

(2007) 10 MAD CK 0089
In the Madras High Court
Case No : Writ Petition (MD) No. 8003 of 2007

G. Radhakrishnan

APPELLANT

Vs

The President, Edayakottai Panchayat

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 131(1), 131(2), 201, 202, 218(1)

Citation : (2008) 3 LW 548 : (2008) 1 MLJ 1132

Hon'ble Judges : S. Palanivelu, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : R. Vijayakumar, for the Appellant; R. Janakiramulu, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—This Writ Petition has been filed, praying for issuance of a writ certiorari, to call for the records relating to the impugned

order of the respondent, dated 17.09.2007, whereby the petitioner was directed to vacate the property in S. No. 646/70, Edayakottai Village,

Oddanchathiram Taluk, Dindigul District, within seven days, and to quash the same.

2. According to the petitioner, he is a resident of Edayakottai Village, Oddanchathiram Taluk, Dindigul District; his father one S.P. Govindan

Chettiar purchased one cent of land comprised in Survey No. 646/70 by means of a registered sale deed, dated 21.10.1970; after his father's

lifetime, he is in possession of the property; he has put up a grocery shop therein, got the electricity connection and, for the past 37 years, he is in

possession and enjoyment of the property, by paying property tax, house tax and professional tax.

3. It is the further case of the petitioner that Patta Updating Scheme was launched in the year 1985, wherein the above survey number was

wrongly classified as ""Santhai"" and, hence, a cloud was cast on the holding as if the property belonged to the Panchayat.

4. The respondent issued a notice on 17.09.2007 to the petitioner, stating that he has encroached the property belonging to Edayakottai

Panchayat; in spite of previous intimation, the same was not removed and that the said encroachment should be removed within seven days from

the date of receipt of the communication.

5. The backbone contention of the petitioner is that the, respondent, who is the President of Edayakottai Panchayat, is not at all competent nor a

statutory authority under any law, and he has no power to issue the impugned notice, which discloses his predetermined mind to evict the petitioner

by hook or crook, without affording sufficient opportunity, violating the principles of natural justice. It is his further contention that the conduct of

the respondent in not issuing a prior notice to the impugned letter, as per the prescribed settled procedure, is bad in law.

6. The crucial point to be decided in this matter is, whether the President of a Village Panchayat is legally competent to issue notice for removal of

the encroachment and consequently whether he can physically dispossess the encroacher as per law?

7. Before advertng to the settled and illuminating legal propositions on the subject, it is profitable to extract herein the provision, which enables the

authority concerned, to initiate the proceedings against an encroacher, to secure removal.

8. Section 131(2) of The Tamil Nadu Panchayats Act, 1994, (in short, "the Act"), reads thus:

131. Prohibition against obstructions in or over public roads, etc.-

(1) xxxx

(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in village

panchayats or panchayat union councils to the executive authority or the commissioner concerned and to the officer of the Revenue Department,

and it shall be the duty of the executive authority or the commissioner concerned either suo motu or on obtaining a report from the Village

Administrative Officer in this regard to institute proceedings under this Act and secure the removal of the encroachments within such time as may

be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified

in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil

Nadu Act III of 1995) and secure such removal.

9. As per the above said provision, the executive authority or the commissioner, as may be, upon a report of the Village Administrative Officer

concerned as to the encroachments or suo motu can initiate proceedings under this Act, for removal of encroachments and, if the said authority

finds it impossible to get the encroachments removed, then, the Revenue Department will come into picture, to initiate action under the provisions

of the Act.

10. Learned Counsel for the petitioner would vehemently argue that the President of a Village Panchayat is not at all an "Executive Authority", as

mentioned in the above said provision and the letter impugned, emanated from him, is non est, in the eye of law.

11. In this context, the learned Special Government Pleader would draw attention of this Court to a Government Order in G.O.Ms. No. 225,

Rural Development (C-1) Department, dated 15.10.1996, in and by which, the Government of Tamil Nadu appointed Presidents of Village

Panchayats, to perform the functions of the Executive Authority of the Village Panchayats concerned. The Notification, appended to the said G.O.,

is as follows:

In exercise of the powers conferred by Section 83 of the Tamil Nadu Panchayats Act, 1994, (Tamil Nadu Act 21 of 1994), the Governor of

Tamil Nadu hereby appoints the President of Village Panchayat, as Executive Authority, to exercise the power and perform the functions of the

Executive Authority of that Villaga Panchayat.

12. The above Notification, issued by the Government of Tamil Nadu, is definite, with regard to appointment of Presidents of Village Panchayats,

as Executive Authority. Hence, the respondent squarely comes under the category of "Executive Authority", who has been duly authorized by the

Government, to perform the functions, as contemplated in Sub-section (2) of

Section 131.

13. The next part of the question posed above is, with regard to the power of the President of a Panchayat, to secure removal of encroachment.

14. A careful scrutiny of the aforementioned provision would go to show that the Executive Authority, even suo motu, can institute proceedings

under the Act and, in case he could not obtain the removal of encroachment, then, he has to refer the matter to the officers of the Revenue

Department, who would shoulder the responsibility of initiating, the proceedings under the Tamil Nadu Land Encroachment Act, 1905, for securing

the removal. The above said provision of law is so clear, to arrive at a conclusion, as aforesaid.

