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W.P.(MD)No.3148 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.03.2022

DELIVERED ON : 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD) No.3148 of 2022

and

W.M.P. (MD) Nos.3377 and 3989 of 2022

S.Meenatchi

... Petitioner

vs.

1.The Additional Collector (Development),
District Rural Development Agency,
Dindigul.

2.The Assistant Director (Panchayat),
Dindigul.

3.The Block Development Officer,
Batlagundu Panchayat Union,
Batlagundu, Dindigul District.

4.The Revenue Divisional Officer,
Dindigul District.

5.The Tahsildar,
Nilakottai Taluk, Dindigul District.

6.The Sub Inspector of Police,
Viruveedu Police Station,
Dindigul District.

7.The Commissioner of Land Reforms,
Commissionerate of Land Reforms,
Ezhilagam, Chepauk, Chennai.

8.M/s.F.Robin Power Solutions Private Limited,
represented by its General Manager, S.Johnson,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the third respondent and quash his orders / advice Na.Ka.No.138/2022/2 தி, dated 03.02.2022 and Na.Ka.No.138/2022/2 தி, dated 07.02.2022 and order valuation of the materials by the engineer Panchayat Union then permit the petitioner office or any competent office this Court deems fit and to call for auctionor this materials attached.



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For Petitioner	:Mr.K.Surendran
For R1, R2, R4 to R7	:Mrs.S.Jeyapriya Government Advocate
For R3	:Mr.D.S.Nedunchezian Government Advocate
For R8	:Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates

O R D E R

The question that arises for consideration in this Writ Petition is whether an order passed by the third respondent/Block Development Officer, dated 03.02.2022 stating that the attachment of building materials by the petitioner, who is a Panchayat President, cannot be done without the permission of the District Collector and revenue officials, can be challenged by the petitioner in a Writ Petition.

2.The petitioner is the Panchayat President of Nadakottai Panchayat, Nilakottai Taluk, Dindigul District. She has effected attachment of materials lying in the premises of the eighth respondent situated at S.Nos.260/2, 260/4, 262/1, 262/2, 262/3, 262/4, 262/5, 318/3, 318/5, 319/1, 319/3A, 319/3B, 319/3C, 319/4A, 320/1, 321/2B2, 321/2B3, 321/3 and 364/5 at Nadakottai Village, Nilakottai Taluk, Dindigul District, under Section 143-A of the Tamil Nadu Panchayats Act, 1994.

3.According to the petitioner, the aforementioned lands are bhoodan and gramadhan lands and cannot be alienated. It is the contention of the petitioner that a gramasabha of Nadakottai Panchayat passed a resolution on 02.10.2021 that the lands, which are in illegal possession of the eighth respondent should be retrieved by the authorities. According to the petitioner, there is an error in the UDR patta issued in favour of the eighth respondent. According to the petitioner, the eighth respondent can never become the owner of the subject lands.

4.It is the contention of the petitioner that the eighth respondent has encroached upon the Government lands in S.Nos.244/1, 244/8, 251/2, 253/1, 256/1B, 264, 321/2B1 and 322/3, measuring approximately ten acres. It is also the contention of the petitioner that the eighth respondent has also encroached and destroyed streams, regular pathway, ooranis, public wells and bore wells, which are directly maintained by the Panchayat.

5.According to the petitioner, without approval of the Panchayat Union, the eighth respondent has initiated construction work in the subject property. According to the petitioner, on



12.01.2022, she issued a statutory notice under Section 143-A of the Tamil Nadu Panchayats Act, 1994, to the eighth respondent calling upon them to stop the construction work and remove the construction materials from the site within a period of seven days from the date of receipt of the notice.

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6.It is the contention of the petitioner that no reply was received by the petitioner to the statutory notice and only thereafter, the petitioner ordered attachment of building materials lying in the eighth respondent's premises. However, according to the petitioner, arbitrarily and illegally, without taking action against the eighth respondent, the third respondent has issued the impugned notice to the petitioner, dated 03.02.2022 stating that the attachment of building materials by the petitioner cannot be done without the permission of the District Collector and revenue officials. According to the petitioner, the act of the third respondent under the impugned order would tantamount to helping a wrong doer, who is the eighth respondent herein. It is the contention of the petitioner that the third respondent does not have any legal authority to issue the impugned direction to the petitioner. In such circumstances, this Writ Petition has been filed.

7.A counter affidavit has been filed by the eighth respondent denying the allegations made by the petitioner. According to the eighth respondent, the Writ Petition filed by the Panchayat President is not maintainable. It is their contention that a person in the capacity of implementing an order under law cannot challenge an order passed by another statutory authority by filing a Writ Petition and a Writ Petition assailing such an action is *ex facie* not maintainable.

