IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.Nos.941, 942 & 943 of 2008

[W.A.No.941 of 2008]

1. The President,
Executive Authority,
Kodanadu Village Panchayat,
Keradamattam, Nilgiris Dist.

2. Kodanadu Village Panchayat,
Kodanadu Taluk,
Nilgiris District. ... Appellants

Vs.

V.K.Sasikala Propritrix Kodanad Estate,
Kodanad, The Nilgiris District,
Rep. by her Power of Attorney
S.Natarajan. ...
Respondent

(V.K.Sasikala Propritrix Kodanad Estate, ... is substituted as respondent in W.A.No.941/2008 vide order in C.M.P.No.10488/2024 dated 07.06.2024 by SMSJ & CKJ)

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.No.20034 of 2007 dated 30.04.2008.

[W.A.No.942 of 2008]

1. The Chief Secretary,
Govt. Of Tamil Nadu,
Secretariat, Chennai- 9.

2. The Director,
Information And Public Relations,
Secretariat, Chennai.

3. The District Collector,
The Nilgiris District,
Udhagamandalam.

4. The Additional Collector,
The Nilgiris District,
Udhagamandalam.

5. The District Revenue,
Officer The Nilgiris District,
Udhagamandalam.

6. The Revenue Divisional Officer,
Coonoor, The Nilgiris District.

7. The Block Development Officer,
Kotagiri, The Nilgiris District.

8. The President,
The Executive Authority,
Kodanadu Village Panchayat,
Kotagiri Taluk, Keradamattam,
The Nilgiris District.

9. Kodanadu Village Panchayat,
Kotagiri Taluk, Keradamattam,

The Nilgiris District. ... Appellants

Vs.

V.K.Sasikala Propritrix Kodanad Estate,
Kodanad, The Nilgiris District,
Rep. by her Power of Attorney
S.Natarajan. ...
Respondent

(V.K.Sasikala Propritrix Kodanad Estate, ... is substituted as respondent in W.A.No.942/2008 vide order in C.M.P.No.11711/2024 dated 07.06.2024 by SMSJ & CKJ)

<u>Prayer :-</u> Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.No.20336 of 2007 dated 30.04.2008.

[W.A.No.943 of 2008]

1. The President,
Executive Authority,
Kodanadu Village Panchayat,
Keradamattam,
The Nilgiris District.

2. The Kodanadu Village Panchayat,
Kodanadu Taluk,
The Nilgiris District.

3. M.Ponthose,
Bedukkai Mand,
Kotagiri Taluk,
Nilgiris District. ... Appellants

Vs.

V.K.Sasikala Propritrix Kodanad Estate,
Kodanad, The Nilgiris District,
Rep. by her Power of Attorney
S.Natarajan. ... Respondent

(V.K.Sasikala Propritrix Kodanad Estate, ... is substituted as respondent in W.A.No.943/2008 vide order in C.M.P.No.11715/2024 dated 07.06.2024 by SMSJ & CKJ)

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order of this Court dated 30/04/2008 made in W.P.No.30671/2007.

For Appellants in all Writ Appeals : Mr.P.S.Raman, Advocate General, assisted by Mr.T.Arun Kumar, Additional Government Pleader.

For Respondent in all Writ Appeals : Mr.G.Rajagopalan, Senior Counsel for Mr.P.A.Elan Tamil Arivalan.

COMMON JUDGEMENT

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The Intra Court Appeal on hand is preferred under Clause 15 of Letters

Patent, questioning the validity of the common order passed in W.P.Nos.20034, 20336, 20337 & 30671 of 2007 dated 30.04.2008.

2. On account of efflux of time, several issues rasied during the relevant point of time lost its relevance. Thus, the respective learned Advocate General Mr.P.S.Raman and the learned Senior Counsel Mr. G.Rajagopalan, appearing on behalf of the contesting parties, would submit that the issues which reached finality deserve no further adjudication in the present Writ Appeals and may be confined with reference to the powers conferred under the Provisions of the Tamil Nadu Panchayat Act and the Rules to conduct inspection in the subject premises in the present case.

3. The subject premise is "Kodanad Estate", situated in Kothagiri Taluk, Nilgiris District, owned by Tmt.Sasikala and late Selvi J. Jayalalitha. Both of them were the partners of Kodanad Estate Firm. Selvi J. Jayalalitha, during her life time, resigned from the partnership and subsequently Tmt.Sasikala became the Propritrix of Kodanad Estate.

