



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD)No. 359 of 2022

and C.M.P. (MD) Nos. 3668 & 3669 of 2022

S.Meenatchi

.. Appellant

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.Tahsildar,
Nilakottai Taluk, Dindigul District.

6.The Sub-Inspector of Police,
Virusveedu 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,
Rep, by its General Manager, S.Johnson,
6/192, Sf.No.401/3A1, Combaipatty Village,
Main Road Chinnupatti, Reddiypatti (PO),
Nilakottai Taluk, Dindigul District.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.04.2022 made in W.P.(MD) No. 3148 of 2022.

Prayer in WP(MD) . 3148/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorarified Mandamus to call for the records from the 3rd respondent, which his orders/advice Na.Ka. no. 138/2022/2 Thi date

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03.02.2022 and Na.Ka. 138/2022/ 2 Thi date 07.02.2022 and order valuation of the materials by the engineer panchayat union and then permit petitioner office or any competent office this Hon`ble Court deems fit and to call for auctioner this materials attached and thus render justice.

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For Appellant : Mr.K.Surendran
For Respondents : Mr.M.Siddharthan,
Addl. Govt. Pleader
for R1, R2, R4 to R7
Mr.M.Ajmal Khan,
Senior Counsel for R8

JUDGMENT

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 01 April 2022 recorded on W.P(MD) No.3148 of 2022. This appeal is by the writ petitioner.

2. Learned advocate for the petitioner/appellant has submitted that, the relief sought in the writ petition ought to have been granted by learned Single Judge, since the petitioner being the President of the Village Panchayat is vested with the powers of taking action against the eighth respondent which she had done and therefore, interference therein by the respondents State Authorities in the form of orders / advisory dated 03.02.2022 and 07.02.2022 was without authority of law and illegal and was in violation of principles of natural justice and therefore the same ought to have been set aside by learned Single Judge.

3. It is noted that, learned advocate for the appellant / writ petitioner has extensively taken this Court through the various provisions of the Tamil Nadu Panchayats Act, 1994 and has also relied on the decision of the Division Bench of this Court recorded on W.P(MD)No.6004 of 2007. It is submitted that, this appeal be entertained.

4. On the other hand, Mr.M.Ajmal Khan, learned Senior Advocate for the contesting eighth respondent has submitted that, learned Single Judge, in the facts of this case has refused to exercise discretion under Article 226 of the Constitution of India and the said refusal in no way can be said to be an error, much less any error apparent on the face of record which may be corrected under Clause 15 of the Letters Patent. It is submitted that this appeal be dismissed.

5. Without prejudice to the above, it is further submitted that, this litigation is not bonafide and it needs to be seen as chain of various litigations. Reference is made to W.P(MD) No.19764



of 2021 and W.P(MD) No.6862 of 2022. It is submitted that the relief sought in those petitions be weighed vis-a-vis this petition, further keeping in view the *prima facie* observations made by learned Single Judge more particularly in para:33 and 34 of the order under challenge. It is noted that, learned Senior Advocate for the respondent has also taken this Court through various provisions of the Tamil Nadu Panchayats Act 1994, more particularly Sections 143A, 202, 205 and 220 thereof, which are relied by learned advocate for the petitioner as well. It is further submitted that, if these provisions are reconciled with what is sought to be contended on behalf of the petitioner, it would only further fortify the case of the respondents that the proceedings are instituted by the petitioner in her official capacity for the considerations less known to law. It is submitted that, it is under these circumstances this appeal be dismissed.

6. Learned Additional Government Pleader has submitted that, the orders under challenge in the writ petition were issued by the competent authority in due consultation with and under the authorization of the District Collector and therefore this appeal be dismissed.

7. Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-

7.1 The appeal is by the President of the Village Panchayat. Before the merits of the appeal are examined, at the outset, it needs to be noted that, not only it is the case of the contesting respondent but there is *prima facie* finding by learned Single Judge about the lack of bonafide on the part of the writ petitioner / appellant. Para : 33 and 34 of the order under challenge reads as under:-

"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."

7.2 Having found as above, this Court is called upon to examine the contentions raised on behalf of the appellant against the order / advisory by the State Authorities to her keeping in view the provisions of the Act. In this regard, reference needs to be made to para : 29 and 30 of the order under challenge:-

"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



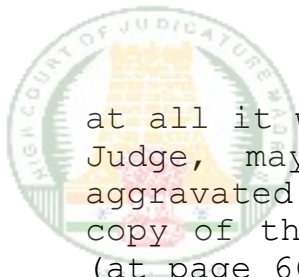
(2) The Inspector shall, before taking action on any of the grounds referred to in clauses (a) and (b) of sub-section (1), give the authority or person concerned an opportunity for explanation.

(3) The power conferred on the Inspector under clause (c) of subsection (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."

7.3 If Section 202 of the Act is kept in view coupled with the satisfaction and finding recorded by learned Single Judge, we find that not only this was the case where discretion was not required to be exercised, had learned Single Judge thought it proper to exercise his discretion, legally it was not permissible to grant relief to the petitioner which was prayed by her. We find that, dismissal of writ petition, going by any standard can not be said to be erroneous and therefore no interference is required. This appeal therefore needs to be dismissed.

8. Having held that this appeal needs to be dismissed, we have restrained ourselves from examining the appeal from the view point



at all it was to be explored, not only the finding of learned Single Judge, may be *prima facie*, the said aspect might have further aggravated in this appeal. It is for the following reason. In the copy of the writ petition which is placed on record of this appeal (at page 66 to 72), the prayer clause reads as under:-

"(i) to direct the 4th respondent to remove all the encroachment made by the 8th respondent in Nadakottai Village.

(ii) to direct the 1st respondent to attach the building materials unloaded by the 8th respondent without getting proper approval from the Panchayat.

(iii) to pass any order, direction or relief which this Hon'ble Court deems fit in favour of this petitioner and thus render justice."

8.1 If this is reconciled with what is noted by learned Single Judge, as the prayer clause, it reads as under:-

"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.138/2022/2Thi, dated 03.02.2022 and Na.Ka.No. 138/2022/2Thi, 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."

8.2 This would show, what is placed before this Bench as the copy of the writ petition is something different than what was placed on record before learned Single Judge.

9. As noted above, since we have restrained ourselves from further examining the matter from the view point of lack of bonafide on the part of the appellant, this point is left here. In totality, we hold that, no relief can be granted to the appellant. No interference is required in the order of learned Single Judge.

10. For the above reasons, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions would not survive.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

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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,
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- 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.AJMAL ASSOCIATES, Advocate (SR-20040[F] dated
21/04/2022)

+1 CC to M/s.SPL.GP. (SR-20740[F] dated 22/04/2022)

W.A(MD)No.359 of 2022
20.04.2022

MGJ(05.05.2022) 7P 10C