



W.P.No.27620 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.07.2025

CORAM

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

W.P.No.27620 of 2025
and
W.M.P.No.30944 of 2025

Menagi Arumugam
W/o.Late C.Arumugam

...Petitioner

VS.

1. The Tamil Nadu Local Bodies Ombudsmen,
O/o. TN Local Bodies Ombudsmen,
100, Anna Salai, Guindy, Chennai – 600 032.
2. The Greater Chennai Corporation,
Rep. By its Commissioner,
Ribbon Building,
Chennai – 600 003.
3. The Assistant Executive Engineer,
Unit 16, Zone VI,
Greater Chennai Corporation,
Jawahar Nagar, Peravallur,
Chennai – 600 082.



W.P.No.27620 of 2025

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4. Tamil Nadu Urban Habitat
Development Board
rep. By its Chairman,
Kamarajar Salai, Chennai – 600 005.

5. The Tahsildar,
Ayanavaram Taluk,
Chennai – 600 102.

6. S. Venugopal

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus, calling for the records relating to the impugned orders (i) Order No.214/Maa/2023, dated 12.09.2023 passed by the 1st respondent and (ii) ZOC.No.0819/4/2023 dated 31.10.2023 passed by the 3rd respondent and (iii) order dated 12.07.2025 passed by the 3rd respondent, quash the same and consequently forbear the respondents from interfering with petitioner's property measuring 2132 sq.ft in Plot No.1561 at Door No.168A, 11th Lal Bahadur Sastri Street, General Kumaramangalam Colony, Peravallur, Chennai - 82 as per the judgment and decree dated 17.07.2012 made in O.S.No.3318 of 1998 on the file of the Ld. VII Assistant Civil Court, (i/c of XI Assistant Court), Chennai.

For Petitioner : Mr.S. Shrish
for Mr.N.Manokaran

For Respondents : Mr.T.K.Saravanan
Additional Govt. Pleader for R1 & R5

Mr.B.Balaji,
for Mr.S.Karthikeyan

Page Nos.2/26



WEB COPY



W.P.No.27620 of 2025

Standing Counsel for TNUHDB for R4

Mr.D.B.R.Prabhu
Standing Counsel for GCC
for R2 & R3

ORDER

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

As regards captioned 'writ petition' ['WP' for the sake of brevity], the subject matter is 'property at Plot No.1561, Lal Bagadur Sastri 11th Street, GKM Colony, Peravellur, Chennai 82' [hereinafter 'said property' for the sake of brevity and convenience].

2. Mr.S.Shrish, learned counsel representing the counsel on record for writ petitioner in captioned main WP submits that there is a judgment and decree dated 17.07.2012 made in O.S.No.3318 of 1998 by the VII Assistant Judge's Court, City Civil Court, Chennai (incharge of XI Assistant Court) and according to learned counsel, the civil Court decree is relevant in the case on hand.

3. Short facts are that R6 moved the Tamil Nadu Local Bodies Ombudsman under 'the Tamil Nadu Urban Local Bodies Ombudsman Act, 2014 (27 of 2014)' [hereinafter 'Ombudsman Act' for the sake of

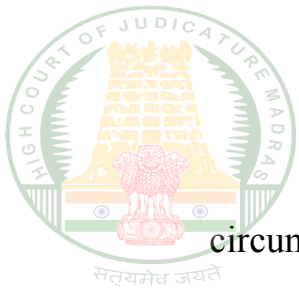
Page Nos.3/26



W.P.No.27620 of 2025

convenience] and the Ombudsman made a 'common order dated 12.09.2023

bearing reference ஆணை எண்:214/மா/2023' [hereinafter 'Ombudsman order' for the sake of convenience]; that thereafter R6 filed W.P.No.17039 of 2025 in this Court (without arraying the writ petitioner herein as respondent) and sought implementation of the Ombudsman order; that this writ petition came to be disposed of by another Division Bench to which one of us (M.Sundar.,J.) was a party in and by an order dated 09.06.2025; that at the time of disposal of this writ petition, learned Standing counsel for 'Greater Chennai Corporation' ['GCC' for the sake of brevity] did not bring to the notice of this Court that proceedings for 'Removal of Encroachment' ['RoE'] have already been commenced by issue of notices under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity); that the notice under TNULB Act is dated 31.10.2023 with reference ZOC.No.0819/4/2023' [hereinafter 'impugned notice' for the sake of convenience]; that noticee / writ petitioner has responded to the impugned notice on 29.11.2023 but no orders have been made by the Commissioner under proviso to Section 128 (1)(b) of TNULB Act; that under such