8.It is the contention of the eighth respondent that the subject lands do not belong to the eighth respondent, but belong to five other companies, namely, ACV Products Private Limited, Coimbatore, M/s.Kayar Exports Private Limited, M/s.VeeBee Yarnntex Private Limited, M/s.Subburaj Cotton Mills Private Limited and Mahavishnu Spinning Mills Private Limited. According to them, they are merely an installation agency hired by the said companies for the purpose of setting up solar power plant unit for generation of electricity to be fed into the grid through Sitthargal Natham Sub Division, Dindigul District. Since the owners of the said lands have not been made as party respondents, the present Writ Petition is not maintainable.

9.According to the eighth respondent, instead of giving effect to the orders passed by the third respondent/Block Development Officer, the petitioner, who is the Panchayat President, is acting in defiance and therefore, she is liable for removal as per Section 205 of the Tamil Nadu Panchayats Act, 1994. The petitioner had



connection with the same subject matter as a public interest litigation and the same is pending for disposal. Such being the case, having subjected herself to an earlier litigation on the same subject matter, the petitioner cannot file another Writ Petition seeking to undertake parallel proceedings.

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10. According to the eighth respondent, the subject lands are patta lands belonging to the aforesaid companies. They had purchased the same for valuable consideration and all the revenue records in respect of the subject lands stand in the names of the said companies. The allegations that Nadaottai Gramdan Sarvodaya Sangam is having title over the said lands and the possession and enjoyment of the same is with the farmers of the village is false. The subject lands are neither bhoodan nor gramadhan lands, but, are private properties of the aforementioned entities.

11. The allegations that in the year 1985, during UDR survey, the patta has been erroneously updated in the name of the private entities is misplaced and no such allegation is borne out of records. Being patta lands, the petitioner, as a Panchayat President, has no jurisdiction to interfere with the rights of the private entities to deal with their respective properties.

12. The eighth respondent never encroached upon the Government lands, as alleged by the petitioner. The project of the eighth respondent does not affect the public streams/pathways or bore wells, as alleged by the petitioner. Section 143 and Section 143-A of the Tamil Nadu Panchayats Act, 1994, have no relevance. Section 143 of the Act deals with precautions in case of tanks and wells, but whereas, Section 143-A of the Act deals with permission to sink a well.

13. According to the eighth respondent, in a solar power plant, no construction is made, but only solar power plant units are installed, which is not a construction or development as per the provisions of the Tamil Nadu Panchayats Act, 1994 and therefore, it is not a building under Section 2(1)(A) of the Act and consequently, it neither requires planning permission nor it is governed by the Tamil Nadu Building Panchayat Rules.

14. According to the eighth respondent, the petitioner is known for demanding illegal gratification from various entities to unjustly enrich herself. In fact, the eighth respondent had preferred a complaint to the police stating *inter alia* that certain anti social elements are indulging in extortion and have been demanding huge sums of money or threatening to not to allow the implementation of the project. The said complaint has been taken on file as Cr.No.23 of 2022, dated 27.01.2022 on the file of the Viriveedu Police Station. In addition to the above, the eighth respondent has moved this Court seeking police protection in view of the above apprehensions and this Court by its order, dated 01.11.2021



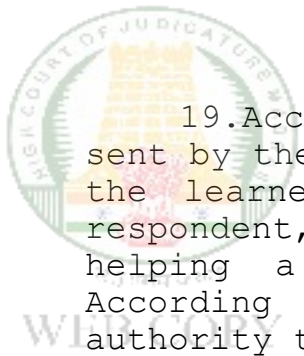
in W.P.(MD)No.19706 of 2021 had directed the police to grant adequate police protection for the implementation of the solar power project.

15.All the above facts, despite being within the knowledge of the petitioner, have been suppressed in this Writ Petition. There is no power conferred in the Tamil Nadu Panchayats Act, 1994, to pass order for attachment of properties or for auction of the same. The third respondent had rightly issued the impugned direction to the petitioner in the present Writ Petition. The petitioner has no legal right to assail the impugned proceedings. Further, it is to be noted that the petitioner had already preferred an appeal against the order impugned in the present Writ Petition to the Inspector of Panchayat on 09.02.2022 and having already approached the first respondent, the present Writ Petition is not maintainable, as it lacks *bona fides*. The instant Writ Petition is an abuse of process of law, tainted by suppression of material facts, actuated by malice and without a semblance of legal right.

