

(2013) 11 MAD CK 0128

In the Madras High Court

Case No : Writ Petition (MD) No. 7264 of 2013

Raja

APPELLANT

Vs

The District Collector, Madurai District, The Assistant Director
(Village Panchayts), Murugan and Keelakuilkudi Panchayat

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0128

Hon'ble Judges : M. Venugopal, J;M. Jaichandren, J

Bench : Division Bench

Advocate : N. Sathish Babu, for the Appellant; V.R. Shanmuganathan, Spl. G.P. for R. 1, Mr. M. Alagathevan, Spl. G.P. for R.R. 2 and 4 and Mr. T.S.R. Venkatramana for R. 3, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioner has focussed the instant Writ of Mandamus praying for passing of an order by this Court in directing the Respondents 1 and 2 to take appropriate action in removing the encroachment put up by the Third Respondent in Government Poramboke land in S. No. 122/14 in Keelakuilkudi Village and Post, Madurai South Taluk, Madurai District, by considering the representation of the Petitioner and other Villagers dated 15/3/2013 within a period fixed by this Court. The Summary of Facts:- The Writ Petitioner is an Agricultural Coolie by profession and he is residing with his family members at 2/16, South Street, Keelakuilkudi Village and Post, Madurai South Taluk, Madurai District. He has filed the present Writ Petition as "PRO BONO PUBLICO" in the interest of villagers of Keelakuilkudi Village. The said Village has a population of around 5,000 people and they are living in unity without any discrimination.

2. The Third Respondent has constructed a house in S. No. 122/15 and encroached a land of total extent of 0.0128 Acres in S. No. 122/14 which is classified as Village Natham Poramboke, which absolutely belongs to the Government. The Villagers, on several occasions, questioned the high handed act

of the Third Respondent and advised him not to put up any encroachment in the said land, as it can be used for some common purposes, as in the Village, no community hall and health centre are available. If the land is free, it can be used for the above said purposes.

3. In spite of the Villagers' repeated request, the Third Respondent is acting in a high handed manner and going on with the construction activities in the said Government poramboke land. Therefore, the Villagers approached the First and Second Respondents and submitted a representation on 15/3/2013 to the First Respondent/District Collector, Madurai through "Courier", highlighting all the high handed act of the Third Respondent, in encroaching the Government Poramboke land for his own purpose and requested him to take appropriate action to remove the encroachments. The First Respondent/District Collector, Madurai, acted on the representation of the Villagers and through his proceedings dated 1/4/2013, directed the Second Respondent/Assistant Director (Village Panchayats) to look into the matter and take appropriate action on the Villagers' representation. However, till date, no action has been taken on the recommendation of the First Respondent/District Collector, Madurai.

4. Salient features of Third Respondent's Counter:- The Writ Petition filed by the Petitioner is not a "Public Interest Litigation" but a "Blackmail Interest Litigation". The Third Respondent purchased an extent of 56 cents by means of four documents for valuable consideration from Karnan, Raja and others. The vendors were the Petitioner's Uncle's children. While purchasing the properties, before the Third Respondent, the Petitioner created a big problem, falsely alleging that he had some non-existing right on it. Through his high handed action, the sale was dragged on and the matter went to Police. Ultimately, the Third Respondent was forced to pay a sum of Rs. 15,000/- to the Petitioner as evidenced by an Agreement dated 20/8/2009 and this will speak volume of the Blackmail of the Petitioner, which deserves to be dismissed with compensatory costs.

5. The Third Respondent is putting up a construction in S. No. 122/14 in Keelakuilkudi Village corresponding to Old Survey No. 82/9 which is a "Grama Natham". He has purchased plots in S. Nos. 122/14, 15, 16, 30, 31 by various sale deeds. All the Survey numbers are "Grama Natham" (village house sites) corresponding to Old Natham Survey No. 82/9. S. No. 82/9 was sub divided in the UDR recently and new Grama Natham Survey numbers were assigned to plots on the basis of possession and enjoyment. "Grama Natham" is generally called as "Natham Poramboke" as there is no assessment of tax for house site till now.

6. The Third Respondent, purchased various plots in S. Nos. 122/14, 15, 16, 30 and 31 continuously and applied to the Local Panchayat and obtained building plan approval and his building construction is half way through. The ground floor roofing work is on. The Petitioner motivated by greed, demanded money from this Respondent (to pay him before construction) and on refusal, has filed the

present Writ Petition only to extract money and cause loss to him.

7. He submitted a building plan and paid the requisite fee of Rs. 13,866/- and obtained a building Permit No. 1/2013-14.

8. The Petitioner seems to think that Natham Poramboke belongs to the Government. In fact, Natham house site belongs to the occupier and the Third Respondent has purchased plots from the original owner through registered sale deeds which cannot be questioned by the Petitioner. Originally, S. No. 122/14 belonged to one Murugan, S/o. Meenakshi Sundaram. There was a house and it was assessed as D. No. 1/107A by the Panchayat. The house is dilapidated. He purchased it and demolished the old building and built a house there. The new S. No. 122 is correlated to old Natham Survey No. 82/9 part. S. No. 122/2 is correlated to old Natham S. No. 82/9 part. S. No. 122/2 is a common pathway. Only Communal Poramboke Road, Poramboke River Poramboke, Manthai Poramboke are common property and not Natham site. Natham site is owned by its owner. S. No. 122/13 is a dilapidated house and equally, sub division 14 and 16 are vacant sites. In sub-divisions 15 and 17, there are houses. This will expose the fraud of the Petitioner. Since the Third Respondent has refused to pay money to the Petitioner, he has been sending false petitions to the First and Second Respondents.