W.P.No.27620 of 2025

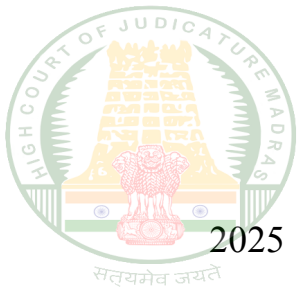
circumstances, the writ petitioner has been visited with a 'communication from R3 signed on 12.07.2025' [hereinafter 'impugned order' for the sake of convenience] calling upon the writ petitioner to remove alleged encroachments in three days.

4. Learned counsel for writ petitioner submits that there is a jurisdictional issue qua impugned notice as the same has not been issued by the Commissioner and as regards the impugned order also, there is a jurisdictional issue as the same has been made by R3.

5. In the light of the jurisdictional issue raised by learned counsel for writ petitioner, issue notice to official respondents.

6. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for R1 and R5, Mr.B.Balaji, learned counsel representing Mr.S.Karthikeyan, learned Standing counsel for TNUHD Board accepts notice for R4 and Mr.D.B.R.Prabhu, learned Standing counsel for GCC accepts notice for R2 and R3.

7. Learned Standing counsel for GCC submits that as regards the jurisdictional point raised by the writ petitioner, the same is covered by ***Nikhil Banthia*** case i.e., order dated 05.03.2025 made in W.P.No.7529 of



W.P.No.27620 of 2025

2025 to which one of us (M.Sundar.J.,) was a party, which has to be read along with ATR recorded on 26.03.2025. **Nikhil Banthia** order and the ATR addendum thereat are as follows:



W.P.No.7529 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**
W.P.No.7529 of 2025

Nikhil Banthia

... Petitioner

Vs.

- 1.Greater Chennai Corporation
rep. By its Commissioner,
Ripon Building, Chennai – 600 003.
- 2.Greater Chennai Corporation
rep. By its Superintending Engineer
(Central), No.36 B, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Mandamus forbearing the respondents from
in any way interfering with the petitioner's property at No.21/10,
V.V.Koil Street, Choolai, Chennai – 600 112 pending final determination
of the representation under Sec.128(b) dated 20.02.2025 submitted
pursuant to the notice of the 2nd respondent dated 12.02.2025 in

Page Nos.1/10

Page Nos.6/26



WEB COPY



W.P.No.27620 of 2025



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W.P.No.7529 of 2025

Notice/No/zone-VI/Enc/Dn78/3884/2025 under Sec.128 of Tamil Nadu
Urban Local Bodies Act, 1998.

For Petitioner : Mr.D.S.Rajasekaran
for Mr.K.Sivasubramanian
For Respondents : Ms.E.Abinaya Lakshana
for Mr.E.C.Ramesh,
Standing Counsel

ORDER

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

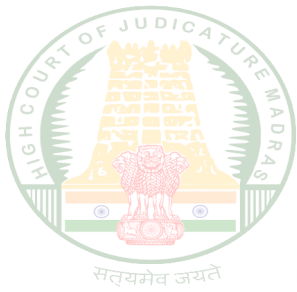
Nucleus of the captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) is a 'notice dated 12.02.2025 bearing reference Notice/No/zone-VI/Enc/Dn78/3884/2025' (hereinafter 'said notice' for the sake of convenience and clarity) and a scanned reproduction of the same is as follows:

Page Nos.2/10

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Page Nos.7/26



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W.P.No.27620 of 2025



W.P.No.7529 of 2025

GREATER CHENNAI CORPORATION,
REGIONAL OFFICE - CENTRAL
No.36B, PULLA AVENUE, SHENOT NAGAR, CHENNAI - 600030.

NOTICE
NOTICE UNDER SECTION 128 OF TAMIL NADU URBAN LOCAL BODIES ACT, 1998

Notice/No./Zone-VI/Enc/Dn78/3884/2025 Date:12.02.2025

During inspection it was found that you have encroached the Canal portion by putting a steel staircase and Head room an measuring about 551 sq.ft at No.21/10, V.V Kail Street,Choolai, Chennai-600112, in Division-78, Unit-17, Zone-6, Greater Chennai Corporation. The above said encroachment is blocking the Canal causing inconvenience to the public. Consequently you are lawfully bound to remove the encroachment under your occupation.

