



W.P.No.27358 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

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CORAM:

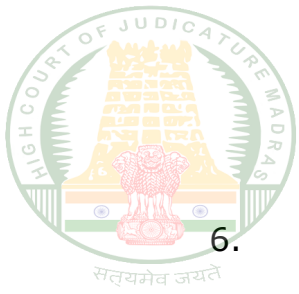
THE HONOURABLE MR. JUSTICE M.SUNDAR

and

THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.27358 of 2024 and W.M.P.No.29852 of 2024

1. Nelson Chambers Flat Owners Association
A Block
represented by its Secretary
Venkatesh Hariharan
115 Nelson Manickam Road
Aminjikarai
Chennai 600 029
2. Nelson Chambers C Block Owners Association
represented by its Secretary
Pradeep Samuel
115 Nelson Manickam Road
Aminjikarai
Chennai 600 029
3. Nelson Chambers D Block Owners Association
represented by its Secretary
Mallikharjuna Roa G
115 Nelson Manickam Road
Aminjikarai
Chennai 600 029
4. E. Chandrasekar
5. D. Raja Reddy



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6. StoneMart Cladding Systems
represented by its Authorised Signatory
S. Nagarajan
E Block
115 Nelson Manickam Road
Aminjikarai
Chennai 600 029

Petitioners

vs.

1. The Commissioner
Greater Corporation of Chennai
Ripon Building
Chennai 600 003

2. The Assistant Commissioner
Zone-8
Greater Chennai Corporation
Chennai

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondent to consider the petitioner's representation dated 25.08.2024 and consequently, forbear the respondents from disturbing the peaceful possession of the private pathway in T.S.No.2 in R.S.No.14/2 (part) in O.S.No.14/A and 14/B in Vada Agaram Village of Aminjikarai Taluk, Chennai District, without following the due process of law.

For petitioners Mr. C. Vigneswaran

For respondents Mr. A. Arun Babu
Standing Counsel

- - - - -



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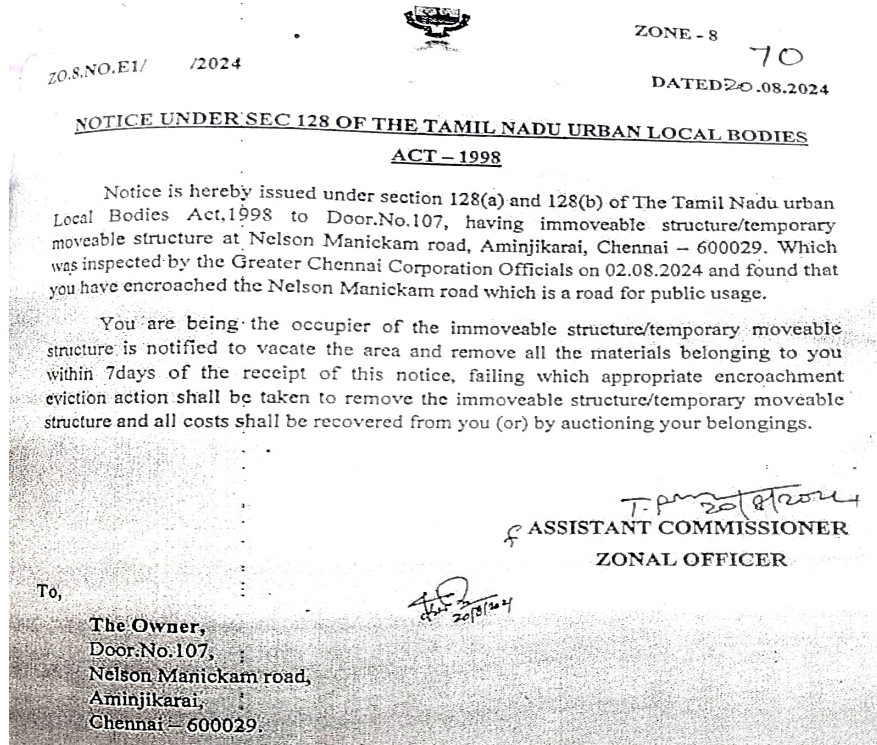
ORDER

[made by M.SUNDAR, J.]

