

IN THE HIGH COURT OF JUDICATURE AT MADRAS

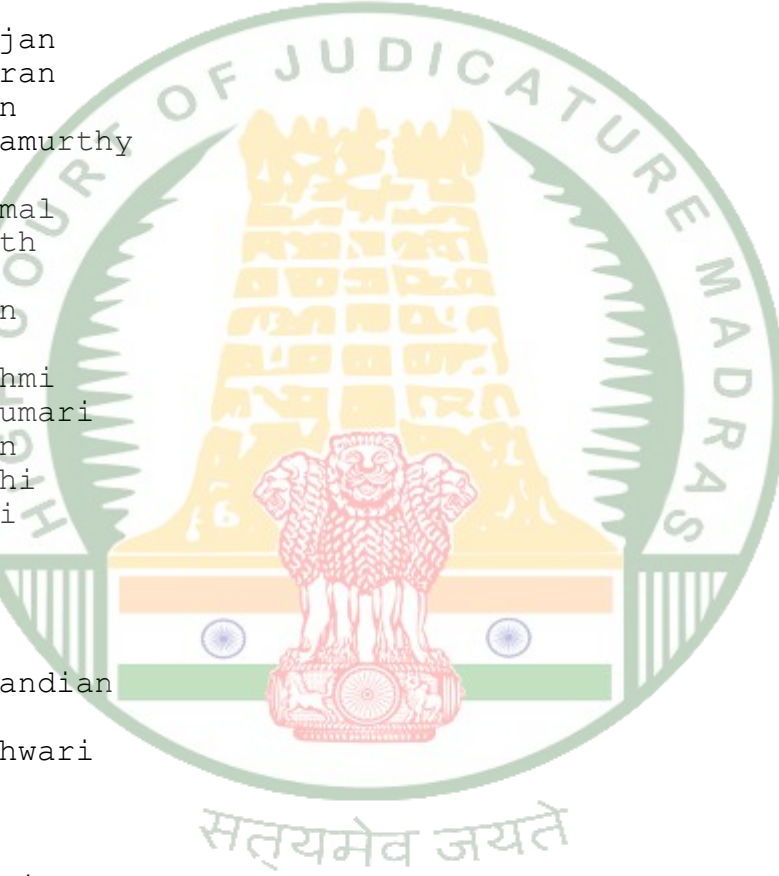
DATED: 18-08-2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.28718 of 2016
and
WMP Nos.24795 & 24796 of 2016

1.S.Meenakshi
2.V.Thiyagarajan
3.M.Ramachandran
4.N.Lakshmanan
5.KR Dhatshinamurthy
6.R.Sivakumar
7.Tmt.Chellammal
8.M.Vijayakanth
9.Viji
10.B.Murugesan
11.V.Natesan
12.K.Mahalakshmi
13.PL Vijayakumari
14.S.Mariappan
15.K.Poyyamozhi
16.Pushpavalli
17.L.Ganesan
18.Smt.Dhanam
19.M.Senthil
20.K.Sivakami
21.P.Sundarapandian
22.R.Selvaraj
23.E.Bhuvaneshwari
24.Revathi
25.Narmatha
26.R.Karnaki
27.L.Thiyagarajan
28.M.Rajendran
29.V.Lakshmanan
30.P.L.Shenbagalakshmi
31.S.P.Swarnavalli
32.G.Elangovan
33.M.Nyanapriya
34.K.Chandhirakala



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... Petitioners

Vs

1.The District Collector,
Peramballur.

2.The Assistant Director (Panchayat/audit),
Peramballur.

3.The President,
Allinagaram Panchayat
Kunnam Taluk, Peramballur District.

4.V.Kokila

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issue of writ of certiorari calling for the records relating to the order dated 22.06.2016 in Na.Ka.No.A3.694/2016 of the 1st respondent herein and quash the same.

For Petitioners : Mr.AR.L.Sundaresan,
Senior Counsel for
M/s.AL.Ganthimathi

For R.1 & R.2 : Mr.V.Jayaprakash Narayanan
Special Govt. Pleader

For R.3 : Mr.T.M.Pappiah,
Special Govt. Pleader

For R-4 : Dispensed with

O R D E R

The petitioners are the purchasers of the plots in the layout called Abirami Nagar Layout in Thondapadi Village, Alli Nagaram Panchayat, Alathur Taluk, Peramballur District. One Mrs.Shanthi who was the absolute owner of the property to an extent of 1.47.50 hectares in the said village developed the layout, after getting appropriate panchayat resolution from the said Village Panchayat on 21.11.2014. Since the plots are approved by the Panchayat Resolution, the petitioners purchased the respective plots. When things stand so, after a passage of two years, based on the representation of the 4th respondent dated 06.06.2016, without giving notice either to the developer or the petitioners, resolution dated 21.11.2014 granting approval for Abirami Nagar Layout was cancelled by the District Collector on 22.06.2016. The said order is being challenged before this court by way of this writ petition.

2. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the first and second respondents and Mr.T.M.Pappiah, learned Special Government Pleader who takes notice on behalf of the third respondent.

3. There is no necessity to hear the fourth respondent as this court is not quashing the impugned order. Hence, notice to the fourth respondent who is a private party is dispensed with at this stage.

4. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners would submit that when a Panchayat Resolution is sought to be cancelled by the Inspector of Panchayat namely, the District Collector, procedure under Section 202 of the Tamil Nadu Panchayat Act, 1994 has to be followed. No such procedure has been followed and therefore the District Collector's order has to be quashed.

5. Mr.V.Jayaprakash Narayanan, learned Special Government Pleader would submit that instead of quashing the order, he seeks this court to treat the impugned order as Show Cause Notice and for which the petitioners as well as the Panchayat President could give their reply.

6. Section 202 of the Tamil Nadu Panchayat Act is usefully extracted as follows -

202. Power to suspend or cancel resolution, etc. under the Act - (1) The Inspector may, by order in writing-

(i) suspend or cancel any resolution passed, order issued, or licence or permission granted, or

(ii) prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in his opinion, -

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law or an abuse of such powers or is considered by the Inspector to be otherwise undesirable, or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the going of such act is likely to cause danger to human life, health or safety or is likely to lead to a riot or an affray :

Provided that nothing in this sub-section shall enable the Inspector to set aside any election which has been held.

(2) The Inspector shall, before taking action on any of the grounds referred to in clauses (a) and (b) of sub-section (1), give the authority or person concerned an opportunity for explanation.

(3) The power conferred on the Inspector under clause (c) of sub-section (1) may be exercised by the collector in accordance with the provisions of that clause.

7. A perusal of the above said section would reveal that as per Section 202 (1) of the Act, suspension or cancellation of resolution passed by the Panchayat, if a resolution which has been passed is found to be illegally passed, before cancelling the said resolution, the Inspector of Panchayat cum District Collector, mandatorily has to give a notice under Section 202 (2) of the Act. In this case, though the resolution granting permission for the layout approval was granted as early as on 21.11.2014, merely based on a complaint given by the fourth respondent on 06.06.2016 during public grievance day, without issuing notice under Section 202 (2) of the Tamil Nadu Panchayat Act, straight away the resolution has been cancelled by the District Collector. The procedure adopted by the District Collector is illegal.

8. When a resolution has been passed by the Panchayat, based upon the resolution, third parties would have acted upon and right would have got accrued to the parties. Therefore the District Collector should be diligent enough to follow the procedure laid under Section 202 of the Act. When the said sub-section (2) mandatorily requires a Show Cause Notice or notice of hearing to the parties before cancellation, the District Collector is duty bound to follow the same. It is well settled law that if the act is directed to be done in a particular manner by statute, the same has to be done according to law.

9. In view of the above said provision in the law, the resolution is liable to be quashed. However, as suggested by the learned Special Government Pleader, instead of quashing the impugned order, this Court directs the petitioners as well as the Panchayat to treat the impugned order of the District Collector dated 22.06.2016 as Show Cause Notice and they are required to give their reply within a period of four (4) weeks

from the date of receipt of copy of the order. On receipt of the reply, the District Collector shall hear the petitioners, the Panchayat as well as the fourth respondent, and pass appropriate orders, on merits and in accordance with law, within a period of eight (8) weeks therefrom.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rgr

To

- 1.The District Collector,
Peramballur.
- 2.The Assistant Director (Panchayat/audit),
Peramballur.
- 3.The President,
Allinagaram Panchayat
Kunnam Taluk, Peramballu District.

+1cc to Mr.A.L. Gandhimathi, Advocate, S.R.No.47305
+1cc to the Government Pleader, S.R.No.49694

SKV(CO)
EU(07/08/2016)

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W.P.No.28718 of 2016

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