

(2014) 04 MAD CK 0087

In the Madras High Court

Case No : W.P. (MD) Nos. 18881 and 19749 of 2013

R. Eakamparam

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu District Municipalities Act, 1920 — Section 152, 152(1), 24A, 4(3)

Tamil Nadu Panchayats Act, 1994 — Section 241

Tamil Nadu Town and Country Planning Act, 1971 — Section 19(2), 26, 47, 49, 49(1)

Citation : (2014) 4 LW 562

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Judgement

V. Ramasubramanian, J.—The town of Karur, which started developing fast in the past about 3 decades, as an industrial hub, for the manufacture and export of garments, has a central bus-stand, that was established a long time ago, with a parking facility only for about 55 buses. Therefore, from the 1990s, there was a huge demand for the establishment of a new bus-stand. When the public started mounting pressure on the authorities for the establishment of a new bus-stand, the District Collector, Karur, sent a proposal, dated 28.01.2006, indicating that the lands available at three places, namely Sanappiratti Village, Athur Village and Thoranakalpatti Village, were examined and that the land of a total extent of Acres 8.01 in Thoranakalpatti Village, Thanthoni III-Grade Municipality, offered by the villagers free of cost for the construction of the bus-stand is suitable and that the Thanthoni III-Grade Municipality had also passed a resolution approving the location of the bus-stand in Thoranakalpatti village. But, the recommendation of the District Collector was rejected by the elected council of Karur Municipality, by a resolution bearing No. 32, dated 31.01.2006. Therefore, the Government requested the Municipal commissioner of Karur to find out a new place and put up a proposal before the Municipal Council. In order to carry out the directives of the Government, the Municipal Commissioner of Karur first sent a communication

to the Project Director of the National Highways Authority of India, on 27.01.2009, requesting him to send the Road Map for the National Highway that was coming up in Trichy-Coimbatore by-pass road, passing through Thanthoni Revenue Village, Achimangalam Revenue Village and Thoranakalpatti Revenue Village.

2. In the meantime, two Ward Councillors of Karur Municipality brought independent resolutions before the Karur Municipal Council on 29.01.2009. The proposal brought forth by one Ward Councillor by name R. Prabhu was for the location of the bus-stand in the land of an extent of 17 acres, situate at Sukkaliyoor Village. This land was actually a Government poramboke land. The other proposal was brought up by another Ward Councillor by name N. Maniraj, for the location of the bus-stand in a land belonging to a temple by name Shri Bala Thandayuthapani Temple, Thanimalai, Athur Village.

3. The proposal brought up by R. Prabhu received the support of the majority and a resolution was passed accepting his proposal.

4. Thereafter, the Revenue Divisional Officer, Karur, addressed a communication to the District Collector, recommending the reclassification of the land from "manthaiveli poramboke" (waste land meant for grazing), so that a bus-stand could be located therein. The Revenue Divisional Officer also proposed that an equivalent extent of land can be made available as "manthaiveli poramboke", so that the cattle of the village could have grazing ground.

5. The Revenue Divisional Officer also wrote a letter to the Karur Municipality, requesting the Commissioner to obtain consent letters from private land owners whose lands are located in-between or adjoining the Government land, for preparing a detailed plan. Upon receipt of the said proposal, the Commissioner of Karur Municipality approached the Commissioner for Municipal Administration, for obtaining approval of the Government. This was in view of the fact that the land in which the bus-stand was proposed to be located was situate in Thanthoni Municipality, lying outside the jurisdictional limits of Karur Municipality.

6. But when the above proposal was pending, the Government issued an order in G.O.Ms. No. 19, Municipal Administration and Water Supply Department, dated 14.11.2011 extending the local limits of Karur Municipality so as to include within Karur Municipality, the entire areas comprised in Inam-Karur Municipality, Thanthoni Municipality and Senapiratti Village Panchayat. The requisite notification was also published in terms of Section 4(3) of the Tamil Nadu District Municipalities Act, 1920.

7. In view of this new development, the District Collector, Karur again sent a letter dated 31.01.2011 to the Commissioner for Municipal Administration as well as the Government, seeking a fresh approval for the location of the new bus stand at Thorankalpatti revenue village in the Government poramboke lands available there. By a separate letter dated 24.02.2011, the District Collector also sought the reclassification of the land.

8. However, by a communication dated 22.12.2011, the Commissioner for Municipal Administration requested the Commissioner of Karur Municipality to have a fresh resolution passed in the Municipal council, in view of the inclusion of several areas within the municipal limits and the extension of the limits of the municipality.

