

(2007) 12 MAD CK 0127

In the Madras High Court

Case No : Writ Petition (MD) No's. 7125 and 7531 of 2007 and M.P. No's. 1 and 2 of 2007

Gajini Mohammed and Lalitha Rajan

APPELLANT

Vs

The District Collector, The President, Sakkarakkottai Village Panchayat and Lalitharajan

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Citation : (2007) 12 MAD CK 0127

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Nisha Banu, in W.P. No. 7125/07 and V. Sitharanjandas, in W.P. No. 7531/07, for the Appellant; R. Janaki Ramulu, Special Government Pleader for Respondent Nos. 1 and 2 and Sitharanjandas, for the Respondent

Judgement

M. Jeyapaul, J.—Writ Petition No. 7125 of 2007 is filed by Gajini Mohammed, challenging the impugned proceedings in

Na.Ka.A4/1208/2006 dated 20.05.2006 and Writ Petition No. 7531 of 2007 is filed by Lalitha Rajan seeking consequential relief of directing the

respondents to remove the illegal construction put up in S. No. 421/2, Vani Village, Sakkarakottai Group, Ramanathapuram Taluk and District

pursuant to the aforesaid impugned proceedings issued by the first respondent.

2. The petitioner in W.P. No. 7125 of 2007 would contend that he is the absolute owner of the property in S. No. 421/4 measuring 45 cents by

virtue of the settlement deed dated 13.10.2004 executed by his father. He applied for plan approval. His father who was the then President having

verified all the documents gave approval of the plan submitted by the petitioner. The suit for bare injunction in O.S. No. 27 of 2005 filed by the

petitioner was withdrawn, since the third respondent herein filed a counter accepting the possession of the petitioner. The suit filed for declaration

of title by the third respondent in O.S. No. 11 of 2006 is still pending disposal before the learned Subordinate Judge, Ramanathapuram.

3. It is further contended by the petitioner in W.P. No. 7125 of 2007 that the third respondent herein having submitted a petition to the Revenue

Divisional Officer, Ramanathapuram moved a writ petition in W.P. No. 1072 of 2006 before this Court and obtained therein a direction to

consider her representation. The first respondent, the District Collector, has passed the impugned order without even giving any notice to the

petitioner. The first respondent has got no power or jurisdiction to cancel the plan permission already granted when a suit is pending before the

Civil Court concerned. Hence the petitioner sought for quashing the impugned proceedings issued by the first respondent.

4. The petitioner in W.P. No. 7531 of 2007 would submit that the father of Gajini Mohammed, the petitioner in W.P. No. 7125 of 2007, had no

right over the subject property at the time when the property was settled in favour of Gajini Mohammed, inasmuch as he had already settled the

property in favour his another son Sowkath Ali and sold away the same to one Balu in the guise of power of attorney given by Sowkath Ali in

favour of his father Noor Mohammed. While the said Noor Mohammed was the President of Sakkarakkottai Panchayat, he misused his power

and granted plan permission to his son Gajini Mohammed and also assessed tax for the said property. It is submitted that the first respondent has

rightly cancelled the plan approval granted by the said Noor Mohammed misusing his power as per the direction of this Court in W.P. No. 1072

of 2006. The respondents are bound to remove the illegal construction in the aftermath of the cancellation of plan approval granted in favour of the

said Gajini Mohammed.

5. The learned Counsel appearing for the petitioner in W.P.7125 of 2007 would contend that the principles of natural justice were not adhered to

by the first respondent, the District Collector, while cancelling the plan approval granted by the competent Panchayat President. When the suit for

declaration of title in connection with the subject property is still pending before the competent Civil Court, the first respondent, the District

Collector should not have entertained the representation made by the petitioner in W.P. No. 7531 of 2007. It is his further submission that the first respondent can pass orders only after the civil litigations reached finality.

6. The learned Counsel appearing for the petitioner in W.P. No. 7531 of 2007 would vehemently contend that the first respondent, the District Collector having come to an unassailable decision that the father of Gajini Mohammed had completely misused his position as a President and granted approval, chose to cancel the plan approval invoking the power under the Tamil Nadu District Municipalities Act 1920. Further the first respondent has acted only as per the directions of this Court in W.P. No. 1072 of 2006. No notice is required for cancellation of the approved plan granted in favour of the petitioner Gajini Mohammed, the petitioner in W.P. No. 7125 of 2007, as the order was passed illegally abusing the official position by the President.

7. There is no dispute to the fact that the petitioner Gajini Mohammed in W.P. No. 7125 of 2007 was granted plan approval for construction of a house in the subject property by his father Noor Mohammed, when he was functioning as the President of Sakkarakkottai Panchayat. Of course, it appears that within a few days from the date of approval of plan, the property was assessed to tax by the father of the petitioner in W.P. No. 7125 of 2007.

