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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.13886 of 2023
and W.M.P. No.13547 of 2023

Lakshmi

Petitioner

vs.

1.The District Collector,
Namakkal District.

2.The Executive Officer,
Paramathy Velur Town Panchayat,
Namakkal District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the issuance of the Impugned Order having reference Na. Ka. No.7642/2022/PAE3 dated 07.01.2023 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.C.Pushparaj

For Respondents : Mr.S.Arumugam
Government Advocate for R1

Ms.P.Raja Rajeshwari
Government Advocate for R2

**ORDER**

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The subject matter of challenge in the present writ petition pertains to the exercise of emergency powers under Section 37 of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as “the Act”) by the District Collector through proceedings dated 07.01.2023.

2.The petitioner is the elected Chairman of the Paramathyvelur Town Panchayat and she was elected in the urban local body elections that was held during the year 2022. It seems that there was difference of opinion as between the petitioner, the Vice-Chairman and some of the Councillors, who were also elected during the same election. In view of the same, the petitioner was not in a position to convene any meeting, since the minimum quorum was not fulfilled. Under such circumstances, the 2nd respondent through letter dated 23.12.2022 has informed the 1st respondent that due to the difference of opinion as between the Councillors, no meeting has been convened and hence, the 2nd respondent sought for the permission to meet out the urgent and essential expenses to be incurred for the town panchayat.

3.On receipt of the report of the 2nd respondent, the 1st respondent viz., the District Collector, Namakkal District passed the impugned order dated



not in a position to convene even a single meeting and as a result, certain urgent works which had to be carried out was not able to be executed and hence, the 2nd respondent had approached the 1st respondent seeking for permission and the 1st respondent has rightly invoked the emergency powers conferred under Section 37 of the Act. It was further submitted that the fact with regard to the stalemate that continues in the town panchayat, is an admitted fact and hence, there is no requirement to afford any opportunity considering the urgency that was involved in carrying out the works for the town panchayat. The learned counsel also brought to the notice of this Court proceedings dated 03.04.2023, wherein, the 2nd respondent has requested the petitioner to convene the meeting, since no meeting was held from November 2022 onwards and till date the petitioner has not convened any meeting. Hence, it was contended that the facts of the present case really warranted the invocation of the emergency provisions under Section 37 of the Act.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.Section 37 of the Act gives emergency powers to the District Collector in cases of emergency for executing any work where such work is not



undertaken by the elected representatives of the panchayat. The invocation of

Section 37 of the Act is predominantly done in public interest. In the case on hand, there is no dispute with regard to the fact that a stalemate continues from November 2022 onwards and not even a single meeting has been convened till date, since there is misunderstanding as between the elected Councillors and the meeting is not able to be convened due to lack of minimum quorum. Under such circumstances, the public interest cannot suffer and the immediate expenses must be incurred by the panchayat from the municipal fund and the general public cannot be waiting endlessly for the fight between the Councillors to come to an end. In otherwords, if the elected Councillors do not care about the interest of the public who had elected them and they keep themselves busy fighting with each other, the law has to provide for some remedy under such circumstances and Section 37 of the Act has been brought into force only keeping this contingency in mind. The fact that no meeting has been convened from November 2022 onwards till date, shows that the functioning of the elected representatives has come to a stalemate and the District Collector had to necessarily invoke the emergency provisions to incur immediate expenses. Providing an opportunity will become a wasteful exercise since the admitted facts shows that there is every justification for the District Collector to invoke Section 37 of the Act. In view of the same, this Court does not find any ground



to interfere with the impugned proceedings of the 1st respondent dated 07.01.2023. It is a matter of fact that the emergency powers have been invoked till date since the impasse continues.

9.The next question that requires the consideration of this Court is as to whether the petitioner is remedy less in a situation like this where the petitioner wants to convene a meeting as the Chairman of the Town Panchayt and the elected Councillors are putting spokes and not allowing the meeting to be convened. The Act itself has provided for a remedy under Section 39(6) of the Act. For proper appreciation, the said provision is extracted hereunder:

39.State Government's power to undertake works for, or to take action in default of, a municipality-

..

(6)If on a representation in writing made by the chairman, the State Government are satisfied that due to the non-cooperation of the councillors with the chairman, the municipal council is not able to function, the State Government may, by notification, authorize the chairman to perform, subject to the control of the State Government or any officer authorized by the State Government in this behalf, such of the duties imposed upon the municipal council



by law and for such period not exceeding six months as may be specified in such notification. During the period for which the chairman is so authorized, there shall be no meeting of the municipal council.

10.It is clear from the above that where the Chairman of the Panchayat is not able to function due to the non-cooperation of the Councillors, the Chairman can always make a representation in writing to the State Government and the State Government is empowered to authorize the Chairman to perform such duties as provided under the relevant enactment for a period not exceeding six months. The Chairman so authorized will perform the function subject to the control of the State Government or any Officer authorized by the State Government in this behalf. It is therefore clear that there is a remedy for the Chairman of the Town Panchayat to get over the impasse caused due to the non-cooperation of the elected Councillors and the Chairman has not chosen to invoke the provisions of Section 39(6) of the Act till date.

11.In the light of the above discussion, it is clear that if the Chairman is really interested in the proper functioning of the concerned town panchayat and the Chairman is not getting cooperation from the elected Councillors even to convene a meeting, it is always left open to the petitioner to make a representation and workout her remedy under Section 39(6) of the Act. If any



such representation is made by the petitioner, the same shall be immediately considered by the State Government, since the petitioner has not been able to function from November 2022 onwards. In any event, if a representation is made by the petitioner, the State Government shall consider the same, within a period of four weeks from the date of receipt of the representation, in accordance with law. Except giving this liberty, this Court does not find any ground to interfere with the impugned proceedings of the 1st respondent, dated 07.01.2023.

12.This writ petition is disposed of in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

01.06.2023
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

1.The District Collector,
Namakkal District.

2.The Executive Officer,
Paramathy Velur Town Panchayat,



Namakkal District.

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N. ANAND VENKATESH, J.

SSR

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