15. Learned Counsel for the petitioner would also submit that a Division Bench of this Court, in *V. Balamurugan v. The District Collector* 2007 (3)

CTC 56, has categorically held that the executive power of a Village Panchayat shall vest with the Executive Authority, appointed by the

Government, and removal of shop, being executive power, cannot be exercised by the elected Presidents of Panchayats and any order passed by

such President of Village Panchayat is liable to be quashed.

16. In the said case, the Division Bench discussed the matter on the strength of Section 131(1)(a) of the Act with regard to removal of

encroachment and also Section 131(2), for the procedure to be adopted. After a thorough discussion on the subject, the Division Bench

concluded that without referring to any of the methods prescribed under the Act, the President of Village Panchayat had assumed the power of

Executive Authority and passed the order impugned, which was liable to be quashed, for lack of jurisdiction.

17. Learned Counsel for the petitioner also cited another unreported Division Bench decision of this Court, dated 23.04.2007, in *M. Abbas v. The*

District Collector and Ors. W.P. No. 6949 of 2005, and other connected matters, wherein, the Division Bench opined that so far as Clause (2) of

Section 131 of the Act is concerned, a reference has been given by the President of the Panchayat, which does not empower the President to

remove the encroachment, though he may bring to the notice of the competent authority. As an epilogue, this Court passed orders, directing the

respondent/Government officials not to give effect to the notice impugned,

issued by the President of the Village Panchayat, and also directing the President of Vilpatti Panchayat to report, if any encroachment is made on properties vested in the village panchayat or panchayat union council to the officer concerned u/s 131(2) of the Act and that the authority concerned would proceed with the matter in accordance with law, after notice to the encroachers and follow the decision of the Full Bench of this Court in Ramaraju Vs. The State of Tamil Nadu and Others, .

18. It appears, that at the time of hearing of the matters before the above different Benches, the Government side had not brought to the notice of the Court the existence of G.O.Ms. No. 225, whereby the Government appointed the President of Village Panchayat, as Executive Authority. Had the said G.O. been produced before the said Division Benches, the observations in the said decisions would have been different.

19. After bestowing careful attention to the materials available and in the light of the G.O. passed, it is to be held that the Village Panchayat is an Executive Authority and the said Executive Authority has got every power to issue notice to the encroachers. The provision does not authorise him to proceed to take forcible physical possession of the property from the encroachers. If he is unable to get possession from the encroachers on issuance of necessary notice, the Revenue Department would take up the job of initiating further action against the encroachers under the Tamil Nadu Land Encroachment Act, 1905, to obtain possession from them.

20. The another limb of discussion would cover the remedies available to the petitioner, under the Act.

21. Sections 201 and 202 of the Act prescribe certain procedures, to be adopted by the person, who receives any communication or order from the authority concerned, as to the encroachments. Section 201 empowers the Inspector or any officer or person, whom the Government or the Inspector may empower in this behalf, to call for any document in possession of the Executive Authority. Section 202 authorises the Inspector to suspend or cancel any resolution passed, order issued, or licence or permission granted, if the same is not passed legally or which is an abuse of powers.

22. It is more, beneficial to have a glance at Section 219, which reads thus:

219. Revision.- (1) The Government may, after consulting the Inspector, Collector

or such other officer or authority as they may deem fit, at any time, either suo motu or on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this

Act by-

(a) the Inspector or the Collector or any officer authorised by the Inspector or the Collector under Sub-section (2) or (3) of Section 218; or

(b) any officer authorized by the Government under Sub-section (1) of that section or any officer empowered by them under Sub-section (4) of

that section; or

(c) any other authority or officer;

for the purpose of satisfying themselves as the legality or propriety of such order, or as to the regularity of such proceeding and pass such order in

reference thereto as they think fit.

(2) The powers of the nature referred to in Sub-section (1) may also be exercised by such authority or officer as may be empowered in this behalf

by the Government.

The Government plays a vital role in deciding the Revisions either suo motu or on an application with regard to any order passed by any other

authority or officer.

(emphasis supplied)

23. The above said two tier remedies are available to the petitioner and the petitioner has got every right to prefer a revision before the

Government, in which event, the Government will pass appropriate orders, following the procedure adumbrated in Section 219.

24. To sum up, a President of a Village Panchayat, who is the Executive Authority of the Panchayat, can very well issue a notice or order to the

encroacher, seeking for his eviction, either on his own or on the report obtained from the Village Administrative Officer. In that process, if the so-

called encroacher fails to comply with the notice or direction for removal of encroachment, as sought for by the President in his capacity as the

Executive Authority of the Panchayat, thereafter, the Executive Authority has to seek for removal of such encroachment by approaching the

Revenue Department Officials, who, in turn, can initiate proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905, for

removal of such encroachment. If any such notice is issued to the petitioner, he will be at liberty to work out his remedy by invoking Sections 201,

202 and 219 of the Tamil Nadu Panchayats Act. Nothing would prevent him from seeking the remedy before the competent Civil Court, if he

comes forward with the contention of title and enjoyment over the property, on the strength of a registered sale deed, if he so desires, and it is for

the said Court to grant necessary reliefs, on the merits of the case.

25. With the above observations, this Writ Petition is dismissed. No costs. Consequently, the connected MP.(MD). No. 1 of 2007 also stands

dismissed.