



W.P.No.32691 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P.No.32691 of 2018 and W.M.P. No.37888 of 2018

M.S. Subash

Petitioner

vs.

1. The Commissioner
Coimbatore Municipal Corporation
Coimbatore

2. Umarani

Respondents

(R2 impleaded as per order dated 17.02.2025 in
W.M.P.No.10204 of 2024 in W.P.No.32691 of 2018)

Writ Petition filed under Article 226 of the Constitution of India
seeking a writ of certiorari calling for the records of the first
respondent pertaining to notice dated 12.11.2018 and quash the
same.

For petitioner Mr. A. Arasu Sanga Tamil
for Mr. K.S. Karthik Raja

For R1 Mr. V. Ravi
Special Government Pleader
for Mr. Najeeb Usman Khan

For R2 Mr. T. Harish Chowdhary
for M/s. T.M. Naidu & Co.

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ORDER

[made by M.SUNDAR, J.]

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In the captioned 'writ petition' (hereinafter 'WP' for the sake of brevity), Mr. A. Arasu Sanga Tamil, learned counsel representing Mr.K.S. Karthik Raja, learned counsel on record for writ petitioner, Mr.V. Ravi, learned Special Government Pleader representing Mr. Najeeb Usman Khan, learned Standing Counsel for R1 and Mr. T. Harish Chowdhary, learned counsel for R2 (Uma Rani, wife of Shanmugasundaram) are before this Court.

2. The legal drill at hand is fairly simple as a notice dated 12.11.2018 issued by R1 *inter alia* under Section 258(4) of erstwhile 'Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981)' (hereinafter 'CCMC Act' for the sake of brevity) (hereinafter 'impugned notice' for the sake of convenience and clarity) has been called in question and the short point is the impugned notice has been issued without show causing the writ petitioner.

3. Before we proceed further, we deem it appropriate to make the obtaining legal position clear.

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4. The Tamil Nadu Urban Local Bodies Act, 1998, (Tamil Nadu Act 9 of 1999) (hereinafter 'the TNULB Act' for the sake of brevity) kicked in on 13.04.2023. In and by TNULB Act, CCMC Act was repealed *vide* Section 200(1)(d) but things done, made, instituted and executed under the erstwhile CCMC Act stand saved *vide* Section 200(3)(e). Therefore, the impugned notice survives in the light of Section 200(1)(d) read with Section 200(3)(e) of TNULB Act.

5. This Court having set out the obtaining statutory position, proceeds to consider the simple point that writ petitioner has not been show caused. We deem it appropriate to write that it will serve the purpose if the impugned notice is directed to be treated as a 'show cause notice' (hereinafter 'SCN' for the sake of convenience and clarity) under Section 128(1)(b) of TNULB Act. We do so.

6. In the light of the narrative, discussion and dispositive reasoning thus far and statement of obtaining statutory position, the following order is made:



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(i) Impugned notice is not set aside but the same shall now be treated as an SCN under Section 128(1)(b) of TNULB Act;

(ii) The SCN under Section 128(1)(b) of TNULB Act shall be construed to have been served on the writ petitioner today (17.02.2025);

(iii) The above means that the writ petitioner/noticee can send a response/ representation to SCN within seven days from today *i.e.*, on or before 24.02.2025;

(iv) On writ petitioner sending such a response/representation within the aforementioned timeline, R1 shall pass 'final orders' *vide* proviso to Section 128(1)(b) of TNULB Act;

(v) If the writ petitioner does not send a response/representation to SCN within aforementioned timeline, impugned notice will rescind to its form as issued and it will be open to R1 to proceed further in accordance with the same;

(vi) As regards 13.03.2024 order made by another Hon'ble Division Bench, it is open to the writ petitioner to file a suit *qua* R2, if so advised and if so desired;



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(vii) In this regard, we deem it appropriate to extract and reproduce the previous 13.03.2024 order made by another Hon'ble Division Bench which reads as follows:



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S.S.SUNDAR, J.
AND
N.SENTHILKUMAR, J.

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

(1) This Court is unable to agree with the contentions of the petitioner. It is admitted that as per layout plan prepared at the time of forming layout the property in which the petitioner has put up construction, was reserved for public purpose by the promoter. After reserving the land in the layout for public purpose, the promoter has sold the property in favour of petitioner in the year 1991 and the petitioner has also put up a construction.

(2) It is to be noted that the law is settled by the Hon'ble Supreme Court and this Court repeatedly by holding that a property reserved for public purpose in a layout ceases to be the property of promoter even though he holds the property in trust for the benefit of the other plot owners / public. It is also the statutory requirement of any developer to reserve a certain percentage of land for public purpose without which, he may not get approval for the development of any land as a layout.



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(3) The learned counsel for the petitioner pleads equity and this Court cannot grant relief quite contrary to the law established and settled by this Court in a number of judgments. However, the petitioner can seek remedy by filing a suit for compensation from the promoter. It is only for that purpose, post this matter after two weeks for impleading the promoter who can be held liable for selling the property unauthorisedly in favour of the petitioner.

[S.S.R., J] [N.S., J]
13.03.2024

AP
Internet: Yes

(viii) It is made clear that no opinion or view has been expressed on this, all questions are left open and the Civil Court, if approached, shall deal with the matter on its own merits and in accordance with law;

(ix) Though obvious, we make it clear that coercive action, if any, shall be subject to and depending on 'final orders' to be made by R1 under proviso to Section 128(1)(b) of TNULB Act.

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7. Captioned main WP stands disposed of in the aforesaid manner with the aforesaid observations and directives. As we have made it clear that coercive action, if any, shall be subject to and depending on 'final orders' of R1 under proviso to Section 128(1)(b), captioned WMP becomes otiose and the same is closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
17.02.2025

cad
Index : Yes/No
NC : Yes/No



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M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

cad

To

The Commissioner
Coimbatore Municipal Corporation
Coimbatore

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