16.Heard Mr.K.Surendran, learned Counsel for the petitioner, Mrs.S.Jeyapriya, learned Government Advocate appearing for R1, R2 and R4 to R7, Mr.D.S.Nedunchezian, learned Government Advocate appearing for the third respondent and Mr.M.Ajmal Khan, learned Senior Counsel for the eighth respondent.

17.Mr.K.Surendran, learned Counsel for the petitioner reiterated the contents of the affidavit filed in support of this Writ Petition and would submit that the subject lands are bhoodan lands, which cannot be alienated and belong to farmers of Nadakottai village. According to the petitioner, the eighth respondent is in illegal possession of the said lands and only in such circumstances, the materials lying in the subject lands belonging to the eighth respondent were attached exercising the power under Sections 143 and 143-A of the Act. According to him, due to an error during UDR survey, the names of the land owners has been altered. Therefore, according to him, the eighth respondent is in illegal possession of the subject lands.

18.He would submit that the eighth respondent has encroached upon the Government lands measuring approximately 10 acres and the eighth respondent has also encroached and destroyed streams, regular pathway, ooranis and bore wells, which are directly maintained by the Panchayat. According to the petitioner, without the approval of the Panchayat Union, the eighth respondent has started construction work in the subject property. According to him, as per the provisions of Section 143-A of the Act, the petitioner, who is the Panchayat President, is entitled to call upon the eighth respondent to stop the construction work and to remove the construction materials from the site within a period of seven days from the date of receipt of the notice.



19. According to him, no reply was also received for the notice sent by the petitioner under Section 143-A of the Act. According to the learned Counsel for the petitioner, the act of the eighth respondent, as seen from the impugned order, would tantamount to helping a wrong doer, who is the eighth respondent herein. According to him, the third respondent does not have any legal authority to issue the impugned direction to the petitioner.

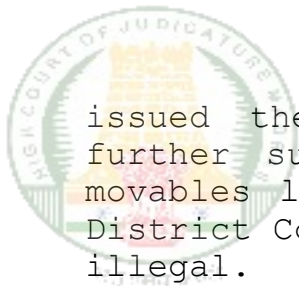
20. *Per contra*, Mr.M.Ajmal Khan, learned Senior Counsel for the eighth respondent would submit that the Writ Petition is not maintainable. He would submit that Section 143-A of the Act has no relevance for the facts of the instant case. He drew the attention of this Court to Section 143-A of the Act, which deals with grant of permission to sink a well, which has no relevance to the facts of the instant case.

21. He would further submit that the petitioner instead of implementing the orders of the Block Development Officer and the District Collector, has disobeyed the same by filing this Writ Petition. According to him, the petitioner has no *locus standi* to institute this Writ Petition. He drew the attention of this Court to a Full Bench Judgment of this Court in the case of ***Union of India vs Member Secretary, CMDA***, reported in ***2006 (4) CTC 460***, and would submit that a person in the capacity to implement an order under law cannot challenge such order by filing a Writ Petition and a Writ Petition assailing such action is *ex facie* not maintainable.

22. The learned Senior Counsel would further submit that the subject lands does not belong to the eighth respondent, but belongs to a group of companies, who have not been arrayed as party respondents in this Writ Petition. Therefore, this Writ Petition is not maintainable for non joinder of necessary parties. Further, he would submit that the eighth respondent is only an installation agency and is not the owner of the subject lands.

23. Mr.M.Ajmal Khan, learned Senior Counsel would submit that the subject lands are patta lands belonging to a group of companies and therefore, the petitioner has no *locus standi* to institute this Writ Petition. According to him, the eighth respondent has not violated any of the provisions of the Tamil Nadu Panchayats Act, 1994 and its rules.

24. Mr.M.Ajmal Khan, learned Senior Counsel also drew the attention of this Court to Section 202 of the Act and would submit that the District Collector, who is the Inspector of Panchayat, is empowered to suspend or cancel any resolution passed, order issued or licence or permission granted by the petitioner, who is the Panchayat President. Therefore, according to him, only in accordance with the provisions of Section 202 of the Act, the Block Development Officer, concurred with the District Collector and has



issued the impugned communication to the petitioner. He would further submit that the petitioner has attempted to attach the movables lying in the subject lands without the permission of the District Collector under Section 143-A of the Act, which is *ex facie* illegal.