9. Therefore, the subject was placed afresh before the Municipal Council in its meeting held on 10.10.2012. But, by a resolution bearing No. 797, the Municipal Council rejected the proposal on the ground that the land where the bus-stand was proposed to be located was at a distance of about 10 kilometres from the heart of the town and that therefore the Municipality can invite fresh offers from land owners, for donating land free of cost.

10. In view of the said resolution, advertisements were issued in prominent newspapers on 12.10.2012, inviting interested parties to donate land for the location of the bus-stand. Objecting to the change of stand taken by the Municipal Council, a section of the public appears to have sent letters of objection to the Chief Secretary on 29.10.2012. But, in the meantime, two persons by name M. Nachimuthu and M. Senthil Prasad, residing at Karur, made an offer on 7.11.2012 to donate the land of an extent of about 12.14 acres in Thirumanilaiyur Village for location of the bus stand. But, the said offer contained a lot of conditions subject to which they were prepared to donate the land. A few others also made offers. Therefore, a meeting was convened on 27.12.2012 in the office of the Karur Municipality. The Revenue Divisional Officer, Karur, the General Manager of the Tamil Nadu State Transport Corporation, the District Superintendent of Police, the Regional Transport Officer, the Divisional Engineer of the Highways Department, the Tahsidar of Karur and the officials of the Traffic Police participated in the meeting and discussed the offers made by the parties. After analysing the merits and demerits of the offers, the committee decided on 27.12.2012 that the offer made by N. Nachimuthu and N. Senthil Prasad could be considered favourably.

11. Therefore, the offers made by the parties as well as the minutes of the meeting held on 27.12.2012, were placed before the Municipal Council in its meeting held on 28.12.2012. By a resolution, number 1079, passed on 28.12.2012, the Municipal Council decided to accept the offer made by M. Nachimuthu and N. Senthil Prasad. It appears that the resolution was carried by a majority of 47 out of 48 members present. Therefore, the resolution was communicated by the Commissioner of Karur Municipality to the Commissioner for Municipal Administration. The Commissioner of Municipal Administration, in turn, issued a publication in the Newspapers on 07.11.2013, containing "Request For Proposal (RFP) For Invitation of Consulting Services For Appointment of a Consultant For Preparation of Detailed Project Report For Establishment of Integrated Bus-stand For Karur Municipality".

12. Immediately upon publication of the "Request for Proposal" in the Newspapers on 07.11.2013, one of the elected councillors, by name R.

Eakamparam, filed a writ petition in W.P.(MD) No. 18881/2013. The prayer in the said writ petition was for the issue of a writ of certiorari to quash the "Request For Proposal", published on 07.11.2013. The said writ petition came up for admission, for the first time, on 25.11.2013. Though what was challenged in the writ petition was only the "Request For Proposal" for consultancy services just to prepare a project report, a Division Bench of this Court ordered notice in the writ petition and granted interim order not to finalise the tender for the award of consultancy services.

13. It is interesting to note that the petitioner in this writ petition in W.P.(MD) No. 18881/2013, represented Ward No. 42 of the Karur Municipal Council and his was the only vote that went against the proposal, in the meeting of the Municipal Council held on 28.12.2012. Therefore, what this lone dissenting member could not achieve in the meeting of the Municipal Council, as against a vociferous majority of 47 members, was achieved by him through this writ petition in W.P. (MD) No. 18881 of 2013.

14. Even before the filing of W.P.(MD) No. 18881 of 2013, the Municipality passed yet another resolution on 23.05.2013, for seeking the approval of the Government, in terms of Section 152 of the Tamil Nadu District Municipalities Act, 1920 (in short "the Act"). This is, in view of the fact that the proposed bus stand was to be located in a land outside the municipal limits of Karur and hence the approval of the Government was statutorily required. Based upon the said resolution, dated 23.05.2013 and the recommendation made by the Commissioner, the Government had also issued an order (much before the filing of the first writ petition) in G.O.Ms. No. 87, Municipal Administration and Water Supply Department, dated 20.06.2013, granting approval under Section 152 of the Act, for the Karur Municipality to undertake the work of establishment of a bus-stand at the place accepted by the Municipal Council.

15. Therefore, the very same dissenting Ward Councillor R. Eakamparam came up with a second writ petition in W.P.(MD) No. 19749 of 2013, challenging the said Government Order, dated 20.06.2013. This writ petition was admitted on 05.12.2013. Thereafter, three more writ petitions came to be filed in W.P.(MD) Nos. 536, 2746 and 5774 of 2014, challenging the very same Government Order in G.O.Ms. No. 87, M.A. & W.S. Department, dated 20.06.2013.

