

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.02.2021

Coram

The HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No.13597 of 2020

and

WMP Nos.16883, 16885 and 16887 of 2020

K.Radhamani
W/o Krishnasamy
Vice President
The Pongalur Village Panchayat
Dhasarapalayam
Pongalur Post, Avinashi Taluk,
Tiruppur District.Petitioner

vs.

- 1.The District Collector,
Thiruppur District,
Thiruppur.
- 2.The Executive Engineer,
Tamilnadu Slum Clearance Board,
188, Sakthi Nagar, Koyampalayam,
Thiruppur-2.Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records with related to the impugned communication dated .07.2020 vide Na.Ka.No.598/2020/A4 issued by the first respondent and quash the same as illegal and unconstitutional and consequently direct the respondents to permanently stop the proposal for construction of multi storied building or any other building in the land measuring 9.42 cents in S.No.112/1 and another extent of acres 3.47 cents in S.No.113/1 situated at Pongalur village, Avinashi Taluk, Tiruppur District.

For Petitioner .. Mr.S.S.Karthikeyan

For Respondents .. Mr.K.Kumaresh Babu for R2
Additional Advocate General
Assisted by Mr.E.Balamurugan
Special Government Pleader
Mr.Prabhu for R2
Standing Counsel

O R D E R

This Writ Petition is filed as against the order dated July, 2020 in Na.Ka.No.598/2020/A4 issued by the 1st respondent, cancelling the resolution passed by the Village Panchayat under Section 202 of the Tamil Nadu Panchayat Act, 1994.

2. The petitioner/Vice President of Pongalur Village Panchayat has passed a resolution on the request made by the 2nd respondent for construction of Pradhama Mandir Awas Yojana, Housing Scheme. The Tamil Nadu Slum Clearance Board is constructing multi storied tenements under Honourable Prime Minister's Housing Scheme to remove and rehabilitate the encroachers in the water bodies as per the directions of the Honourable Supreme Court of India to provide house for houseless urban poor in all the Urban Local bodies in Tamil Nadu. Accordingly, the 2nd respondent has identified the Government Land (Assessed Waste) in SF. No.112/1 measuring 3.81.50 Hectares and 113/1 measuring 1.40.0 Hectares in Pongalur Village, Avinashi Taluk of Tiruppur District for the construction of multi-storied tenement for houseless poor families in Punjaipuliampatti Municipality, Avinashi Town Panchayat and Tiruppur Corporation. The Tamil Nadu Slum Clearance Board requested the 1st respondent/District Collector to give entry permission to the 2nd respondent and the 1st respondent has also granted permission by proceedings dated 09.12.2019. The possession of land was also taken over by the 2nd respondent on 23.12.2019 and building plan approval was submitted to the Village Panchayat. While taking a decision on the proposal of building plan approval submitted by the 2nd respondent, the Village Panchayat has passed a resolution in Resolution No.22 dated 25.02.2020 stating that the said land can very well be utilised for some other purpose like construction of School, hospital etc. instead of constructing multi storied building and rejected the request of the 2nd respondent. By subsequent resolution No.37 dated 26.06.2020, the Village Panchayat has requested that the said land may be utilised for construction of Primary Health Centre, Veterinary College, Government High Court and for any other Government scheme etc. The said resolution was placed before the 1st respondent/District Collector. The 1st respondent, by order impugned in this writ petition, has cancelled the resolution passed by the Panchayat stating that the Panchayat cannot take a resolution as against the policy decision of the Government and the Government has decided to construct the multi storied buildings in Government lands at Pongalur Village for allotment to houseless poor below poverty line by removing the encroachments in water bodies. This order came to be passed by the 1st respondent/District Collector invoking the power conferred under section 202 of the Tamil Nadu

Panchayat Act, 1994. The said order is challenged by the Vice President of the Village Panchayat stating that this order was passed without affording an opportunity of hearing to the Panchayat as required under section 202(2) of the Tamil Nadu Panchayat Act, 1994.

3. Section 202 of the Tamil Nadu Panchayat Act, 1994, reads as follows:

202. (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 doing 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.