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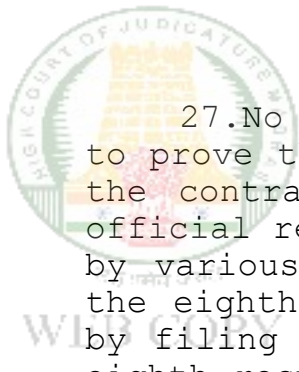
Discussion:

25.The petitioner is the Panchayat President. The impugned communication, dated 07.02.2022 has been sent to her, wherein, the third respondent/Block Development Officer has intimated the petitioner that the attachment of building materials by her in the eighth respondent premises under Section 143-A of the Tamil Nadu Panchayats Act, 1994, has been done without the permission of the District Collector and revenue officials and therefore, the same is bad in law. Under the impugned communication, a further direction has been issued to the petitioner to remove the notice affixed in the eighth respondent's premises regarding alleged attachment issued under Section 143-A of the Tamil Nadu Panchayats Act, 1994. Section 143-A of the Tamil Nadu Panchayats Act, 1994, reads as follows:

"143. (I) If any tank, pond, well, hole, stream, dam, bank or other place appears to him to be, for want of sufficient repair, protection or enclosure, dangerous to the public health or safety, the commissioner or executive authority may with the approval of the panchayat union council or village panchayat, as the case may be, by notice require the owner to fill in, remove, repair, protect or enclose the same so as to prevent any danger therefrom."

25(A).As seen from the aforesaid section, it deals with seeking permission to sink a well. It is not empower a Panchayat President to attach movables, as was done by the petitioner on 30.01.2022 in her attachment notice.

26.It is not in dispute that the subject lands are patta lands. According to the eighth respondent, they are owned by five entities, namely, ACV Products Private Limited, Coimbatore, M/s.Kayar Exports Private Limited, M/s.VeeBee Yarnntex Private Limited, M/s.Subburaj Cotton Mills Private Limited and Mahavishnu Spinning Mills Private Limited, for the purpose of setting up a solar power plant unit for generation of electricity to be fed into the grid through Sitthargal Natham Sub Division, Dindigul District. The aforesaid companies have not been made as party respondents, despite a categorical stand having been taken by the eighth respondent in their counter affidavit that they are not the owners of the subject lands, but they are only an installation agency. Therefore, this Court is of the considered view that the Writ Petition will have to be dismissed for non joinder of necessary parties.



27.No documentary evidence has been produced by the petitioner to prove that the subject lands are bhoodan or gramadhan lands. On the contrary, the contentions of the eighth respondent and other official respondents is that the subject lands are patta lands owned by various entities referred to in the counter affidavit filed by the eighth respondent, have also not been denied by the petitioner by filing a reply affidavit to the counter affidavit filed by the eighth respondent. Even during the submissions made by the learned Counsel for the petitioner, the statements made by the eighth respondent in its counter affidavit that the subject lands are patta lands and owned by five different entities have not been denied. Therefore, it will have to be presumed that the subject lands are patta lands owned by different entities and cannot be classified as bhoodan or gramadhan lands.

28.The petitioner had issued the attachment notice on 30.01.2022 on the ground that the eighth respondent is an encroacher of the subject lands measuring 10 acres. It is also the contention of the petitioner that the eighth respondent has also encroached and destroyed streams, regular pathway, ooranis, and bore wells, which are directly maintained by the Panchayat. However, no documentary evidence has been produced by the petitioner before this Court in support of the said contention. On the contrary, all the official respondents have not denied the fact that the subject lands are patta lands. The petitioner has also not denied the same either through an affidavit or in the submissions made by her Counsel before this Court.

29.The attachment notice has been issued by the petitioner, as a Panchayat President on 30.01.2022 without the approval of the District Collector. The third respondent/Block Development Officer has also issued the impugned communication to the petitioner on the ground that the petitioner has issued the attachment notice without getting approval of the District Collector and other revenue officials. It is also the contention of the official respondents that only with the concurrence of the District Collector, the impugned communication has been issued to the petitioner, who is the Panchayat President. 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:*

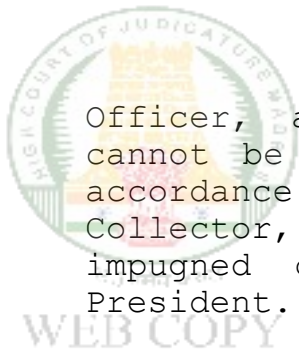
Provided that nothing in this sub-section shall enable the Inspector to set aside any election which has been held.

(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 (I) may be exercised by the Collector in accordance with the provisions of that clause."