16. The writ petition in W.P.(MD) No. 536 of 2014 was filed by one Mr. M. Ramalingam, by way of public interest litigation. Except stating in paragraph 2 of his affidavit that he is filing the writ petition in public interest for the welfare of the people and the tax payers, he had not disclosed his identity in any other manner.

17. Similarly, W.P.(MD) No. 2746 of 2014 has been filed by nine elected councillors of Ward Nos. 7, 30, 21, 45, 47, 37, 2, 38 and 9 of Karur Municipality. They have also claimed in paragraph 2 of the affidavit in support of the writ petition that they have filed the writ petition in public interest, for the welfare of

the people living in and around Karur Municipality. Interestingly, their affidavit is conspicuously silent as to whether they participated in the Municipal Council Meeting held on 28.12.2012 and voted in favour of the resolution or whether they absented themselves from the said meeting. As we have pointed out earlier, 48 elected councillors attended the meeting held on 28.12.2012 and the resolution in question came to be passed by a majority of 47 as against one. If the nine elected councillors who are the petitioners in W.P.(MD) No. 2746 of 2014 had voted in favour of the resolution on 28.12.2012, they were not entitled to challenge the consequential steps taken by the Government. But, the petitioners have left no indication about this, in their affidavit.

18. The last of the writ petitions, namely W.P.(MD) No. 5774 of 2014 is also filed purportedly in public interest, by a person by name M. Chinnathambi, who had earlier filed one writ petition in W.P.(MD) No. 1648 of 2013 but had withdrawn it with liberty. This person has also not indicated his identity except stating that he was filing the writ petition in public interest.

19. Since all the writ petitions revolve around the same issue, all these five writ petitions were taken up together and we have heard Mr. S. Silambannan, learned Senior Counsel, Ms. D. Geetha, Mr. R. Mathialagan and Mr. M. Saravana Kumar, learned counsel appearing for the petitioners, Mr. K. Chellapandian, learned Additional Advocate General, assisted by Mr. A.K. Baskara Pandian, learned Special Government Pleader appearing for the State and Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the Municipality.

20. Before we proceed further, we must bring on record one fact for the purpose of completion of narration. There was yet another writ petition in W.P.(MD) No. 5999 of 2014 filed by owners of certain lands located adjacent to the land in which the bus-stand is proposed to be constructed. The objection of the writ petitioners was that in the land in which the bus-stand was proposed to be established, there were water channels and sub-channels irrigating their lands and that the closure of the water course would seriously jeopardise the interest of agriculturists. But, this writ petition was withdrawn, at the time of hearing.

21. Therefore, what we have on hand are only five writ petitions, four of which challenge the Government Order in G.O.Ms. No. 87, dated 20.06.2013 and the first writ petition challenging the "Request For Proposal" published by the Municipality for engaging consultants for preparing a project report. Out of these five writ petitions, two writ petitions are filed by a Ward Councillor, who became the lone dissenter in the meeting of the Municipal Council. One writ petition is filed by nine elected Ward Councillors who either absented themselves in the meeting of the Municipal Council or supported the resolution, when it was taken up for discussion. The other two writ petitions are by members of public, whose identity is not very clear, from the records. Keeping these basic facts in mind, let us now proceed to consider the writ petitions on their merits.

MAINTAINABILITY:

22. At the outset, we wish to point out that three writ petitions, namely W.P.(MD) Nos. 18881 of 2013, 19749 of 2013 and 2746 of 2014 cannot be entertained by this Court for a variety of reasons. They are:

(i) The first two writ petitions are filed by one R. Eakamparam, who is the elected councillor of Ward No. 42. The decision to establish the bus-stand at the location in question was approved in a meeting of the Municipal Council held on 28.12.2012, in which 48 elected members participated. Out of them, 47 voted in favour of the resolution. The only person who voted against the resolution was the writ petitioner. Therefore, his writ petitions in W.P.(MD) Nos. 18881 and 19749 of 2013 are nothing but a veiled attempt to impose his will upon all the other elected members, by taking the route of public interest litigation. This Court cannot be allowed to be used by such persons, to annul the Resolutions passed at a meeting of the elected council. Public Interest Litigations are not meant for the purpose of annulling the will of the majority, especially at the instance of a person who participated in the meeting and became the lone dissenter.