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Two notices, both dated 20.08.2024, bearing reference nos.O.8.No.E1/2024 and Z.O.8No.E1/234/2024 [hereinafter collectively 'said notices' for the sake of convenience and clarity] constitute the epicentre of the captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity].

2. A scanned reproduction of said notices is as follows:





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ZO.8.NO.EI/2024

ZONE - 8

DATED: 20.08.2024

NOTICE UNDER SEC 128 OF THE TAMIL NADU URBAN LOCAL BODIES
ACT - 1998

Notice is hereby issued under section 128(a) and 128(b) of The Tamil Nadu urban Local Bodies Act, 1998 to Door.No. CPR-4, having immovable structure/temporary moveable structure at Water Tank road, Aminjikarai, Chennai - 600029, which was inspected by the Greater Chennai Corporation Officials on 02.08.2024 and found that you have encroached the Water Tank road pavement which is a road for public usage.

You are being the occupier of the immovable structure/temporary moveable structure is notified to vacate the area and remove all the materials belonging to you within 7 days of the receipt of this notice, failing which appropriate encroachment eviction action shall be taken to remove the immovable structure/temporary moveable structure and all costs shall be recovered from you (or) by auctioning your belongings.

T. p. m. 20.8.2024
f ASSISTANT COMMISSIONER
ZONAL OFFICER

To,

The Owner,
Door.No.CPR-4,
Water Tank road,
Aminjikarai,
Chennai - 600029



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3. Caption to the said notices say that the same have been issued 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].

4. Mr. C. Vigneswaran, learned counsel on record for writ petitioners and Mr. A. Arun Babu, learned Standing Counsel for Greater Chennai Corporation [hereinafter 'GCC' for the sake of convenience and clarity] (RR 1 & 2) are before us.

5. Aforesaid learned counsel on both sides consented to have the captioned main WP taken up and heard out. We do so.

6. After hearing both sides for some time, it came to light that writ petitioners have construed said notices as show cause notices (SCNs) and sent independent replies (two replies), both dated 25.08.2024. To be noted, replies are also in the nature of representations.



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7. Captioned main WP has been filed with a mandamus prayer to consider the replies/representations of the writ petitioners dated 25.08.2024 and consequently, to forbear the respondents from disturbing the possession of writ petitioners *qua* properties which constitute the subject matter of said notices, which we have described as the epicentre of the captioned main WP.

8. Notwithstanding myriad grounds raised in the writ affidavit, it came to light that a jurisdiction issue arises in the matter. This issue arises because said notices have been issued by R2 (Assistant Commissioner, GCC). As already alluded to *supra*, said notices mention that the same have been issued under Section 128 of the TNULB Act which 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



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

9. A careful perusal of Section 128 makes it clear that the said notices have to be issued only by R1 (Commissioner, GCC) and not by R2. 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--



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(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).

10. There is no disputation that R2 does not qualify as 'Commissioner' within the meaning of Section 2(7)(a) of the TNULB Act. This led us to the question of whether R1 has delegated powers under Section 128 to R2. In this regard, we deem it appropriate to refer to **Nikhil Banthia's** case [Nikhil Banthia vs. GCC represented by its Commissioner and another *vide* order dated 05.03.2025 in 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



W.P.No.27358 of 2024

(Central), No.36 B, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030.

...Respondents

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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 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:

GREATER CHENNAI CORPORATION,
REGIONAL OFFICE - CENTRAL
No.36B, PULLA AVENUE, SHENOY 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 Koil 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 Koil Street.



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2. Mr.D.S.Rajasekaran, learned counsel representing Mr.K.Sivasubramanian, learned counsel on record for writ petitioner advertg 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. Advertg to said notice, we wanted to know from the learned standing counsel for GCC as to whether the Commissioner of GCC has 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;



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(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 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-

(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 Officer of the town panchayat; '



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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.