4. The writ proceedings were instituted by the Manager, Kodanad Estate, challenging Rule 4(1)(d) of the Tamil Nadu Panchayat Building Rules

1997 and the consequential notice issued by the Panchayat for conducting inspections. The Writ Court adjudicated the issues and delivered judgement on 30.04.2008, upholding the constitutional validity of Rule 4(1)(d) of the Tamil Nadu Panchayat Building Rules 1997. However, the consequential notice for inspection was set aside on the ground that prior intimation was not given to the owners/propritrix/occupants of Kodanad Estate.

5. Mr.G.Rajagopalan, learned Senior Counsel appearing for Kodanad Estate would contend that the observations made by the writ Court would be sufficient to dismiss the present writ appeals since the learned Single Judge held that there is no violation whatsoever in respect of the constructions made by the erstwhile partners of Kodanad Estate and property tax assessment was made in accordance with law and the Estate occupants are paying the property tax regularly. In support of the said contention, the tax receipts for the assessment years, up to 2023, has been filed before this Court. Relying on the said tax receipts and the observations made by the writ Court, the learned Senior Counsel Mr.G.Rajagopalan would contend that there is no material available on record or any reason to believe to conduct further inspection in Kodanad Estate and therefore, the present Writ Appeals, filed by the President of the Panchayat and others, are to be rejected.

6. It is further contended that further inspection is sought to be conducted by the local authority on political vendetta and such a ground need not be appreciated by this Court. Due to change of Government in the year 2021, attempts are taken to conduct further inspections which became unnecessary. Kodanad Estate is paying the property tax and other statutory payments in accordance with law and thus, the claim of the authorities are unfounded and to be negated.

7. The learned Advocate General, Mr.P.S.Raman would oppose by stating that it is the authority of law which is sought to be enforced and therefore, the judgement delivered on 30.04.2008 in the writ petition cannot prevent the authorities from exercising the powers conferred under the Act and Rules. No doubt, there are certain observations and the local authority has no other intention to harass the occupants or to do any harm to them. The idea is to ascertain the correctness of the property tax assessment made and to find out the nature of constructions and other aspects for which the law provides authority which need not be taken away. Therefore, the contention made on behalf of Kodanad Estate deserves to be rejected.

8. The learned Advocate General would further draw the attention of this Court with reference to the Tamil Nadu Village Panchayats (Restriction and control on Powers of Entry and Inspection) Rules, 1999. In exercise of the powers conferred by Sub Section (1) of Section 223 and Section 242 of the Tamil Nadu Panchayats Act, 1994, the Rule was enacted and conditions for entry have been stipulated in the Rules. Accordingly, no dwelling house or any part of public building, used as a dwelling place, shall be entered into by the Executive authority or Commissioner or Secretary as the case may be or any person authorised by him without the concern by the occupier thereof, unless the said occupier has received notice at least 6 hours prior of the intention to make such entry. Rule 2(3) enumerates that sufficient notice shall be given by the Executive Authority or Commissioner or Secretary as the case may be or any person authorised by him, in every case even when any premises may otherwise be entered without notice under Clause 2 of Rule 2 (3) to enable the inmates of any apartment appropriated to women to make to some part of the premises where their privacy may be preserved.

9. Relying on the above rules, the learned Advocate General would contend that restrictions are imposed for conducting inspections with

reference to the powers conferred on the authorities under Section 223 of the Tamil Nadu Panchayats Act. Such powers conferred need not be taken away and the authorities are empowered to conduct inspections by following due process as contemplated.

10. Let us now consider the power of entry and inspection provided under Section 223 of the Tamil Nadu Panchayats Act, 1994 and the provision reads as under :-

> "*223.* ***Power of entry and inspection –*** *(1) Subject to such restrictions and conditions as may be prescribed, the Executive Authority or the Commissioner or the [the Secretary or the Collector] or any person authorised by him may enter on or into any place, building or land, with or without assistants or workmen in order –*
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> *(a) to make any enquiry, inspection, test, examination, survey, measurement or valuation or to execute any other work, which is authorised by the provisions of this Act or of any rule, bye-law, regulation or order made under it or which it is necessary to make or execute for any of the purposes of this Act or in pursuance of any of the said provisions, or*
>
> *(b) to satisfy himself that nothing is being done in such*

place, building or land for which a licence or permission is required under any of the said provisions, without such licence or permission or otherwise than in conformity with the terms of the licence or permission obtained.