(ii) The third writ petition in W.P.(MD) No. 2746 of 2014, as we have pointed out earlier, is filed by the elected councillors of nine Wards of Karur Municipality. They have miserably failed to disclose in the affidavit in support of the writ petition whether they participated in the meeting held on 28.12.2012 and if so whether they supported the resolution. If they had participated in the meeting and voted in favour of the resolution, they are estopped from challenging the resolution. If they had failed to participate in the meeting, they cannot try to compensate, in the form of a public interest litigation, their failure to voice their concerns in the meeting of the Council of democratically elected members. Therefore, either way, their writ petition cannot be entertained. As we have pointed out earlier, these nine Ward Councillors have not disclosed in the affidavit in support of the writ petition as to whether they participated in the meeting of the council held on 28.12.2012. In paragraph 18 of the affidavit in support of the writ petition in W.P. (MD) No. 2746 of 2014, they have just stated that the Municipal Council passed a resolution on 28.12.2012, under undue pressure from the land owners. The role that they themselves played either by remaining absent or by participating, is conspicuously absent in the affidavit. Therefore, it appears that the petitioners in W.P.(MD) No. 2746 of 2014, if their grievance is genuine, had failed to fulfill the aspirations of the members of the public who elected them. If these petitioners have really kept public interest in mind, they must have voiced all these concerns in the meeting of the Council held on 28.12.2012. They have not even mentioned in the affidavit as to what they did in the meeting. Therefore, at the instance of persons who failed to fulfill their obligations as elected representatives, we do not think that we will entertain a public interest litigation.

(iii) Insofar as the remaining two writ petitions are concerned, namely W.P.(MD) Nos. 536 and 5774 of 2014, the petitioners have not disclosed even their identities in the affidavits. Except stating that they are filing the writ petitions in

public interest for the welfare of the people and the tax payers of Karur, they have not stated anything else. Therefore, it is possible for us to reject their writ petitions also as devoid of necessary particulars. But, nevertheless, we will consider the contentions of all the petitioners, so as to give a quietus to the issue.

Contentions on Merits:

23. Mr. S. Silambannan, learned senior counsel appearing for the petitioner in the first two writ petitions raised the following contentions:

(i) that the lands in question are offered by the owners, with a series of conditions attached, most of which would prove detrimental to public interest;

(ii) that when the proposal mooted way-back in the year 2000, had reached the final stage of maturity in the year 2011 and when the said proposal was in respect of Government poramboke lands of an extent of 20 acres, readily available for conversion, it was not prudent for the respondents to accept the land of a private party and that too of a lesser extent, namely 12 acres, with lot of stings attached;

(iii) that the power under Section 152 of the Tamil Nadu District Municipalities Act, 1920 has been exercised by the Government without due application of mind, making the impugned Government Order vulnerable to attack;

(iv) that the land in question is located within a short distance of river Amaravathy and another channel, which, during the floods, would inundate the land in question with water; and

(v) that the village in which the land in question is located is known historically to have had a criminal track record and hence the location of the bus stand therein may endanger safety to the members of the public.

24. Ms. D. Geetha, learned counsel appearing for the petitioner in one writ petition raised the following contentions:

(i) that the respondents had failed to follow the detailed procedure stipulated for undertaking any developmental work, in terms of Section 24A of the Tamil Nadu District Municipalities Act, 1920 read with Section 241 of the Tamil Nadu Panchayats Act, 1994 and the various provisions of the Tamil Nadu Town and Country Planning Act, 1971;

(ii) that in the proposal that was pending from the year 2000, the detailed procedure stipulated in the above statutory provisions was actually followed and the matter reached its final stage;

(iii) that the disputed land has as an approach only a 60 ft. Road, which is not sufficient for a new bus-stand;

(iv) that Section 152 of the Tamil Nadu District Municipalities Act, 1920 could be invoked only for certain types of work, such as water works undertaken outside the local limits of the Municipality and not for the purpose of constructing a bus-

stand; and

(v) that there are sub-channels going through the very land in question with the water flowing there for irrigating the lands on the other side of the proposed bus stand.

25. The learned counsel appearing for the petitioners in the other writ petitions reiterated the very same contentions, as we have extracted above.

26. We have carefully considered the above contentions. We shall deal with them one after another.

Contention No. 1:

27. The first contention raised by Mr. S. Silambannan, learned senior counsel for the petitioner, is that the land in question is offered by the owners with any number of conditions, most of which are aimed at improving the market value of the lands that they seek to retain for themselves. According to the learned Senior Counsel for the petitioner, the detriment suffered by the Municipality, by accepting such conditions, would far out-weigh the benefits that would accrue to the Municipality by accepting the gift of the land. The learned Senior Counsel also drew our attention to a newspaper report according to which, the purported offer of gift, was with an eye on the real estate market.