Your occupation by encroachment at the above said land belonging to Greater Chennai Corporation is illegal and it is entitled to be removed under Section 128 of Tamil Nadu Urban Local Bodies Act, 1998.

I, therefore call upon you to show cause why the above said encroachment should not be removed within **15 Days (Fifteen Days)** from the date of service of this notice, failing which action will be taken for removing the said encroachment under Section 128 of Tamil Nadu Urban Local Bodies Act, 1998 act without further notice, holding you liable for all the costs and consequences arising therefore.

AE/Div-78 AEE/U-17 Exe.Engineer-VI Zonal Officer-VI

Superintending Engineer (Central)

Regional Deputy Commissioner (Central)

To:
Mr./ Mrs. Mansi Banthia & Nikhil Banthia
No-21/10, V.V Kail Street.

Page Nos.3/10

<https://www.mhc.tn.gov.in/judis>

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Page Nos.8/26



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W.P.No.27620 of 2025



W.P.No.7529 of 2025

2. Mr.D.S.Rajasekaran, learned counsel representing Mr.K.Sivasubramanian, learned counsel on record for writ petitioner advertng to the aforementioned notice submits that the writ petitioner/noticee has sent a representation dated 20.02.2025 in response to said notice and it is necessary that writ petitioner's representation is considered and final orders are passed before any coercive action is taken.

3. Issue notice.

4. Ms.E.Abinaya Lakshana, learned counsel representing Mr.E.C.Ramesh, learned standing counsel for Greater Chennai Corporation (GCC) accepts notice for both respondents.

5. Ms.E.Abinaya Lakshana, learned counsel for GCC is instructed by Mr.M.Sivakumar, Junior Engineer, Zone 6, Unit 17, Division 78.

6. Advertng to said notice, we wanted to know from the learned standing counsel for GCC as to whether the Commissioner of GCC has

Page Nos.4/10



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W.P.No.27620 of 2025



W.P.No.7529 of 2025

delegated the powers to Regional Deputy Commissioner Central and/or other officers who have signed said notice. Learned standing counsel for GCC on instructions submitted that there is no such delegation. This submission is recorded.

7. We find that said notice is flawed, not in conformity with statutory requirements and as a result wholly without jurisdiction. The reasons are as follows:

7.1 Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) reads as follows:

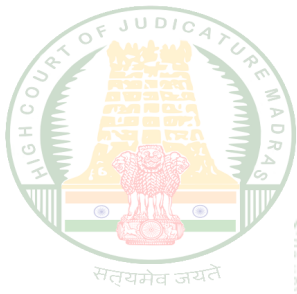
'128. Power to remove encroachment from public place. -

(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 or public place or the [land belonging to or vested with the municipality] with the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to municipality or vested with the

Page Nos.5/10



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W.P.No.27620 of 2025



W.P.No.7529 of 2025

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

7.2 A bare perusal of Section 128 of TNULB Act brings to light that a notice under Section 128 can be issued only by the 'Commissioner'. The term 'Commissioner' is defined vide sub-section (7) of Section 2 of TNULB Act and the same reads as follows:

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

Page Nos.6/10

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Page Nos.11/26



WEB COPY



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W.P.No.27620 of 2025



W.P.No.7529 of 2025

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(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 Officer of the town panchayat; '

7.3 There is no dispute that in the case on hand as it is GCC, Commissioner is within the meaning of Section 2(7)(a) of TNULB Act.

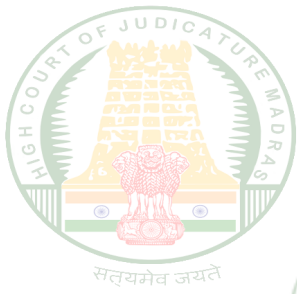
7.4 As said notice has not been issued by the authority who is empowered to do so under the statute i.e., TNULB Act and as it is the stated position of learned standing counsel for GCC that there is no delegation by the Commissioner, said notice is wholly without jurisdiction.