30.As seen from the aforementioned section, the District Collector is having the power to prohibit the doing of any act, which is about to be done or is being done in pursuance or under colour of the Tamil Nadu Panchayats Act, if in his opinion, such a resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised. The Inspector referred to the above Section is the District Collector. Hence, it is clear that the District Collector is having the power to issue communication, as in the nature of one, which is impugned in this Writ Petition. Though the same has been issued by the Block Development Officer, a categorical stand has been taken that the said communication has been issued only with the approval of the District Collector. None of the respondents have also not denied the same. The petitioner has also not contended that the impugned communication has been issued without the approval of the District Collector. Therefore, it is to be presumed that prior approval was obtained by the third respondent/Block Development Officer from the District Collector before issuing the impugned communication to the petitioner. The act of the third respondent under the impugned communication would not tantamount to helping a wrong doer, as alleged by the petitioner. There are no materials/evidence placed before this Court to show that the eighth respondent is a wrong doer. When there are no materials/evidence against the eighth respondent, the aforesaid contention of the petitioner has to be necessarily rejected.

31.The District Collector, being the Executive Head of the district, exercises overall supervision on other Government agencies in his district. He is, in short, the head of the district administration, a coordinating officer among various departments and a connecting link between the public and the government so far as he executes the policies, administers the rules and regulations framed by the government from time to time. Hence, the impugned communication issued by the third respondent/Block Development



Officer, after obtaining approval from the District Collector, cannot be considered to be not in accordance with law. Only in accordance with the statutory powers granted to a District Collector, the third respondent, on his approval, has issued the impugned communication to the petitioner, who is a Panchayat President.

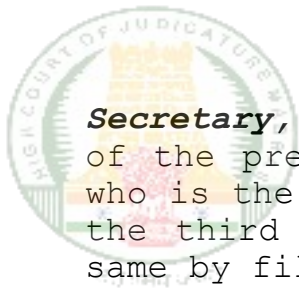
32.The project, which is attempted to be stalled by the petitioner, is a public project and it relates to installation of a solar power plant. Without any documentary evidence, this Writ Petition has been filed by a Panchayat President, which goes against the public interest. The eighth respondent has already lodged a criminal complaint against the petitioner and an FIR has also been registered in Cr.No.23 of 2022 on 27.01.2022 on the file of the Viriveedu Police Station. The eighth respondent has already obtained police protection through an order passed by this Court on 01.11.2021 in W.P.(MD)No.19706 of 2021.

33.The eighth respondent has also raised a contention that the petitioner is known for demanding illegal gratification from various entities to unjustly enrich herself. Though the said contention has been raised without any documentary evidence, this Court cannot totally ignore the said contention to be false, as the conduct of the petitioner raises some suspicion on the minds of the Court. However, the present issue is not one concerning the integrity of the petitioner and therefore, there is no necessity for this Court to make a roving enquiry against those allegations levelled by the eighth respondent in their counter affidavit.

34.The petitioner is a Panchayat President and is a responsible person in the Society, who has been vested with certain statutory powers. She must act responsibly, while discharging her function and should not have any personal interest. The petitioner has now challenged the impugned communication sent by the third respondent/Block Development Officer, which is not an adverse order passed against the petitioner, but is only a communication intimating the petitioner that the attachment notice issued by her against the eighth respondent is not in accordance with law, as it has been issued without the approval of the District Collector and other revenue officials.

35.As observed earlier, the attachment notice, dated 30.01.2022 issued by the petitioner against the eighth respondent is not in accordance with law, and hence, the impugned communication cannot be challenged by the petitioner, who is also having certain statutory powers under the Tamil Nadu Panchayats Act, 1994, to implement certain orders.

36.The decision relied upon by the learned Senior Counsel for the eighth respondent in the case of ***Union of India vs Member***



Secretary, CMDA, reported in **2006 (4) CTC 460**, applies to the facts of the present case, as it is also a case, where, the petitioner, who is the Panchayat President, instead of implementing the order of the third respondent/Block Development Officer, has challenged the same by filing this Writ Petition.

37. For the foregoing reasons, there is absolutely no merit in this Writ Petition. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2022

Sub Assistant Registrar(CS)

cmr

To

1. The Additional Collector (Development),
District Rural Development Agency,
Dindigul.
2. The Assistant Director (Panchayat),
Dindigul.
3. The Block Development Officer,
Batlagundu Panchayat Union,
Batlagundu, Dindigul District.
4. The Revenue Divisional Officer,
Dindigul District.
5. The Tahsildar,
Nilakottai Taluk, Dindigul District.
6. The Sub Inspector of Police,
Viruveedu Police Station,
Dindigul District.
7. The Commissioner of Land Reforms,
Commissionerate of Land Reforms,
Ezhilagam, Chepauk, Chennai.

+1 CC to M/s.K.SURENDRAN, Advocate (SR-15922[F] dated 01/04/2022)



+1 CC to M/s.SPL GP (SR-16315[F] dated 04/04/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-16293[F] dated 04/04/2022)

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