28. But, the said contention does not survive any more. The learned Senior Counsel appearing for the Municipality, today, produced copies of the letters given by the owners agreeing to abide by the decision taken by the Municipality. The Municipality also appears to have passed a resolution not to accept any of the conditions. We also make it clear that the Municipality need not accept any conditional gift of the land.

Contention No. 2:

29. The second contention is that when the land of an extent of about 20 acres, belonging to the Government itself, is available and when the proposal for construction of the bus-stand in the said land has reached its finality after 10 years, it was not prudent for the Municipality to accept the private land of a lesser extent.

30. But, unfortunately, the justifiability of the acceptance of the land in question by the Municipality cannot be gone into by this Court. A democratically elected body has considered the pros and cons of the proposal and arrived at a conclusion to locate the bus-stand in the land in question. The Government had also examined the proposal and found the land to be suitable. Therefore, we cannot re-examine the issue and decide in a public interest litigation, whether the place now chosen is the most suited one for the Municipality to locate a bus-stand or not. In Paragraph 13.E of the counter affidavit filed by the Government, they have given the reasons for deciding to locate the bus-stand in the land in question. Paragraph 13.E can be usefully extracted as follows:

"13.E. The site proposed in 2009 in Thoranakalpatty was then outside the municipal limits of Karur Municipality, which was subsequently annexed to Karur Municipality. The distance from Karur Town is 10 KM. Some portion of the 21.4 Acres of the lands belonged to private individuals and they had not transferred the lands to Karur Municipality. Moreover, the Karur Municipality had financial difficulties in getting the lands. The present site in Thirumanilaiyur, even though outside municipal limits of Karur Municipality, is within 4 KM. from Karur Town and is easily approachable. Moreover, the lands had been donated by its owners vide Gift Deed dated 07.10.2013 registered as Document No. 6741/2013 on the file of Sub-Registrar, Karur West, and thereby no cost has been involved in the acquiring of the lands."

31. Again in Paragraph 14(iii) & (iv) of the counter affidavit, the Government has stated as follows:

"(iii) The present site is situated in the middle of the expanded limits, even though the site is outside the territorial jurisdiction of Karur Municipality. Hence, the Government had taken decision as per Section 152 of the District Municipalities Act, 1920.

(iv) The present site is more convenient to reach nearby places, such as Railway Station, Old Bus Stand, Collectorate, District Court, National Highway, etc., without any traffic congestion in the Town the location of the place is easily approachable from all other parts of the City within 10 minute. It is situated within 4 KM. Corporation Bus Depot is situated within 250 meters from the proposed New Bus Stand and Mofussil Buses can easily approach the highways without causing any traffic congestion. It is very safe to the public to reach their place. Moreover, the place has been donated by public without cost. Inter-alia, considering these aspects, the Karur Municipal Council had passed resolutions and had sent proposal to the Government for appropriate order. The Government had considered the same and had obtained opinions from the relevant authorities and had finally passed orders."

32. The correctness of the reasons stated above cannot be examined by this Court in a writ petition under Article 226 of the Constitution. There is a limit upto which the jurisdiction of this Court under Article 226 for a judicial review of the administrative action can be extended. Once we find that the decision of the respondents is supported by reasons, we cannot examine each and every reason and call upon the respondent to justify the same. It is quite unfortunate (or at least interesting to note) that today, even while the legal pundits keep debating on the one hand, the extent to which judicial activism could go, the public on the other hand, keep knocking at the doors of this court even in respect of matters such as the location of a bus stand, location of a railway station and the location of even public toilets (we ourselves have cases of this nature). But this court cannot function as a supervisory body for all the departments of the Government. Hence, the second contention is rejected.

Contention No. 3.

33. The third contention revolves around Section 152 of the Tamil Nadu District Municipalities Act, 1920, which reads as follows:

"152. Powers in respect of works outside the municipality.-- (1) The municipality council shall not undertake new works beyond the limits of the municipality without the sanction of the State Government.

(2) The council may, in the execution and for the purpose of any works beyond the limits of the municipality sanctioned by the State Government whether before or after the passing of this Act, exercise all the powers which it may exercise within the municipality throughout the line of the country through which conduits, channels, pipes, lines of posts and wires and the like run, and with the sanction of the State Government--

(a) over any lake, tank or reservoir, from which a supply of water for drinking, for producing electric energy or for other purposes is derived, and over all lands within one mile of the high water level of any such lake, tank or reservoir;

(b) over any water-course from which a supply of water for drinking, for producing electric energy or for other purposes is derived, within one mile above and half a mile below any point at which water is taken for such use; and

(c) over any lands used for sewage farms, sewage disposal tanks, filters and other works connected with the drainage of the municipality."