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.

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

mmi

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.'



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11. Post **Nikhil Banthia's** case, in the light of post script thereat, the matter was listed on 26.03.2025 and on that date, the following order came to be made:

'W.P. No.7529 of 2025

M.SUNDAR, J.

and

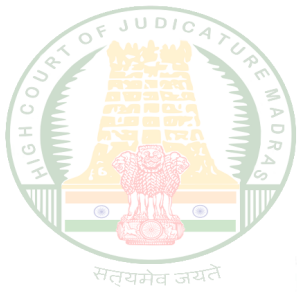
K. GOVINDARAJAN THILAKAVADI, J.

[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:



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W.P.No.27358 of 2024

L.C.C.No.LC1/1102/2025

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:

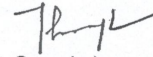
As per the Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998, the power to remove encroachments from public place vested with the Commissioner and the Commissioner may issue notice.

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



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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-

(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.'



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W.P.No.27358 of 2024

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-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'

12. The aforereferred order dated 05.03.2025 in **Nikhil Banthia's** case and the postscript thereat speak for themselves and therefore, the same shall be read as an integral part and parcel of this order.



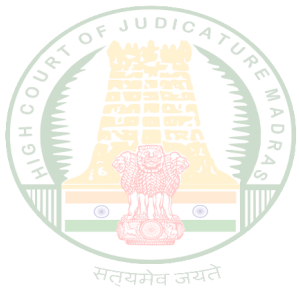
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13. Learned Standing Counsel for GCC made a feeble attempt by contending that in the light of delegation of powers by R1 *vide* proceedings of R1 dated 14.03.2025 bearing reference L.C.C. No.LC1/1102/2025 [hereinafter 'delegation proceedings' for the sake of convenience and clarity], R2 gets the power to issue the said notices.

14. On a demurrer, even if the delegation dated 14.03.2025 bearing reference L.C.C. No.LC1/1102/2025 is taken into account, said notices do not pass muster for two reasons and they are as follows:

- i. In and *vide* the delegation proceedings, R1 has delegated powers under Section 128 only to 'Regional Deputy Commissioner' and not to R2 who is Assistant Commissioner; and
- ii. the delegation proceedings cannot be given retrospective effect as the delegation proceedings is dated 14.03.2025 but the said notices are dated 20.08.2024 (admittedly, there was no delegation prior to 14.03.2025).

Therefore, we deem it appropriate to dislodge the said notices on the aforementioned short jurisdictional point.



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15. This Court is acutely conscious that the prayer in the captioned main WP is one for a mandamus but we take judicial cognizance of said notices, which we have described as the epicentre of the captioned main WP and we interfere *qua* said notices.

16. *Ergo*, the sequitur of the discussion and dispositive reasoning thus far is, said notices are set aside, albeit with preservation of rights and contentions of GCC, more particularly, R1 and/or any other officer in the hierarchy, to issue notices under Section 128 of the TNULB Act afresh, obviously through a competent authority.

17. If GCC resorts to such a course, the machinery and mechanism put in place *vide* Section 128 of the TNULB Act will kickstart the drill thereat and the same will be continued and taken to its logical end, on its own merits and in accordance with law.

18. As said notices, which constitute the eye of the storm, have been dislodged, the anxiety of the writ petitioners *qua* captioned writ miscellaneous petition [hereinafter 'WMP' for the sake of brevity] gets doused.



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19. Captioned main WP stands disposed of in the aforesaid manner and captioned WMP thereat stands disposed of as closed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
27.06.2025

cad
Index: Yes
N.C. : Yes



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W.P.No.27358 of 2024

M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

cad

To

1. The Commissioner
Greater Corporation of Chennai
Ripon Building
Chennai 600 003
2. The Assistant Commissioner
Zone-8
Greater Chennai Corporation
Chennai

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