



W.P.No.37767 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.37767 of 2024

and

W.M.P.No.40837 of 2024

Thilagavathi
S/o.Janagiraman

... Petitioner

Vs.

The Commissioner
Madurantakam Municipality
Chengalpattu District.

... Respondent

Prayer :

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 order dated 18.11.2024 passed by the respondent herein in Na.Ka.No.1590/2024/F1, quash the same and consequential direction directing the respondent herein to not to dispossess the petitioner from Door No.7A, Hospital Road, Madurantakam Town and Taluk, Chengalpattu District situated in Survey No.976, 977/3 without due process of law.



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For Petitioner : Mr.G.Magesh Kumar
For Respondent : Mr.P.Srinivas
Standing Counsel

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity} was listed in the Admission Board yesterday (02.01.2025), the following proceedings were made:

**'W.P.No.37767 of 2024
and W.M.P. No.40837/2024
in W.P.No.37767/2024**

M.SUNDAR, J.
and
K.RAJASEKAR, J.

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

There is no representation for the writ petitioner either in the physical Court or on the Video Conferencing platform. To be noted, this is a hybrid hearing which is a regular/daily/routine feature in this Court.

2. However, with the intention of giving an opportunity to writ petitioner and learned counsel for writ petitioner, list this matter tomorrow (03.01.2025) in the Admission Board i.e., Motion List but under the caption 'FOR DISMISSAL'.'



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2. Today, Mr.G.Magesh Kumar, learned counsel on record for writ petitioner is before us on 'Videoconferencing' ['VC'] platform. Learned counsel expresses regret and apologizes for missing the matter yesterday.

3. A communication 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) being communication signed on 18.11.2024 (signed by sole respondent) has been assailed. Adverting to Section 128 of TNULB Act, learned counsel submits that writ petitioner has not been show caused.

4. Issue notice to respondent.

5. Mr.P.Srinivas, learned Standing Counsel accepts notice for respondent.

6. Considering the limited scope of the captioned WP, captioned main WP is taken up in the Admission Board with the consent of both sides.

7. Section 128 of TNULB Act 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



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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 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.'



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8. A careful perusal of the aforementioned provision makes it clear that Section 128(1)(b) of TNULB Act proviso thereat is applicable as regards the case on hand.

9. As regards Section 128 of TNULB Act, the language in which the provision is couched makes it clear that noticee should be show caused qua notice returnable in seven days and if any representation is received within 7 days, final orders has to be made. Therefore, we deem it appropriate to dispose of the captioned WP by writing that the impugned communication shall now be treated as 'Show Cause Notice' {'SCN'}, writ petitioner / noticee can send a representation within seven days from today i.e., by 10.01.2025, if so advised and if so desired and if such a representation is sent, sole respondent shall pass final orders and further action (if any) will be subject to / depending on such final orders.

10. If the writ petitioner / noticee does not send response within 7 days, it is open to respondent to proceed in accordance with law qua removal of alleged encroachment.

11. In the light of the order which we have written, the requirement to show cause noticee / writ petitioner vide Section 128(1)(B) of TNULB Act



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is satisfied and directive qua proviso has been given.

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(M.S.,J.)

(K.R.S.,J.)

03.01.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk

To

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and
K.RAJASEKAR, J.,

mk

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