
(2017) 04 MAD CK 0220

In the Madras High Court

Case No : 526 of 2011 ?and ?M P (MD) Nos 1 and 2 of 2011

M.Mohamed Abdullah

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

[Tamil Nadu District Municipalities Act, 1920](#), [Section 36](#)

Citation : (2017) 04 MAD CK 0220

Hon'ble Judges : T.S.Sivagnanam, P.Velmurugan

Bench : DIVISION BENCH

Advocate : T.S.Sivagnanam, P.Velmurugan

Final Decision : Dismissed

Judgement

1. This appeal by the writ petitioners is directed against the order, dated 08.04.2011, in W.P.(MD) No.1210 of 2011.
2. The appellants / writ petitioners challenged the validity of the Government Order, in G.O.(Ms) No.317, dated 30.12.2010, passed by the first respondent, in and by which, the resolution passed by the second respondent ? Panchayat was set aside pertaining to the rate of property tax to be fixed for the properties falling within its jurisdiction.
3. The Writ Court, after hearing the parties and taking note of the submissions made in the pleadings, took note of the fact that the resolution passed by the second respondent " Panchayat was cancelled by the Government after following proper procedures and bearing in mind that the second respondent " Panchayat is liable to pay a sum of Rs.254.61 Lakhs towards loan. Further, it was pointed out that merely because four persons felt that the tax levied on their properties is excessive that by itself cannot be a ground to challenge the impugned Government Order. Ultimately, the writ petition came to be dismissed holding that the appellants / writ petitioners were not able to pinpoint any irregularity or

illegality in the impugned Government Order.

4. The learned counsel appearing for the appellants / writ petitioners advanced two contentions before this Court. Firstly, on the ground of jurisdiction of the Government to pass the impugned Government Order by invoking the power under Section 36 of the Tamil Nadu District Municipalities Act, 1920 (hereinafter, it may be referred to as "the Act"). In support of such plea, reliance was placed on the decision in Pitchammal v. The Collector, Kanyakumari District, reported in 2000 (III) CTC 636.

5. It is further contended that to invoke the power under Section 36 of the Act, parameters, which are to be fulfilled, have been stipulated under the statute and in the instant case, none of the parameters are attracted and therefore, the impugned Government Order is liable to be set aside.

6. The learned counsel appearing for the second respondent " Panchayat, while seeking to sustain the impugned order, submitted that after following proper procedures, the Government passed the impugned Government Order and the Panchayat Council in utter disregard to the guidelines laid down by the Government in G.O.(Ms) No.110, dated 23.03.2008, had fixed the property tax and the same was rightly interfered with by the Government. Further, it is submitted that there are totally 1144 assesseees in the second respondent " Panchayat and out of them, 1011 assesseees have already remitted the revised property tax and the appellants / writ petitioners are only resisting the payment and on account of non-payment of the revised property tax, the interest of the second respondent " Panchayat has been grossly affected.

7. In support of his contentions, the learned counsel appearing for the second respondent " Panchayat has placed reliance upon the following decisions:

- i. Kamarajapuram Labour Contract Co-op. Soc.Ltd. v. State of T.N., reported in (2007) 1 MLJ 534;
- ii. Kodanthur Village Panchayat & others v. M/s .Supreme Poultry Private Limited and others, reported in 2012-1-L.W.505; and
- iii. German Trading Corpn. v. Secretary to Government of T.N ., reported in (2013) 5 MLJ 646.

8. Heard the learned counsel for the parties and perused the materials produced.

9. The short issue, which falls for consideration in this writ appeal is whether the Government was justified in striking down the decision taken by the second respondent " Panchayat with regard to the property tax payable in respect of the residential and non-residential buildings within the jurisdiction of the second respondent Panchayat. It is not in dispute that the Government had passed an order, in G.O.(Ms) No.110, dated 23.03.2008. The said order is in the nature of the clarification sought for by the Municipal Administration Department with regard to the manner in which the property tax has to be fixed. It may be true

that the Government cannot fix a flat rate for all the properties. But, nevertheless, the Government is vested with sufficient power to issue guidelines to the various local bodies with regard to the method and rates, which have to be adopted for fixing the property tax. If this power is not conferred on the Government, it may result in haphazard fixation of property tax and each local body will proceed to fix the property tax as per their whims and fancies. Therefore, the contentions raised by the appellants / writ petitioners that the Government cannot interfere with the resolution passed by the second respondent " Panchayat cannot be countenanced.

10. The next aspect is as to under what circumstances, the Government can exercise power over and above the decision taken by the second respondent " Panchayat.