8. The petitioner in W.P. No. 7531 of 2007 moved W.P. No. 1072 of 2006 even without impleading the petitioner in W.P. No. 7125 of 2007 and got a direction from this Court to consider her representation made before the District Collector for the purpose of cancellation of the approved plan already granted by the Panchayat President to the petitioner in W.P. No. 7125 of 2007.

9. True it is, that this Court has directed the District Collector, Ramanathapuram to consider the representation of the petitioner in W.P. No. 7531 of 2007 dated 02.01.2006 after giving opportunity to Noor Mohammed, the father of the petitioner in W.P. No. 7125 of 2007. The petitioner in W.P. No. 7531 was aware of the fact that civil litigations were pending between her and Gajini Mohammed. But the petitioner in W.P. No. 7531 of 2007 has not chosen to implead Gajini Mohammed who is the person really concerned with the subject matter of the property in W.P. No.

1072 of 2006.

10. On a careful perusal of the impugned order, it is found that the District Collector Ramanathapuram has neither granted any opportunity to Noor

Mohammed or his son Gajini Mohammed before ever cancelling the plan approval granted in favour of Gajini Mohammed. Noor Mohammed

might have misused his power and granted plan approval to his son, the petitioner in W.P. No. 7125 of 2007, misusing his official position. The

property also might have been assessed to tax even before any construction was made thereon by Noor mohammed without application of mind.

But, it is to be seen that Gajini Mohammed had already obtained plan approval. The possession of Gajini Mohammed in the subject property also

is not in dispute. The right to construct a building on the subject property had flowed from the order passed by the President of the Panchayat.

Such a right which had already flowed to Gajini mohammed cannot be simply taken away by the impugned proceedings without putting him on

notice calling for his explanation to the representation made by the petitioner in W.P. No. 7531 of 2007 seeking cancellation of plan approval

granted in favour of Gajini Mohammed. Principles of natural justice warrant issuance of notice to the party, who has acquired some right on the

basis of the order which was cancelled by the impugned proceedings.

11. Pendency of civil suit does not shackle the authorities concerned who have been empowered to grant plan approval, if the documents

produced satisfactorily convince the authorities to grant plan approval as per the rules and regulations, as otherwise a party who wants to stall the

construction proposed by his adversary, would just file a suit without any basis and would see that no plan approval is granted, citing the pendency

of the civil suit with respect to the property concerned. The party who has approached the Civil Court will have to necessarily seek for an

appropriate order from the Civil Court restraining the authority concerned from granting plan approval. The Civil Court has every power to grant

such an interim order of injunction restraining the authority concerned from granting approval, if it is convinced on perusing the prima facie materials

that a case has been made out not to grant plan approval. If no order of interim injunction is there to restrain the authorities concerned from acting

as per the rules and regulations, the authority concerned is at liberty to pass an

appropriate order despite the pendency of the civil suit, if he is satisfied that plan approval is quite warranted in the facts and circumstances of the case.

12. In this case, it is submitted by the learned Counsel appearing for the petitioner in W.P. No. 7125 of 2007 that a Civil Suit in O.S. No. 11 of

2006 filed by the petitioner in W.P. No. 7531 of 2007 is still pending adjudication before the Subordinate Court, Ramanathapuram. But the

learned Counsel appearing for the petitioner in W.P. No. 7531 of 2007 would bring to the notice of the Court that the said suit has been decreed

in favour of Lalitha Rajan, the petitioner in W.P. No. 7531 of 2007. At any rate, it is made clear that the first respondent, District Collector

Ramanathapuram has every authority to consider the representation of the petitioner in W.P. No. 7531 of 2007 and pass appropriate orders,

unless he is restrained by an order passed by a competent Court. As the District Collector Ramanathapuram has not chosen to issue notice to the

petitioner in W.P. No. 7125 of 2007 and sought his explanation for the representation made by the petitioner in W.P. No. 7531 of 2007 seeking

cancellation of the plan approval, the impugned order passed by the District Collector, Ramanathapuram is liable to be quashed.

13. Consequential prayer sought for by the petitioner in W.P. No. 7531 of 2007 to remove the alleged illegal construction put up by the petitioner

in W.P. No. 7125 of 2007 is found not sustainable.

14. In view of the above, the District Collector Ramanathapuram is directed to dispose of the representation of the petitioner in W.P.7531 of 2007

dated 02.01.2006 afresh on merits and in accordance with law within a period of two months from the date of receipt of this order after giving

opportunity to both the petitioners in W.P.Nos.7125 and 7531 of 2007. Consequently, the impugned proceedings in Na.Ka.A4/1208/2006 dated

20.05.2006 issued by the first respondent stand quashed and the relief sought for by the petitioner in W.P. No. 7531 of 2007 seeking to remove

the alleged illegal construction is rejected.

15. Accordingly, W.P. No. 7125 of 2007 stands allowed and W.P. No. 7531 of 2007 stands dismissed. There is no order as to costs.

Connected MP.Nos.1 and 2 of 2007 in W.P. No. 7125 of 2007 are closed.