4. However, in this case, the learned Additional Advocate General who appeared for the 1st respondent would submit that subsequent to the resolution passed by the Panchayat, the Panchayat President and others have realised the mistake committed by them and on 06.07.2020, granted building permission order to the 2nd respondent. Therefore, if the present impugned order is set aside, it would amount to restoring the earlier resolution passed by the Panchayat. Learned Additional Advocate General would further submit that by passing the resolution, rejecting the building plan for construction under Pradhama Mandir Awas Yojana-Housing Scheme, the Village Panchayat had acted beyond the power vested with the Panchayat, therefore, setting aside the present impugned order without

giving an opportunity, would only revive another illegal order. In support of this contention, he relied on the judgement of the Hon'ble Supreme Court reported in 2012(9) SCC 310 (Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel) and the relevant paragraph reads as follows.

"14. It is a settled legal proposition that the court should not set aside the order which appears to be illegal, if its effect is to revive another illegal order. It is for the reason that in such an eventuality the illegality would perpetuate and it would put a premium to the undeserving party/person."

5. This Court paid its anxious consideration on the rival submissions made.

6. Though the order impugned was passed without providing an opportunity of hearing as per section 202 of the Panchayat Act, in view of the subsequent developments that the Panchayat has revived its own resolution and also passed an order approving the building plan submitted by the 2nd respondent and if the present impugned order is set aside, it would only revive another illegal order. This Court cannot set aside the order which appears to be illegal and which will revive another illegal order. Further, this writ petition is filed only by the Vice President of the Panchayat, while the President and all other members have taken a decision and passed an order for building permission in favour of the 2nd respondent.

7. Therefore, this Court is of the view that this writ petition is liable to be dismissed, accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vsi

To

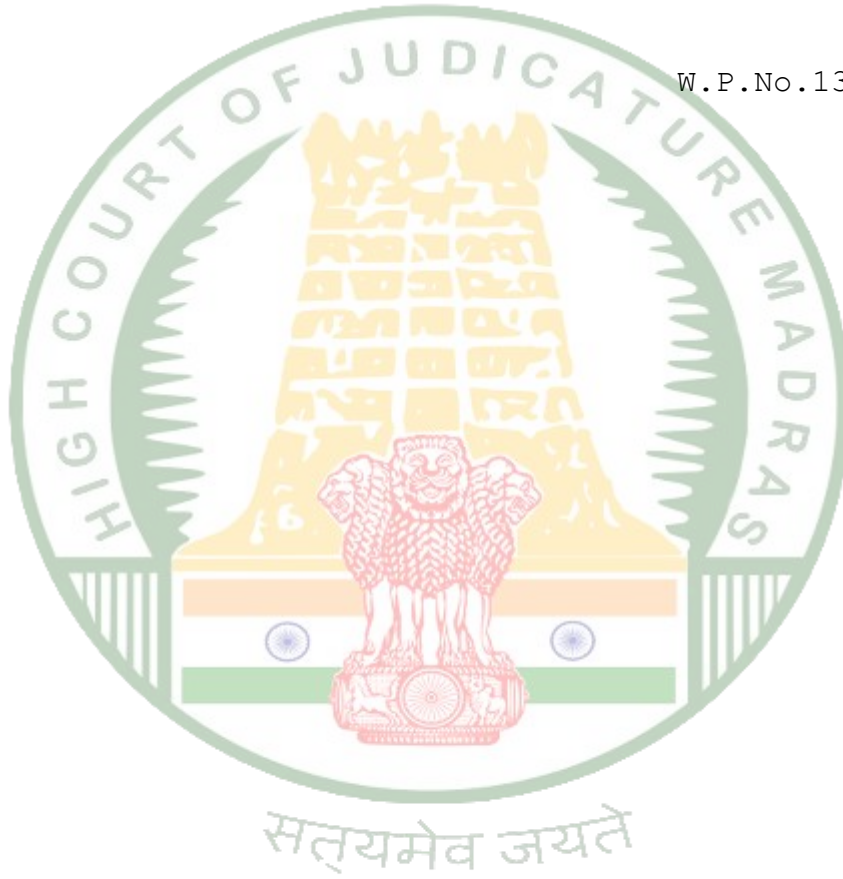
1.The District Collector,
Thiruppur District,
Thiruppur.

2.The Executive Engineer,
Tamilnadu Slum Clearance Board,
188, Sakthi Nagar, Koyampalayam,
Thiruppur-2.

+1cc to Mr.S. PRABU, Advocate, S.R.No.7579

VSN11(CO)
SM/02/03/2021

W.P.No.13597 of 2020



WEB COPY