34. Two contentions are raised around section 152. The first is that the Government Order does not show any application of mind as to the availability of lands within the municipal limits of Karur. The second is that Section 152 of the Act can be invoked only for certain purposes, such as water works undertaken outside the local limits of the Municipality.

35. Insofar as the first issue is concerned, there is nothing on record to show that the Government did not take note of the previous proposal that was pending from 2000. As a matter of fact, the resolution passed by the Municipality, on the basis of which the Government Order was issued, itself contained a reference to the previous proposal and the annulment of the same. Therefore, the impugned Government order in G.O.Ms. No. 87, dated 20.06.2013, cannot be said to have been passed without realising the existence of the previous proposal.

36. As we have pointed out earlier, the original proposal was shunned by the Municipality itself and by a thumping majority of 47:1, the elected council decided to go in for the land in question. Any interference by the Government, with the said decision of a democratically elected body, would actually defeat the very object of the Constitution (Seventy third Amendment), to make local bodies, independent institutions of self government. Therefore, the Government could not have rejected the proposal of the Municipality on the ground that the previous proposal was far better.

37. The second contention relating to Section 152 of the Act that it applies only to certain types of works and not to matters like the establishment of a bus-stand, is unsustainable. We have already extracted Section 152 of the Act.

38. Section 152 of the Act contains two parts, divided into two sub-sections. The first sub-section makes it clear that a municipal council cannot undertake new works beyond the limits of the municipality without the sanction of the State Government. The emphasis is on the expression "new works". This sub-section (1) does not restrict its application to only a few types of works. The only restriction found in sub-section (1) is with regard to new works. The second sub-section merely clarifies that once the Government grants sanction for the execution of any work to a municipality beyond its local limits, the municipality will have all residuary powers that it would otherwise have, if the work is executed within its own limits. In order to steer clear of any doubt that may arise with regard to properties such channels, pipes, wires, etc., which may be the common properties of other municipalities or panchayats, sub-section (2) provides that once sanction is granted to the municipality under sub-section (1), the municipality will have powers to carry out the work, even in respect of those properties such as channels, pipes, etc.

39. The object of section 152 is just to ensure that the autonomy of each local body is kept confined to its local limits. The Government is vested with a power under Section 152(1) to make a small encroachment into such autonomy by sanctioning for one municipality, the carrying out of any work outside its local limits. A careful reading of both the sub-sections of Section 152 would show that sub-section (2) amplifies and clarifies sub-section (1). It does not restrict the scope of sub-section (1).

40. In any case, the land in question is located within Thanthoni Ill-Grade Municipality. The said Municipality has passed a resolution in favour of the establishment of the bus-stand therein. Therefore, if at all any one has the locus standi to question the decision of the Government to permit Karur Municipality to undertake a developmental work outside its local limits, it is Thanthoni Ill-Grade Municipality. Once they have accepted the proposal, it is not open to the petitioners to raise any issue on the basis of Section 152 of the Act.

Contention No. 4.

41. The fourth contention is that the land in question is located within a short distance of river Amaravathy and another channel, which, during floods, would inundate the land in question with water. As a by-product of this argument, another contention is advanced to the effect that there are sub-channels going through the very land in question, with the water flowing therein, used for irrigating the lands on the other side of the proposed bus-stand.

42. But, in answer to the said contention, the Government had stated that the site in question is not prone to floods and that it is away from the river bed. In paragraph 12 of the Government's counter affidavit, it is stated that even during

the heavy floods that happened in 1997 or 2003, the area was not flooded. It is further claimed in the same paragraph that the channels are located far away from the finalised site. In any case, the Divisional Engineer, Highways, appears to have sent a report to the Municipal Commissioner of Karur in Na.Ka.No. 804/2013, dated 10.05.2013, stating clearly that even during the heavy floods that happened in 1997 and 2005, no breach took place in the road proceeding from Thirumanilaiyur to Chellandipalayam and Sukkaliyur. It is stated further in the report that the existing ground level bridge at Pasupathipalayam is proposed to be converted into an over-bridge and that therefore there was no possibility in future for Thirumanilaiyur-Chellandipalayam road to be inundated by water during floods. The Divisional Engineer has stated very clearly in the same report that the proposed bus-stand is actually 150 metres away from Thirumanilaiyur-Chellandipalayam road. Therefore, it is clear that the apprehension expressed by the petitioners is only illusory.

