

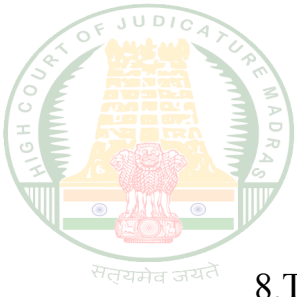


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7. The learned Standing counsel appearing for the Corporation would state that there is a statutory bar under Section 149 of the Tamil Nadu Urban Local Bodies Act, 1998. He further states that the petitioners are rank encroachers and the Corporation is empowered to evict the encroachment with or without notice under Section 128 of the Tamil Nadu Urban Local Bodies Act and therefore, the petitioners are not entitled to any opportunity as well. The learned counsel would therefore state that there is no error or infirmity in the rejection of the plaint by the trial Court. Section 149 that has been relied on by the standing counsel for the respondent is extracted for easy reference:

" No Civil Court shall have jurisdiction to decide or deal with any question which is by or under this part required to be decided or dealt with by the Government or the Commissioner."

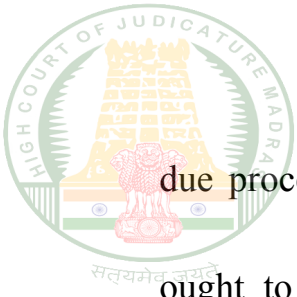
The relief that is sought for in the suit is only for permanent injunction and not disturbing the possession of the petitioners, except by due process of law.



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8.The learned standing counsel refers to Section 128 which enables the Commissioner to remove, without any notice, any movable property namely temporary structure, enclosure, stall, booth etc., whatsoever hawked, exposed or displayed for sale and under Section 128 (b) when if it is immovable structure, whether permanent or of temporary, then the encroachment can be removed only after issuing a show cause notice for such removable, returnable within a period of seven days.

9.Even from the photographs that have been relied on by the learned standing counsel, it is clearly seen that the encroachment is an immovable property, with an asbestos shed above concrete structure. Therefore, necessarily the contention of the respondents that no notice is required cannot be accepted or countenanced. In any event, the prayer in the suit does not, in any manner, impede lawful action that is contemplated under any of the provision of the Urban Local Bodies Act and therefore, I do not see that the above prayer, which is only seeking to restrain the disturbance of the plaintiff's possession, except by



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due process of law being barred under Section 149 and 128. The trial Court ought to have numbered the suit without proceeding to virtually render a judgment, without any evidence produced by the parties, much less even a written statement on the side of the defendants.

10. In view above, the order of the trial Court dated 27.06.2025 passed in O.S.Sr.No.7138 of 2025 by the I Assistant City Civil Court, Chennai, is hereby set aside. Accordingly, the civil revision petition is allowed. The trial Court shall number the suit and it shall open to the defendants to seek rejection of the plaint, if any ground is available to them and it is also made clear that the pendency of the suit shall not be a bar for the respondents to proceed with all action that is permissible under the provisions of the Tamil Nadu Urban Local Bodies Act, 1998. Original plaint shall be returned to the learned counsel for the plaintiff to enable him to represent before the trial Court. No costs.

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Index: Yes/No

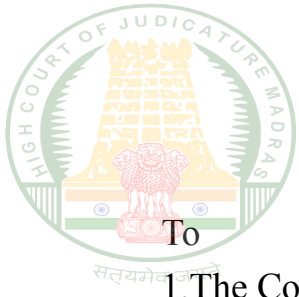
Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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Note: Issue order copy on 08.08.2025



To

1.The Commissioner

Greater Chennai Corporation, Rippon
Building, Chennai - 003.

2.The Zonal Officer

Greater Chennai Corporation, Zone
No.4, No.266, Tiruvottiyur High Road,
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