

David vs the Commissioner

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SooperKanoon Citation : sooperkanoon.com/1809201

Court : Chennai

Decided On : Aug-05-2025

Judge : Honourable Mr Justice M. Sundar, Honourable Mr. Justice T. Vinod Kumar

Appeal No. : WP/7148/2025

Appellant : DAVID

Respondent : The Commissioner

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2025

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR AND THE HON'BLE MR. JUSTICE T. VINOD KUMAR W.P.No.7148 of 2025 and W.M.P. No.7933 of 2025

1. David
2. Kathiravan
3. K. Venkatesan

4. Ganesan Petitioners vs.

1. The Commissioner Coimbatore Municipal Corporation Coimbatore 641 001

2. The Assistant Planning Officer East Division Coimbatore Corporation Coimbatore

3. Karthikeyan

4. Aneethamani Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of proceedings NIL dated 31.01.2025 on the file of the respondent and quash the same as illegal, incompetent and wholly without jurisdiction. For petitioners Mr. S.N. Kirubanandam For RR 1 & 2 Mr. N. Umapathi Standing Counsel For RR 3 & 4 Mr. S. Rishab Narayanan for Mr. Sunny Sheen Akkara -----

ORDER

(made by M. SUNDAR, J.) In the captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity], Mr. S.N. Kirubanandam, learned counsel on record for the four writ petitioners, Mr. N. Umapathi, learned Standing Counsel for Coimbatore City Municipal Corporation for respondents 1 and 2 and Mr. S. Rishab Narayanan, learned counsel representing Mr. Sunny Sheen Akkara, learned counsel on record for private respondents (respondents 3 and 4), are before us.

2. All the aforementioned learned counsel submit in one

voice in unison that the notice issued by second respondent (Assistant Planning Officer) dated 31.01.2025 [hereinafter 'impugned notice' for the sake of convenience and clarity] which has been assailed in the captioned main WP, was assailed by third respondent (Karthikeyan, son of late Rajan) vide W.P.No.5433 of 2025 and this

writ petition was allowed, albeit with preservation of rights vide order

dated 17.02.2025 by another Hon'ble Division Bench in which one of us (M. SUNDAR, J.) was a member and the 17.02.2025 order reads as follows: '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.5433 of 2025 and W.M.P.No.5983 of 2025 Karthikeyan S/o.Late Rajan ...Petitioner Vs

1. The Commissioner Coimbatore Municipal Corporation Coimbatore - 641 001.
2. The Assistant Planning Officer

East Division, Coimbatore Corporation Coimbatore. ...Respondents Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of proceedings Nil dated 31.01.2025 on the file of the 2nd respondent and quash the same as illegal, incompetent and wholly without jurisdiction.

For Petitioner : Mr.V.Raghavachari Senior Counsel for Mr.S.Kirubanandam For Respondents: Mr.D.R.Arunkumar Standing Counsel

ORDER

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

Captioned main 'Writ Petition' {hereinafter 'WP' for the sake of brevity, convenience and clarity} has been filed assailing a 'notice dated 31.01.2025 issued by R2 [The Assistant Planning Officer, East Division, Coimbatore Corporation, Coimbatore]' {hereinafter 'impugned notice' for the sake of brevity, convenience and clarity}.

2. Mr.V.Raghavachari, learned Senior Counsel, instructed by Mr.S.Kirubanandam, counsel on record for writ petitioner submits that

the impugned notice is one wholly without jurisdiction as R2 is not vested with powers under 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) to issue the impugned notice.

3. Issue notice to respondents.

4. Mr.D.R.Arunkumar, learned Standing Counsel for Coimbatore Corporation accepted notice for both respondents and fairly conceded that R2 does not have authority and is not vested with powers to issue impugned notice.

5. Owing to the fair stand taken by learned Standing Counsel for

respondents, legal drill at hand has become fairly simple. Therefore, with the consent of learned counsel on both sides, main WP was taken up in the Admission Board.

6. A scanned reproduction of the impugned notice issued by R2 as placed before us is as follows:

7. A careful perusal of impugned notice brings to light that R2 has made it clear that it has been issued under Section 128 of TNULB Act.