43. The Tahsildar, Karur, has also sent a similar report to the Karur Municipal Commissioner stating that the finalised site is 550 metres away from Amaravathy River and that it is 820 metres away from New Amaravathy Bridge. The Assistant Executive Engineer, Amaravathy Irrigation Sub-Division, had also sent a similar Report, dated 16.05.2013. Therefore, in the light of these reports, it is not possible to accept the contention of the petitioners that the finalised site is likely to be inundated by water. There is also no proof to show that there are sub-channels irrigating the lands on the other side of the proposed bus-stand. The owners of those lands had come up with a writ petition, but they have withdrawn the same. Therefore, the fourth contention also deserves to be rejected. Contention No. 5.

44. The fifth contention is that the village in which the finalised site is located has a historical background of being the habitat of persons with criminal track record. Therefore, it is contended that the safety and security of the commuters using the bus-stand will be in jeopardy. We are surprised at such a contention raised in the 21st Century. After about 67 years of political freedom, an entire village cannot be identified as a haven for criminals, in a democratic Country. Therefore, the said argument is rejected outright. Contention No. 6.

45. The next contention is that the respondents failed to follow the detailed procedure stipulated for undertaking any developmental work in terms of various provisions of the Tamil Nadu District Municipalities Act, 1920, the Tamil Nadu Panchayats Act, 1994 and the Tamil Nadu Town and Country Planning Act, 1971. Section 24A of the Tamil Nadu District Municipalities Act, 1920, mandates the preparation of a development plan every year and the submission of the same to the District Planning Committee constituted under Section 241 of the Tamil Nadu Panchayats Act, 1994. The District Planning Committee is required under section 241 of the Tamil Nadu Panchayats Act, 1994 to consolidate all the plans submitted by all local bodies and prepare a draft development plan and forward the same to the Government. Once a draft development plan is submitted, the

provisions of the Tamil Nadu Town and Country Planning Act, 1971 will get attracted. Therefore, it is contended by Ms. D. Geetha, learned Counsel for one of the writ petitioners that before undertaking any developmental work, the respondents ought to have followed these detailed procedure.

46. In answer to the above contention of the petitioners, it is submitted by the learned senior counsel for the municipality that Section 49(1) of the Tamil Nadu Town and Country Planning Act, 1971 exempts the State Government, the Central Government or any local authority from the requirement of making an application for permission.

47. But, the said contention of the learned Senior Counsel for the Municipality is sought to be repelled by Ms. D. Geetha, learned counsel for the petitioner, on the basis of Section 58(1) of the Tamil Nadu Town and Country Planning Act, 1971. While Section 49 deals with applications for permission by any person not being the State Government or Central Government or any local authority, for carrying out any development on any land or building, Section 58 is a special provision that deals with the development of any land or building carried out by the State Government or Central Government or local authority. Therefore, it is contended on behalf of the petitioners that without going through this detailed procedure, the municipality cannot establish a bus-stand. According to the petitioners, the municipality went through this procedure, in respect of the previous proposal.

48. But, we do not think that the stage has arrived for us to examine this issue. As we have indicated in the sequence of events, the Municipal Council just passed a Resolution on 28.12.2012, resolving to accept the gift of the land. The Government passed an order on 20.06.2013 under Section 152 of the Tamil Nadu District Municipalities Act, 1920, granting permission. On 07.11.2013, the Municipality merely issued an advertisement inviting "Request For Proposal" for appointment of a project consultant. Immediately, the petitioners rushed to Court and put the whole project on hold. Therefore, at this stage, the respondents could not have gone ahead with all those detailed procedures prescribed by the Tamil Nadu Town and Country Planning Act. Hence this contention is liable to be rejected as pre-mature.

49. In any case, we do not know whether any development plan has actually been put into operation in the area in question. For the application of the provisions of Chapter-VI of the Tamil Nadu Town and Country Planning Act, 1971, a development plan should have actually come into operation. This is seen from Section 47, which mandates that no person other than any State Government or Central Government or any local authority shall use any land or carry out any development in any area, otherwise than in conformity with a development plan, if a development plan had come into operation. Section 49 is applicable only if a development is sought to be undertaken, after the date of publication of a resolution under Section 19(2) or after the publication of a notice under Section 26. Without even pleading (i) that a development plan had come into operation for the area in question; (ii) that a resolution under Section 19(2) has been

published or (iii) that a notice under Section 26 had been published, the petitioners cannot seek to impose an obligation upon the respondents.