(2) No claim shall lie against any person for any damage or inconvenience necessarily caused by the exercise of powers under sub-section (1) or the use of any force necessary for effecting an entrance under that sub-section."

11. Sub Section (1) to Section 223 confers power to the executive authorities or the Commissioner or the Secretary or the Collector or any person authorised by him, to enter on or into any place, building or land, subject to such restrictions and conditions as prescribed. Therefore, the power of entry and inspection is absolute under the enactment. However, such power is to be exercised subject to such restrictions and conditions as prescribed under the Rules in the present case.

12. In the present case, admittedly the observation was made by the writ Court in the judgement dated 30.04.2008 where the observation in

paragraph 15.1 is that "*The fact that plans were sanctioned by the AAA Committee and approved by the Government and also subsequently license fees were paid and the buildings were assessed for House Tax which tax are also being paid regularly by the writ petitioners, will clearly show that there are no violation of any Building Rules*"

13. The above observation was made based on the fact which was prevailing in the year 2008 at the time of passing orders. More so, the material considered for making such observation by the Writ Court was that the AAA Committee and the Government sanctioned the building plans and subsequently, licence fees were paid and buildings were assessed for House Tax. Therefore, such an observation in the writ order would not preclude the competent authorities from conducting further inspection in accordance with law.

14. Authority under law cannot be taken away merely on the basis that property assessment was made few years back and the assessee is paying the tax punctually. One of the contention raised by the learned Advocate General is that the property tax assessment was made in the year 2007 and there was no inspection conducted thereafter for the past about 15 years. The

authorities are unaware of the situation prevailing inside Kodanad Estate, which is a vast extent of land measuring approximately 900 acres including tea estates where Staff quarters are constructed, factories are functioning and residential houses are also constructed. Since no inspection was conducted for more than 15 years and the observation made by the writ Court cannot be an impediment for conducting further inspections in accordance with law, the authorities have to conduct an inspection in order to find out the present situation prevailing in Kodanad Estate.

15. The learned Advocate General would contend that the power of Authority under the Tamil Nadu Panchayats Act is to be exercised in the manner known to law, which cannot be taken away and further the writ Court upheld the constitutional validity of the Rules. The show cause notice was set aside on the ground that no information was provided by the local authority before conducting inspection during the relevant point of time and at present, such a procedure is to be followed for the purpose of conducting inspection.

16. In view of the factual matrix as elaborated above, there is no ambiguity with reference to the authority of law, contemplated under Section

223 of the Tamil Nadu Panchayats Act, 1994. Power of entry and inspection under Section 223 is absolute and authority competent not be prevented from exercising their powers in the manner contemplated under the Act and Rules. The Rules provide restrictions and conditions for conducting inspections. Section 223 provides power to entry and inspection and to make enquiry, inspection, test, examination, survey, measurement, or valuation or to execute any other work in the manner known to law.

17. Therefore, question of interfering with the findings of the learned Single Judge in the impugned writ proceedings does not arise at all. The constitutional validity of the Rules has been upheld and we concur with the writ Court. The show cause notice was set aside and on account of efflux of time, the grounds raised on that deserves no further adjudication. However, we made it clear that the competent authorities under the provisions of the Tamil Nadu Panchayats Act, 1994, and the Rules framed thereunder, are empowered to make any enquiry, inspection, test, examination, survey, measurement or valuation or to execute any other work which is authorised by the provisions of the Act and under the Rules by following the due process as contemplated. Such a power conferred under the Act and Rules, being an absolute one, there is no reason to prevent the authorities from exercising

their powers in the manner contemplated. It is made clear that while exercising such powers the authorities are expected to proceed neutrally and to respect the rights of the occupants and, owners.

18. With these observations, the Writ Appeals are disposed of. However, there shall be no order as to costs.

(S.M.S.J.,) **(C.K.J.,)**
07.06.2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

To

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S.M.SUBRAMANIAM, J.

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