Page Nos.7/10

<https://www.mhc.tn.gov.in/judis>

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Page Nos.12/26



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W.P.No.27620 of 2025



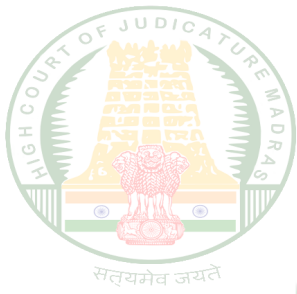
W.P.No.7529 of 2025

7.5 Section 128 more particularly Section 128(1)(b)

provides for a noticee being show caused vide notice returnable in seven days. It is clear from the language in which Section 128(1)(b) is couched but said notice gives 15 days time to the noticee to respond. This again is not in conformity with the statute.

8. Faced with the above situation, learned standing counsel for GCC submitted that said notice will be withdrawn and a fresh Show Cause Notice (SCN) will be issued by the Commissioner. Learned standing counsel submitted that this will be done as expeditiously as the business of R1 would permit but in any event within a fortnight from today i.e., on or before 19.03.2025.

9. We make it clear that we are not expressing any view or opinion on the alleged encroachment and all questions are left open qua both sides as regards fresh SCN to be issued by appropriate authority and representation if any by the noticee.



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W.P.No.27620 of 2025



W.P.No.7529 of 2025

10. Captioned main WP is disposed of in the aforesaid manner.

There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
05.03.2025

Index : Yes / No

Neutral Citation : Yes / No

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P.S.: *Though captioned WP is disposed of, list under the cause list caption 'ATR (ACTION TAKEN REPORT)' on 26.03.2025. It is made clear that if the ATR does not demonstrate issue of notice by appropriate authority, we may be constrained to requisition the personal presence of the Commissioner.*

To

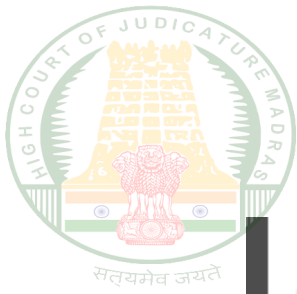
- 1.The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai – 600 003.
- 2.The Superintending Engineer (Central),
Greater Chennai Corporation,
No.36 B, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030.

Page Nos.9/10

<https://www.mhc.tn.gov.in/judis>

(Uploaded on: 10/03/2025 02:49:41 pm)

Page Nos.14/26



WEB COPY



W.P.No.27620 of 2025



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W.P. No.7529 of 2025

W.P. No.7529 of 2025

M.SUNDAR, J.
and
K. GOVINDARAJAN THILAKAVADI, J.

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

Captioned matter is listed under the cause list caption 'FOR ACTION TAKEN REPORT'.

2. Mr.K.Sivasubramanian, learned counsel on record for writ petitioner and Mr.J.Ravindran, learned senior counsel and Additional Advocate General appearing on behalf of Mr.E.C.Ramesh, learned Standing Counsel for respondents/Greater Chennai Corporation (GCC) are before us.

3. Learned Additional Advocate General placed before us a proceedings dated 14.03.2025 bearing reference L.C.C.No.LC1/1102/2025 and submitted that the powers vested in the Commissioner under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) have been delegated to the jurisdictional Regional Deputy Commissioners. A scanned reproduction of this proceedings is as follows:

Page Nos.1/6
<https://www.mhc.tn.gov.in/judis>



WEB COPY



W.P.No.27620 of 2025



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W.P. No.7529 of 2025

L.C.C.No.LCI/1102/2025

Greater Chennai Corporation,
Legal Cell.

Dated: 14.03.2025.

Proceedings of the Commissioner, Greater Chennai Corporation

Present: Thiru.J. Kumaragurubaran, I.A.S.,
Commissioner.

Sub.: Tamil Nadu Urban Local Bodies Act, 1998, u/S 128 -
Powers delegated to the Sub-ordinate Officers - Orders
issued.

Order:

As per the Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998, the power to remove encroachments from public place vested with the Commissioner and the Commissioner may issue notice.

To take speedy action to remove the encroachments from public places, the power vested with the Commissioner to issue notice u/S 128 of the Tamil Nadu Urban Local Bodies Act, 1998, is hereby delegated to the respective Regional Deputy Commissioners.

**Delegation of power to issue notice u/S 128 of the Tamil Nadu
Urban Local Bodies Act, 1998**

Existing	Delegated to
The Commissioner	The respective Regional Deputy Commissioners

This order will take effect at once.


