
(2006) 02 MAD CK 0178
In the Madras High Court
Case No : W.A. No. 2187 of 2005

Lakshmi

APPELLANT

Vs

Senneerkuppam Panchayat and Others

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Development Control Rules for Greater Mumbai, 1967 — Rule 26, 28

Tamil Nadu Panchayats Building Rules, 1997 — Rule 3

Tamil Nadu Town and Country Planning Act, 1971 — Section 120, 2(13), 2(23), 23, 49

Citation : (2006) 02 MAD CK 0178

Hon'ble Judges : A.P. Shah, C.J.;Prabha Sridevan, J

Bench : Division Bench

Advocate : V. Ayyadurai, for the Appellant; K. Chandru for S.N. Ravichandran, for Respondent No. 1, S. Srinivasan, Government Advocate for Respondent No. 2, V. Perumal and V. Subbarayan, Government Advocate, for the Respondent

Judgement

Prabha Sridevan, J.—The Chennai Metropolitan Development Authority (C.M.D.A. in short) granted permission to the appellant for forming a layout and developing the property in Senneerkuppam Village, Poonamallee Panchayat Union. The writ petitioner, namely the President of the Senneerkuppam Panchayat challenged the planning permission on the ground that as per the Tamil Nadu Panchayats Buildings Rules, 1997, it is only the President of the Panchayat, as the "Executive Authority", to whom the application for forming a layout and plot should be made and that no application had been made to the writ petitioner by the fourth respondent (appellant herein). According to the writ petitioner, the land is an agricultural land and cannot be plotted for residential purposes. The writ petitioner is aggrieved by the alleged usurpation of the powers of the Panchayat by the second respondent (C.M.D.A.) by granting the planning permission. Pending the writ petition, stay was sought for and was granted. As against that, this writ appeal has been filed.

2. Learned counsel appearing for the appellant, in whose favour the planning permission has been granted, would submit that in view of the provisions of the

Tamil Nadu Town and Country Planning Act, 1971 and the Development Control Rules, it is only the C.M.D.A. which is empowered to grant planning permission and not the President of the Panchayat, and that the C.M.D.A. may either delegate its powers to the Panchayat or withdraw such delegated powers. The learned Counsel, therefore, submitted that there was no justification for the grant of stay.

3. Learned counsel appearing for the C.M.D.A. drew our attention to the various provisions to show that only the C.M.D.A. had the power to permit any formation of layout in Senneerkuppam Village.

4. The learned Senior Counsel appearing for the first respondent, who is the writ petitioner, would submit that this is a clear case of usurpation of power. The powers of the Panchayat is traceable to Article 243-G of the Constitution of India and the C.M.D.A. cannot transgress its limits, thereby rendering the President of the Panchayat as a mere figurehead. Learned Senior Counsel submitted that the writ petition gives rise to larger constitutional issues and therefore, the stay granted should not be vacated.

5. The Tamil Nadu Panchayats Buildings Rules, 1997 define "Executive Authority" as the President of the Village Panchayat, Rule 3 provides that no owner or other persons shall layout a street, lane, etc., until a layout plan has been approved by the executive authority who shall get prior concurrence of the Director of Town and Country Planning or his authorised Joint Director* or Deputy Director of Town and Country Planning for such approval. Section 2(13) of the Tamil Nadu Town and Country Planning Act, 1971 defines "Development" and it includes master plan and detailed development plan. Section 2(23) defines "Local Authority" and it includes the Panchayat constituted under the Tamil Nadu Panchayats Act. Section 23(a) defines "Chennai Metropolitan Planning Area" as the City of Chennai and such contiguous area of such city as the Government may, from time to time, specify by notification in the Official Gazette. Section 9-C of the Act deals with the functions and powers of the Metropolitan Development Authority and Sections 9-C(2) and (3) read as follows :

9-C(2) The Metropolitan Development Authority may, by order, entrust to any local authority or other authority as may be specified in such order, the work of execution of any development plan prepared by it.

(3) The Metropolitan Development Authority may, by order, authorise any local authority or other authority as may be specified in such order, to exercise any of the powers vested in it by or under the Act and may, in like manner, withdraw such authority; and the exercise of any power delegated in this behalf shall be subject to such restrictions and conditions as may be specified in such order.

