



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P. (MD) .No.6629 of 2012

and

M.P. (MD) Nos.3 and 4 of 2012

WEB COPY

1.S.Govindharaj

2.S.Baluchamy

... Petitioners

Vs.

1.The Assistant Director (Rural),
Rural Development,
Office of Rural Development Assistant
Director,
Virudhunagar.

2.The President,
Thoppalakarai Village,
Thoppalakarai,
Aruppukottai Taluk,
Virudhunagar District.

3.K.Dharmalingam

... Respondents

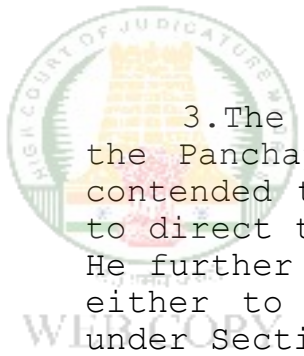
PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the first respondent herein in ref.Na.Ka.Vu.E.4/1518/2012, dated 20.04.2012 and to quash the same.

For Petitioners : Mr.S.Natarajan
For R1 : Mr.N.Muthu Vijayan
Special Government Pleader
For R2 : Mr.M.Thirunavukkarasu
For R3 : Mr.D.Sivaraman

O R D E R

The present Writ Petition has been filed challenging the emergent memo issued by the first respondent herein under which he directed the second respondent Panchayat to cancel a resolution granting House Tax assessment for the property of the writ petitioner.

2.According to the learned Counsel for the petitioners, the property in dispute absolutely belongs to him and there is no encroachment over any poramboku land or Government property. He has put up construction and the property has been assessed to tax by the second respondent Panchayat.



3.The first respondent has passed this emergent memo, directing the Panchayat to cancel the property tax assessment. He further contended that the first respondent has no jurisdiction, whatsoever to direct the Panchayat to pass a resolution in a particular manner. He further contended that only the District Collector has got powers either to cancel or vary any resolution passed by the Panchayat under Section 202 of the Tamil Nadu Panchayat Act.

4.Per contra, the learned Counsel for the third respondent has contended that the writ petitioner had already filed a civil suit impleading the District Collector as a party, claiming declaration of title over the disputed property. The said suit was dismissed and the appeal filed by the writ petitioners was also dismissed. The second appeal was filed and the same is pending. The learned Counsel for the third respondent further submitted that previously an elaborate procedure was followed and an order was passed by the District Collector on 15.11.2005, directing the removal of encroachment. However, the said order has not been implemented citing the pendency of the civil suit.

5.I have carefully considered the submissions made on the either sides. On perusal of the impugned emergent memo, it indicates that the said memo has been issued by the Assistant Director of Panchayat, directing the Panchayat to pass a resolution in a particular manner. Admittedly, he does not have any jurisdiction to pass such an order, especially, in the light of Section 202 of Tamil Nadu Panchayat Act, which empowers only the District Collector to suspend or vary any resolution passed by the Panchayat. Since the impugned order has been passed by an authority with no jurisdiction, the same is liable to be set aside.

6.In view of the above said discussion, this Court is inclined to pass the following order:

- i) The impugned order is set aside.
- ii) The second respondent Panchayat is at liberty to proceed under Section 131 of the Panchayat Act, in case, if it finds that the property is an encroachment over the road.

7.With the above said observation, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

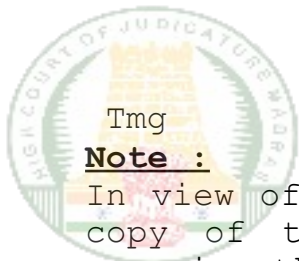
Sd/-

Assistant Registrar (AE)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)



Tmg

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Assistant Director (Rural),
Rural Development,
Office of Rural Development Assistant
Director,
Virudhunagar.

+1 CC to M/s.D. SIVARAMAN, Advocate (SR-28658[F]
dated 29/06/2022)

+1 CC to M/s.SPL.GP (SR-28729, SR-28746[F] dated
29/06/2022)

+1 CC to M/s.S. NATARAJAN, Advocate (SR-28747[F]
dated 29/06/2022)

W.P. (MD) .No.6629 of 2012
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RD(07.07.2022) 3P 5C