Commissioner

To

The Additional Commissioner (Health)
The Joint Commissioner (Education)
The Deputy Commissioners (Works) & (Revenue & Finance)
The Regional Deputy Commissioners (North), (Central) & (South)
All Head of Departments
All Zonal Officers

Page Nos.2/6

<https://www.mhc.tn.gov.in/judis>

Page Nos.16/26



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W.P.No.27620 of 2025



W.P. No.7529 of 2025

4. Learned Additional Advocate General further submitted that the aforementioned delegation is under sub-section (4) of Section 57 of TNULB Act which 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.'*

5. A bare perusal of the above provision brings to light that the delegation (by the Commissioner) can be made only to 'holder of any municipal office'. The term 'municipal office' is defined under Section 2(21) of TNULB Act and the same reads as follows:

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

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W.P.No.27620 of 2025



W.P. No.7529 of 2025

- (6)
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- (13)
- (14)
- (15)
- (16)
- (17)
- (18)
- (19)
- (20)

(21) "municipal office" means the principal office of the municipality.'

6. The question now is whether the Regional Deputy Commissioners would qualify as 'holders of municipal office' within the meaning of Section 2(21) of TNULB Act.

7. Learned Additional Advocate General submits that he will examine this position and revert to this Court.

8. Be that as it may, based on the aforementioned delegation, it appears that a notice under Section 128 of TNULB Act being a notice dated 25.03.2025 bearing reference Notice/No/Zone-



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W.P.No.27620 of 2025



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W.P. No.7529 of 2025

VI/Enc/Dn78/3884/2025 has been issued to the writ petitioner. This notice show causes writ petitioner vide show cause returnable in seven days but there is amendment to Section 128 of TNULB Act, the amendment being vide Amendment Act 25 of 2024 which kicked in on 06.01.2025. Post amendment, noticee has to be show caused vide show cause returnable in fifteen days. Learned Additional Advocate General very fairly submitted that 25.03.2025 notice therefore stands withdrawn and a fresh notice in compliance of Section 128 of TNULB Act will be issued to the writ petitioner. This submission is recorded.

9. List under the same cause list caption i.e., 'FOR ACTION TAKEN REPORT' on 08.04.2025.

[M.S., J.]

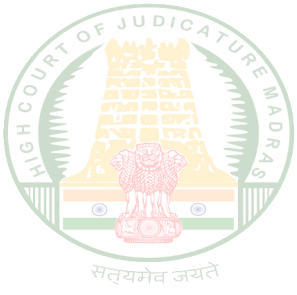
[K.G.T., J.]

26.03.2025

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Page Nos.5/6

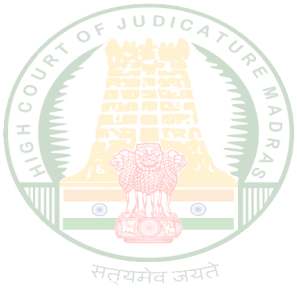
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W.P.No.27620 of 2025

WEB COPY 8. In the case on hand, we do notice that a postal receipt has been pasted / stuck on the right hand side bottom of the impugned notice. Therefore, it is not clear as to whether the jurisdictional Regional Deputy Commissioner has signed the impugned notice or not. The other signatories do not qualify as delegates qua the delegation made by Commissioner under TNULB Act with regard to Section 128. Therefore, the impugned notice deserves to be dislodged on jurisdictional point. Likewise, the impugned order also deserves to be dislodged on jurisdictional point applying *Nikhil Banthia* principle as proviso to Section 128(1)(b) of TNULB Act is clear that the order has to be made only by the 'Commissioner', which is a term of art i.e., a term defined vide Section 2(7) of TNULB Act.

9. The sequitur of the discussion and dispositive reasoning set out thus far is that the impugned notice and impugned order deserve to be dislodged/quashed.



W.P.No.27620 of 2025

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10. Before we do that, we find that this order can be made without impacting the rights and contentions of private respondent (R6). Therefore, we dispense with notice to R6 and take up the main WP with the consent of learned counsel on both sides.