Section 49 of, the Act deals with the manner in which an application for permission should be made. Section 120 dealing with the jurisdiction of the planning authorities in respect of those local authorities areas included in any development plan reads as follows :

When any area within the jurisdiction of any local authority is comprised in any development plan made or Intended to be made by any planning authority then, notwithstanding anything contained in any law for the time being in force relating to such local authority, the planning authority shall exercise in connection with such development plan, all the powers conferred upon it by this Act or rule or regulation made thereunder or the said development plan and the local authorities concerned shall be bound to give all information that may be required by the planning authority for the purposes of this Act or rule or regulation made thereunder or the said development plan and to do nothing that will obstruct the lawful exercise of the powers of the planning authority thereunder.

6. In this regard, the D.C. Rules show that the jurisdiction of Chennai Metropolitan Area takes into its ambit the Poonamallee Taluk. Rules 26 and 28 read thus:

26. These rules to prevail --

(a) In the application of these rules, if there is conflict between the requirements under these rules and the requirements under any other Act or rules or By-laws in force, the requirements under these rules and the provisions of Chennai City Municipal Corporation Act, Tamil Nadu or Panchayat Act or any other law relating to the local authority for the time being in force or any rule, by law or regulation made under the said act or laws, such provisions which are contrary to these rules shall stand suspended.

28. Delegation of powers -- Any of the powers, duties or functions conferred on imposed or vested in the authority by any of foregoing rules may be delegated terany officer under its control or to any officer of the Government or to a local authority.

In the list of villages appended to the D.C. Rules, it is seen that Senneerkuppam Village is included in Chennai Metropolitan Area.

7. On 1.2.2005, the Member Secretary, C.M.D.A. requested the writ petitioner to forward all the pending planning permission applications pertaining to Senneerkuppam Panchayat jurisdiction to the C.M.D.A. On 8.8.2005, the C.M.D.A. issued a notice wherein it is alleged that the writ petitioner is not furnishing the performance report or the planning permission application and that the procedure to be adopted was not adhered to. Therefore, the writ petitioner was asked to show cause why the powers of forwarding the planning permission applications to the C.M.D.A. shall not be withdrawn. On 27.9.2005, the C.M.D.A. issued another notice and once again, time was given to the writ petitioner to send his performance report. On 11.11.2005, alleging that the President had misused his powers in granting planning permission, the Member Secretary, C.M.D.A. invoked his powers u/s 9-C(3) of the Act and withdrew the delegated powers granted to the writ petitioner.

8. Justice G.P. Singh, in the "Principles of Statutory Interpretation" (Ninth Edition

- 2004), in Chapter 7 on the "Expiry and Repeal of Statutes", under Synopsis 5 dealing with "Implied Repeal", while discussing the law on Prior particular law and later general law" in Sub-clause (b), has stated as follows:

As an application of the above principles, a prior particular or special law is not readily held to be impliedly repealed by later general enactment. The particular or special law deals only with a particular phase of the subject covered by the general law and, therefore, a reconciliation is normally possible between a prior particular Act and a later general Act, and so the particular Act is construed as an exception or qualification of the general Act. To quote the words of Lord Philimore, "It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one.

9. On a prima facie consideration of the relevant provisions of law which have been extracted above, when it is evident that Senneerkuppam Village comes within the master plan and also within the development plan area, we are of the opinion that the C.M.D.A. has the power to grant planning permission to form a layout notwithstanding any provision contained in any other Act. The Panchayats Act and the Buildings Rules, which are posterior enactments, do not expressly repeal the permission of the Town and Country Planning Act. On the other hand, the Town and Country Planning Act is applicable notwithstanding the provisions of the Panchayats Act (vide Section 120 of the Act and Rule 26 of the Rules). So, we do not think that the planning permission granted by the C.M.D.A. deserves to be stayed. The writ appeal is, therefore, allowed. No costs Consequently, W.A.M.P. Nos. 4050 and 4051 of 2005 are closed .

10. The larger issues raised by the learned Senior Counsel appearing for the writ petitioner, the first respondent herein, are left open to be decided in the main writ petition.