50. Even in respect of any area where a development plan has come into operation, there are no fetters for the State Government or the Central Government or any local authority to use or cause to be used, any land or carry out any development in that area. This is made clear by Section 47, which reads as follows:

"47. Use and development of land to be in conformity with development plan.-- After the coming into operation of any development plan in any area, no person other than any State Government or the Central Government or any local authority shall use or cause to be used any land or carry out any development in that area otherwise than in conformity with such development plan:

Provided that the continuance of the use of any land for the purpose and to the extent for, and to which it is being used on the date on which such development plan comes into operation, may be allowed for such period and upon such terms and conditions as may be specified in such development plan."

51. A careful look at the scheme of Section 58 of the Tamil Nadu Town and Country Planning Act, 1971 would show that though it prescribes the procedure to be followed by any department of the State Government or Central Government or any local authority, for undertaking a development, it does not curtail the scope of Section 47. Section 47 that prohibits any person from carrying out any development otherwise than in accordance with a development plan, grants a general exemption to the State Government, Central Government and local authorities. It is permissible for the State Government, Central Government or local authority to carry out any development, even otherwise than in conformity with a development plan that had come into operation, by virtue of Section 47. Therefore, the contention based upon Section 58 does not hold water.

Contention No. 7.

52. The last contention is that the disputed land has an approach only through a 60 ft. road, which is not sufficient for a bus-stand. But, it is stated by the learned senior counsel appearing for the Municipality that the approach road will be of a larger width and that steps are taken for acquiring the adjoining lands also. Therefore, this concern of the petitioners also stands addressed.

Conclusion

53. In *S. Venkatesan Vs. Government of Tamil Nadu, Municipal Administration and Water Supply Department, Commissioner of Municipal Administration and Tindivanam Municipality*, a batch of writ petitions were filed, purportedly in public interest, for a writ of declaration to declare the resolution of the Tindivanam Municipality for the establishment of a new bus-stand in a particular area in Tindivanam, as contrary to law. One of the main objections taken in those

writ petitions was that the land in which the bus-stand was proposed to be located, was a water body and that therefore the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 would apply. In paragraph 34 of its decision, a Division Bench of this Court held that the final decision as to where the bus-stand is to be located is to be left with the Government to decide. The Bench also pointed out in paragraph 40 that it cannot substitute its views over that of the Government.

54. When the very Government Order granting permission for locating Tindivanam Bus-Stand in a land purported to be a water body came to be challenged in another writ petition by the same person, another Division Bench of this court rejected the challenge in *S. Venkatesan Vs. Government of Tamil Nadu, Tindivanam Municipality and Tamil Nadu Pollution Control Board*, . The rejection was on the basis that the Government had undertaken to deepen the lake and also increase the tank bund to ensure the retention of the full capacity. But, this was done by the Division Bench in view of the admitted position that the bus-stand was sought to be located in a lake. Such a contingency has not arisen in the case on hand.

55. In *Union of India vs. Government of Tamil Nadu*, decided on 22.04.2013 in W.A. No. 572 of 2013, a Division Bench of this Court took a survey of all the decisions of the Supreme Court on the scope of the power of this Court for judicial review of policy decisions and summarised the position in paragraph 61 as follows:

"61. From the aforesaid decisions of the Hon"ble Supreme Court, the following principles emerge as to when the Courts can interfere in a policy decision:-

- I. If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.
- II. The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.
- III. The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.
- IV. The policy is found to be against any statute or the constitution or runs counter to the philosophy behind these provisions.
- V. It is dehors the provisions of the Act or legislations.
- VI. If the delegate has acted beyond its power of delegation.
- VII. If the policy is against public interest or does not sub-serve public interest, public purpose and public good."

The case on hand does not fall under any one of the above categories. Therefore, the writ petitions are liable to be dismissed.

56. In normal circumstances, we would have dismissed the writ petitions without

imposing costs. But, in this case, we are constrained to impose costs upon the petitioner R. Eakamparam [W.P.(MD) Nos. 18881 and 19749 of 2013], for the simple reason that after having suffered a defeat in the meeting of the council on 28.12.2012, he had made use of this Court to annul the effect of resolution passed by an overwhelming majority of 47:1. Therefore, he is directed to pay costs to the Karur Municipality to the tune of Rs. 20,000/- (Rupees twenty thousand only). Therefore, in fine, the writ petitions W.P.(MD). Nos. 18881 and 19749 of 2013 are dismissed with costs of Rs. 20,000/-. The other writ petitions are dismissed without any order as to costs. Connected miscellaneous petitions are closed.