8. 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 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.'

9. A careful perusal of Section 128 of TNULB Act makes it clear

that a notice under Section 128 of TNULB Act can be issued only by 'Commissioner'. The Commissioner is a term of art. In other words, Commissioner is a defined term having been defined vide sub-section (7) of Section 2 of 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 -

(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; '

10. In the case on hand, considering that the matter pertains to Coimbatore Corporation, Commissioner would be Commissioner within the meaning of Section 2(7)(a) and R2 is obviously not the commissioner.

11. The narrative, discussion and dispositive reasoning thus far

makes it clear that impugned notice is wholly without jurisdiction. Therefore, we are acceding to certiorari prayer on this short point without expressing any view or opinion on the merits of the matter.

12. The sequitur of not expressing any view or opinion on the

merits of the matter is, it is now open to R1 to issue notice afresh under Section 128 of TNULB Act (if so advised and if so desired). After notice under Section 128 of TNULB Act is issued, considering the nature of the matter, it obviously has to be a 'Show Cause Notice' {'SCN'} within a meaning of Section 128(1)(b) of TNULB Act. Therefore, we make it clear that all rights and contentions of writ petitioner also stand preserved (untrammelled by this order) on being show-caused vide notice by R1. Thereafter, the matter will be dealt with on its own merits and in accordance with law untrammelled by this order. Captioned WP allowed albeit with aforementioned preservations. Consequently, connected Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs. [M.S.,J.] [K.G.T.,J.] 17.02.2025 Index : Yes / No Neutral Citation : Yes / No

Speaking order / Non-speaking order

mk To

1. The Commissioner Coimbatore Municipal Corporation Coimbatore - 641 001.
2. The Assistant Planning Officer East Division, Coimbatore Corporation Coimbatore. ADDENDUM W.P.No.5433 of 2025

M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

ORDER

(made by M.SUNDAR, J.)

Captioned matter is listed today under the cause list caption 'FOR BEING MENTIONED', inasmuch as, at paragraph 6 of order dated 17.02.2025 allowing the writ petition, page no.46 of typed set of papers has been inadvertently scanned and reproduced, instead of page no.45 of typed set of papers. A scanned reproduction of Page no.45 of the typed set of papers which should appear at paragraph 6 of order dated 17.02.2025 is as follows:

2. Today, Mr. S. Kirubanandam, learned counsel for writ petitioner and Mr. D.R. Arunkumar, learned Standing Counsel for respondents, are present before us.

3. The aforereferred counsel on either side agreed to have

the aforementioned correction made. In all other aspects, the order

dated 17.02.2025 remains the same. Therefore, this order will now be

made as 'Addendum' and Corrigendum / Erratum to 17.02.2025 order

already pronounced in open court and already uploaded. This order will now be uploaded as 'ADDENDUM' to / along with order made by this Court on 17.02.2025 and the Registry shall issue certified copies accordingly. (M.S., J.) (K.G.T., J.) 06.03.2025 cad'

3. All the aforesaid counsel very fairly submitted that the

captioned main WP is directly and squarely covered by aforereferred final order dated 17.02.2025 in aforereferred W.P.No.5433 of 2025 and writ miscellaneous petition thereat.

4. Recording this common stated position of all the learned

counsel, captioned main WP is also allowed, albeit with preservation of rights of first respondent (Commissioner) to issue a fresh notice under Section 128 of the Tamil Nadu Urban Local Bodies (Amendment) Act, 2022 (TN Act 35 of 2022) (if so advised and if so desired) and we also preserve the rights of the writ petitioners as well as private respondents (respondents 3 and 4), if show caused under Section 128.

5. Captioned main WP is allowed, albeit with preservation of

rights in the aforesaid manner. Consequently, captioned writ miscellaneous petition thereat stands disposed of as closed. There shall be no order as to costs. (M.S., J.) (T.V.K., J.) 05.08.2025 cad To

1. The Commissioner Coimbatore Municipal Corporation Coimbatore 641 001

2. The Assistant Planning Officer East Division Coimbatore Corporation Coimbatore

M. SUNDAR, J.

and

T. VINOD KUMAR, J.

cad 05.08.2025

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