9. The Petitioner has no cause of action and the invented cause of action is imaginary. The alleged petition dated 15/3/2013 of the petitioner and other villagers is a false and created one for the purpose of the case. The petition has no date. The Collector's reply dated 1/4/2013 has no relevancy to S. No. 122/14 and has not referred to the Petitioner.

10. The Third Respondent purchased natham land for valuable consideration applied to the local Panchayat and obtained building permit and the construction is half way through. His construction has come to a stand still because of the Writ Petition. Therefore, the Writ Petition is liable to be dismissed.

11. The Learned Special Government Pleader for the Second and Fourth Respondents (Panchayat) submit that the Third Respondent (Writ Petitioner in W.P. (MD) No. 10786 of 2013) had applied for building permission on 18/3/2013 for the house to be constructed in S. Nos. 122/14, 122/15 and 122/31 measuring an extent of 2649 Sq.feet and the same was filed with sale deed and other required documents and the permission was granted on 3/4/2013. Further, on behalf of the Second and Fourth Respondents, it is represented before this Court that later, the Petitioner in W.P. (MD) No. 7264 of 2013 raised an objection by filing the Writ Petition and in consequence, the building permission was cancelled, during the pendency of construction work.

12. The Learned Special Government Pleader for the Respondents 2 and 4 fairly brings it to the notice of this Court that on receipt of representation of the Petitioner and other villagers dated 15/3/2013 (sent through Courier) by the Fourth Respondent/Panchayat {First Respondent in W.P. (MD) No. 10786 of

2013} was directed to take action against the Third Respondent (Writ Petitioner in W.P. (MD) No. 10786 of 2013), based on an oral instructions and resultantly, the building plan approval was cancelled on 28/6/2013 in proceedings Na.Ka. No. 1/13 dated 28/6/2013.

13. Apart from the above, the Learned Special Government Pleader takes a plea that the Government, as per Revenue records (the same being house site), the building plan approval was granted in favour of the Third Respondent (Writ Petitioner in W.P. (MD) No. 10786 of 2013) in connection with S. Nos. 122/14, 122/15 and 122/31.

14. By way of Reply, the Learned Counsel for the Third Respondent (Writ Petitioner in W.P. (MD) No. 10786 of 2013) submits that the Fourth Respondent/ Panchayat President (First Respondent in W.P. (MD) No. 10786 of 2013) cannot cancel the Building Plan Approval granted in favour of the Third Respondent in W.P. (MD) No. 7264 of 2013.

15. It is pertinently pointed out that the term "Natural Justice Principles" are not the edicts of a statute. As a matter of fact, its absence gives one a feeling of injustice be it before a judicial forum or a quasi-judicial body or even an administrative body etc. The simple "Rule of Hearing" is that no decision shall be taken without hearing the party to be affected.

16. At this stage, this Court aptly points out that the ingredients of "Fair Hearing" are:-

- (i). Prior notice
- (ii). Right to make representation
- (iii). Right to be heard

Without any of these are wanting, the decision is tainted with arbitrariness.

17. It is evident based on the oral instructions of the First Respondent/District Collector, the Fourth Respondent/Panchayat President {First Respondent in W.P. (MD) No. 10786 of 2013} cancelled the building plan approval through proceedings dated 28/6/2013 without providing an opportunity of hearing to the Third Respondent and the said cancellation of the building plan approval originally granted is not a valid and legally tenable one in the eye of Law.

18. On a careful consideration of respective contentions and in view of the fact that there is a settlement agreement dated 20/8/2009 entered into between the Third Respondent (Writ Petitioner in W.P. (MD) No. 10786 of 2013) and the Writ Petitioner in W.P. (MD) No. 7264 of 2013 in and by which a sum of Rs. 15,000/- was paid by the Third Respondent in W.P. (MD) No. 7264 of 2013 Petitioner in W.P. (MD) No. 10786 of 2013/Writ Petitioner in W.P. (MD) No. 7264 of 2013 towards sale amount for which a receipt has been duly issued and also, this Court, taking note of another important fact that the said settlement agreement dated 20/8/2009 was made in the presence of witnesses by the respective

parties, this Court comes to an irresistible and inescapable conclusion that the Writ Petition (MD) No. 7264 of 2013 filed by the Petitioner styling it as "PRO NOBO PUBLICO" in the interest of villagers of Keelakuyilkudi village, Madurai District is per se not maintainable in the eye of law. Obviously, the present W.P. (MD) No. 7264 of 2013 has been filed by the Petitioner with an ulterior motive and also to cause inconvenience and hardship to the Third Respondent in W.P. (MD) No. 7264 of 2013/Writ Petitioner in W.P. (MD) No. 10786 of 2013. Further, even though, the Fourth Respondent/Panchayat (First Respondent in W.P. (MD) No. 10786 of 2013) had acted based on an oral instructions of the First Respondent/District Collector and also based on the representation of the Petitioner in W.P. (MD) No. 7264 of 2013 and other villagers, the same in law is non est and they have no legal sanctity in view of the fact that no opportunity was granted to the Third Respondent in W.P. (MD) No. 7264 of 2013 (Writ Petitioner in W.P. (MD) No. 10786 of 2013), prior to the cancellation of the building plan as per proceedings in Na.Ka. No. 1 of 2013 dated 28/6/2013 because of the simple reason that there has been a negation of principles of natural justice, in the considered opinion of this Court. Viewed in that perspective, the Writ Petition (MD) No. 7264 of 2013 is devoid of merits. In the result, the Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, the connected Miscellaneous Petition is also dismissed.