11. The Honourable First Bench in the case of German Trading Corpn. (cited supra) was considering a case, where the petitioner therein challenged a resolution passed by a Town Panchayat cancelling the building plan approval granted to them. In the said case, a Government Order was passed directing the Commissioner of Town Panchayat to cancel the earlier resolution passed by the concerned Town Panchayat rejecting the permission sought for by the fourth respondent therein and to advise the Executive Officer of the Town Panchayat to grant permission to the fourth respondent to establish the factory within the jurisdiction of the said Town Panchayat. The action of the Government was challenged by way of a separate writ petition by seeking for a writ of declaration to declare the said Government Order as illegal and without jurisdiction.

12. While considering the correctness of those orders, the Honourable First Bench took into consideration the statutory provision, namely, Section 36 of the Act and held as follows:

"14. From a perusal of Section 36 of the Act reproduced above, we find that the State Government has been empowered to suspend or cancel any resolution passed, order issued, or licence or permission granted, or prohibit the doing of any act which is about to be done or is being done, if in its opinion, such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized, or is in excess of the powers conferred by the Act or the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray. The proviso to sub-section (1) enjoins upon the State Government to give an opportunity to the authority or person concerned for giving an explanation. However, this power cannot be exercised for setting aside any election which has been held. Under sub-section (2), the District Collector has been empowered to take immediate action in respect of the execution of any resolution or order, which if continued in force, is likely to cause danger to human life, health or safety or is likely to lead to a riot or an affray, he may suspend the resolution or licence, permission or act and report the matter to the State Government, which may either rescind the

Collectors order or after giving the authority or person concerned a reasonable opportunity of explanation, continue it with or without modification for the entire period or for such period as it thinks fit.

....

....

34. The provision of Section 252 of the Act confers wide powers to the State Government to pass any order which it thinks fit. It encompasses within its sweep the power to set aside an order passed by the Town Panchayat and to substitute a fresh order or to give a positive direction, which it had done in the present case. That being the position, we do not find any good ground to interfere with the order dated 20.4.2010 passed by the State Government."

13. Thus, by applying the law laid down by the Honourable First Bench in the aforesaid decision, we have no hesitation to hold that the Government has sufficient power to interfere with the decision of the second respondent " Panchayat, if it is found to be inconsistent with the procedures stipulated by the Government Order or for any good and valid reason. This decision was rendered by the Honourable First Bench after taking into consideration the decision of the learned Single Judge in the case of Pitchammal (cited supra). Therefore, the Judgment of the Honourable First Bench holds the field.

14. Having held that the Government has jurisdiction to set aside the resolution passed by the second respondent - Panchayat, the next aspect that has to be seen is as to whether the second respondent " Panchayat had sufficient opportunity to putforth their case. It is not in dispute that the second respondent " Panchayat was heard in the matter and they were issued a notice and after considering their stand that Panchayat Council was not properly advised to cancel the earlier resolutions and the Government also took into consideration the financial position of the Town Panchayat as they had an outstanding of Rs.254.61 Lakhs to be paid towards loan. Thus, the impugned Government Order being a reasoned order passed after issuing notice to the Town Panchayat and after hearing their views, we find that there is no error in the order passed by the Government, which was impugned in the writ petition.

15. As noticed above, there are 1144 property tax payers, who owned buildings within the limits of the second respondent " Panchayat. Out of them, 1011 building owners have paid the revised property tax and except the appellants / writ petitioners, the other building owners have not resisted the impugned Government Order.

16. Further, we find that in the present appeal, there are four appellants, of which the third appellant, which is an Association along with one other person by name, M.S.Murugappan, had filed a writ petition in W.P.(MD) No.8989 of 2009 before this Court seeking for a direction upon the respondents therein, which included the Executive Officer and the President of the Town Panchayat as

respondents 3 and 4 to re-consider the decision taken under Resolution No.110, dated 28.07.2008, Resolution No.130, dated 18.09.2008 and Resolution No.2, dated 29.01.2009. The said writ petition was dismissed by an order, dated 12.11.2009 and as against which, the petitioners therein preferred an appeal, in W.A.(MD) No.620 of 2009, which was dismissed as withdrawn giving liberty to the appellants to question the individual demand made in respect of the tax or to go before the Council for reconsideration of fixation of tax without reference to the orders in the writ petition.

17. The second respondent " Panchayat would state that the appellants / writ petitioners herein had filed the second round of litigation by adding three more petitioners and failed to implead the Executive Officer of the Town Panchayat, who was a party respondent in the earlier writ petition.

18. Thus, in the light of the above reasonings, we find that there is no error in the order passed in the writ petition and consequently, the writ appeal is liable to be dismissed.

19. In the result, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.