

(2006) 07 MAD CK 0237

In the Madras High Court

Case No : Writ Petition No. 8907 of 2005 and WPMP No. 9614 of 2005 and
WVMP. No. 116 of 2006

Mr. T. Balakrishnan rep. by POA R. Baskaran, R. Baskaran

APPELLANT

Vs

The Sub. Registrar, Sattur, Viruthunagar District, The District
Collector/Inspector of Panchayats, Virudhunagar District,
Virudhunagar, The Panchayat President,
E.Muthuramalingapuram Panchayath Viruthunagar
Panchayath Union, Viruthunagar District

RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

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

Citation : (2006) 07 MAD CK 0237

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : J. Alaguram Jothi, for the Appellant; D. Gandhiraj, GA, For
Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

K. Mohan Ram, J.—It is the case of the petitioners that the first petitioner is the owner of the lands in survey Nos.50/2, 40/3, 40/2, 41/4c, 39/1, 39/2A, 39/2B, 39/4, 39/5, 40/5 and 40/6 of E. Muthuramalingapuram Village and Panchayat, Viruthunagar District and he executed a power of attorney deed in Power of Attorney deed NO.348 of 2002 dated 25.11.2002 in favour of the second petitioner herein. Apart from that, the second petitioner also bought some lands in survey Nos.46/5, 46/6,51/6, 51/7 and 47/6B of E. Muthuramalingapuram Village and Panchayat, Virudhunagar District from one Mr. M. Subramaniam and Mr. M. Sundararaj. Pursuant thereto, the second petitioner laid the said lands including some other lands in an extent of 40.10 acres into house plots as per the rules in force and applied for approval of the lay out to the Panchayat President. According to the petitioners portion of the land has been set apart for roads and for other common purposes and necessary gift deed has also been

executed in favour of the Panchayat - the third respondent herein. The third respondent has approved the lay out and has given a no objection certificate to sell them as house plots and pursuant thereto, the second petitioner claimed to have sold 630 plots out of 1061 plots to various persons and the remaining 455 plots are to be sold. When the second petitioner presented a document on 12.8.2005 for registration before the first respondent, the first respondent refused to receive the same stating that he has received a copy of the order dated 12.8.2005 from the second respondent canceling the approval accorded to the lay out by the third respondent. The said order of the second respondent is impugned in this writ petition. The contention of the petitioners is that the cancellation of the approval by the second respondent is against the mandatory provisions contained in Section 202(2) of the Tamilnadu Panchayats Act, since the second respondent, before issuing the impugned proceedings, has neither issued any notice to the petitioners nor conducted any enquiry.

2. At the time of admission of the writ petition on 29.9.2005, interim stay was granted. Respondents 1 and 2 have filed a petition to vacate the stay granted along with the counter affidavit. The counter affidavit is sworn to by the second respondent wherein it is stated that the third respondent had approved the lay outs without prior technical approval by the Deputy Director of Town and Country Planning and issued the no objection certificate suo motu. It is also stated that the third respondent has failed to collect the amount towards provision of infrastructure facilities and that the Panchayat President has not obtained the concurrence from the Divisional Engineer (Highways & Rural Works). It is further stated in the counter affidavit that the second respondent called for explanation from the third respondent and after considering the explanation from the Panchayat, the resolution passed by E. Muthuramalingapuram Panchayat Council was cancelled as per Section 202 of the said Act. A peculiar stand has been taken in the counter that the petitioner is in no way connected with the orders of the respondent.

3. Heard both.

4. Learned counsel, by referring to Section 202(2) of the said Act, submits that it is incumbent on the part of the second respondent to issue notice to the petitioners and obtain explanation from them and also give an opportunity of hearing before taking action on any of the grounds referred to in Clauses (a) and (b) of Sub-section (1) of Section 202 of the said Act.

5. Section 202(1) and (2) of the said Act reads as follows :

"1. The Inspector may, by order in writing

i. suspend or cancel any resolution passed, order issued or licence or permission granted, or

ii. prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in his opinion,

- a. such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised, or
- b. such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law or an abuse of such powers or is considered by the Inspector to be otherwise undesirable, or
- c. the execution of such resolution or order, or 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:

Provided that nothing in this subsection shall enable the Inspector to set aside any election which has been held. 2. The Inspector, shall, before taking action on any of the grounds referred to in Clauses (a) and (b) of Sub-section (1), give the authority or person concerned an opportunity for explanation."

6. A reading of the above said provision clearly shows that if the resolution of the Panchayat or order or licence or permission, in the view of the Inspector of Panchayats namely the District Collector, is in excess of the powers conferred under the said Act or any other law or it amounts to any abuse of such powers and if the Inspector of Panchayats considers it to be otherwise undesirable, he shall, before taking action on any one of the grounds in Clauses (a) and (b) of Sub-section (1) of Section 202 of the said Act, give the authority or person concerned an opportunity for explanation.

7. In this case, the approval and the no objection certificate have been granted by the third respondent to the second petitioner on the application made by him. Any order canceling the permission or no objection certificate issued to the second petitioner will directly affect the right of the petitioners and consequently it will also affect the right of numerous persons, who have purchased the house plots from the second petitioner. Admittedly, the second respondent had issued notice only to the third respondent and no notice whatsoever has been issued to the petitioners. In the counter affidavit, as pointed out above, a peculiar stand has been taken stating that the petitioner is in no way connected with the orders of the respondent overlooking the vital fact that the impugned proceedings will lead to the cancellation of the permission and no objection certificate granted by the third respondent in favour of the second petitioner and any cancellation of the same will directly affect the rights of the petitioners as well as the purchasers from the second petitioner. That being so, the notice contemplated u/s 202(2) of the said Act ought to have been issued and an opportunity of hearing should have been given to the petitioners. On this sole ground, the impugned proceedings has to be quashed. Accordingly, the impugned order is quashed and the writ petition is allowed. No costs. Consequently, the above WPMP and WVMP are dismissed as unnecessary. However, it is made clear that it is open to the second respondent to pass orders afresh after strictly following the provisions contained in Section 202 of the said Act by giving a proper notice and opportunity of hearing to the petitioners as well as the purchasers from the second petitioner.