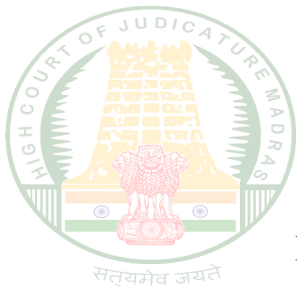
11. Ergo, as a sequitur, the following order is made:

(i) Impugned notice dated 31.10.2023 with reference ZOC.No.0819/4//2023 is quashed by issue of writ of certiorari;

(ii) Impugned order dated 12.07.2025 is also quashed;

(iii) It is made clear that impugned notice and impugned order are quashed on jurisdictional point *inter alia* applying **Nikhil Banthia** principle and they have not been quashed on merits;

(iv) The corollary to the previous points in this operative portion of this order is, the rights and contentions of GCC are preserved for issuing notice under Section 128 of TNULB Act afresh by Competent Authority. If notice is issued afresh by GCC, all the rights and contentions of noticees shall stand



W.P.No.27620 of 2025

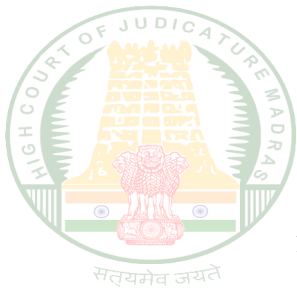
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preserved for sending response afresh for being considered under

proviso to Section 128 (1)(b) of TNULB Act;

(v) In the light of the peculiar facts and circumstances of the case on hand, as learned counsel for GCC has unfortunately not brought to our notice about Section 128 notice when the previous order was made, if GCC resorts to issuing fresh notice by competent authority, such notice shall be sent to the writ petitioner and a copy shall be marked to R6 giving opportunity to R6 to send a representation. Proviso to Section 128(1)(b) refers to '**any representation**' and therefore, if R6 sends a representation, that also shall be considered by Commissioner while making 'final order' vide proviso to Section 128 (1)(b). The order thus made by the Commissioner shall be served on the writ petitioner and R6 within five working days under due acknowledgement;

(vi) As the certiorari limb has been acceded to by resorting to jurisdictional point, we leave open the mandamus limb as that will touch upon the matter on merits. All questions are left open



W.P.No.27620 of 2025

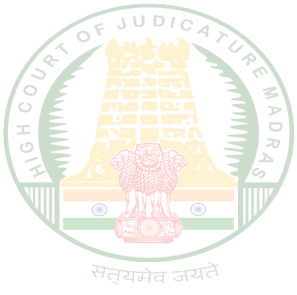
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in this regard, if fresh proceedings are initiated;

(vii) Coercive action, if any and if that be so, shall only be subject to the proceedings to be initiated afresh in the aforesaid manner and final orders under proviso to Section 128(1)(b) to be made by the Commissioner;

(viii) If order to be made by the Commissioner in the aforesaid manner are adverse to the writ petitioner i.e., if there is going to be RoE, the order shall be kept in abeyance for a fortnight to enable the persons concerned to seek judicial review and if that not be so, that will be curtains on the matter;

(ix) As the Ombudsman order dated 12.09.2023 has been served on the writ petitioner only on 14.07.2025, we make it clear that if writ petitioner desires to assail the Ombudsman order and seek judicial review, this order will neither impede nor serve as an impetus for the same;



W.P.No.27620 of 2025

Captioned WP is partly allowed in the aforesaid manner. In the light

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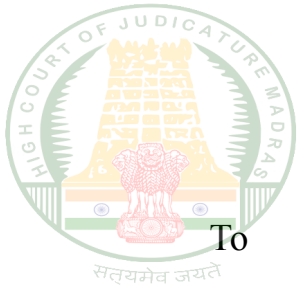
of what we have observed with regard to coercive action, captioned WMP becomes otiose and the same is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (H.C.,J.)
23.07.2025

Index: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order
gpa



W.P.No.27620 of 2025

To

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1. The Tamil Nadu Local Bodies Ombudsmen,
O/o. TN Local Bodies Ombudsmen,
100, Anna Salai, Guindy, Chennai – 600 032.
2. The Greater Chennai Corporation,
Rep. By its Commissioner,
Ribbon Building,
Chennai – 600 003.
3. The Assistant Executive Engineer,
Unit 16, Zone VI,
Greater Chennai Corporation,
Jawahar Nagar, Peravallur,
Chennai – 600 082.
4. The Chairman
Tamil Nadu Urban Habitat
Development Board
Kamarajar Salai, Chennai – 600 005.
5. The Tahsildar,
Ayanavaram Taluk,
Chennai – 600 102.



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W.P.No.27620 of 2025

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

gpa

W.P.No.27620 of 2025

23.07.2025

Page Nos.26/26