
(1981) 03 MAD CK 0002
In the Madras High Court

The Corporation of Madurai	Vs	APPELLANT
K. Sundara Thevar		RESPONDENT

Date of Decision : 05-03-1981

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 86

Citation : (1982) 95 LW 324 : (1982) 2 MLJ 112

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—The second appeal arises out of O.S. No. 897 of 1972 on the file of the District Munsif of Madurai Town, in which the

respondent-plaintiff sought a declaration that the notice for demolition issued by the appellant u/s 258 of the, Madurai City Municipal Corporation

Act, 1971 was illegal and for a permanent injunction restraining the defendant-appellant from demolishing the Vinayakar temple. The suit property

is Sakthi Vinayakar temple and the plaintiff-respondent is the President of the temple. The temple was in existence for more than the statutory

period, having been founded by persons in the locality. Originally, the temple was covered by a thatched roof. It is not in any way a hindrance to

the public, either to the pedestrians or to the vehicular traffic. The temple is worshipped by the entire public all these years, and daily pujas are

being performed by the archaka appointed by the plaintiff. This temple is considered to be very sacred and powerful in the locality. That would be

evident from the increase in the hundial collections every year. In course of time, the thatched roof had to be replaced by zinc sheet roofing to

prevent the rain water getting into the roof. Later on, cement plastering was done to the mud-walls. There is a collapsible gate for safety purposes

for the temple. Every year, the anniversary was conducted in the month of September. Big officers attended the anniversary festival. No objection

was ever raised by the revenue authorities, the police authorities and the municipal authorities all these years, which would be suggestive of the fact

that the temple was never a hindrance to the public. Suddenly, on 2nd September, 1972, a notice under Exhibit A-1 was issued by the defendant-

appellant, Corporation calling upon the plaintiff to remove the temple on or before 29th September, 1972. The said notice is improper and illegal.

The action of the Corporation in sending the notice of demolition is high-handed. Hence the suit for the above reliefs. In defence it was stated by

the Corporation that the suit structure is in a road poramboke. A small old peetam about two years old was situated west of the present peetam

and construction. The present construction has been recently put up just east of the place where the old peetam was situated. In addition to the

construction, a platform had also been put up which is an encroachment on the road. The present construction of the temple with the walls around

and the zinc sheet roofing and the collapsible gate are very recent constructions put up somewhere about 2nd September, 1972. It is undoubtedly

an encroachment on the road poramboke. The temple was not in existence for more than the statutory period as stated in the plaint. Actual

hindrance is quite irrelevant so long as there is encroachment. Equally irrelevant is the popularity of the temple. Public roads having statutorily

vested with the Corporation of Madurai, it is empowered to take action for the removal of the encroachment. It is incorrect to state that the notice

for demolition is in any way illegal. Hence the suit would have to be dismissed.

2. The learned trial Munsif, on a consideration of the various materials before him including the oral and documentary evidence, decreed the suit.

Aggrieved by the same, the appellant Corporation took up the matter in appeal in A.S. No. 75 of 1975 to the Sub-Court, Madurai. The learned

Subordinate Judge concurred with the findings of the trial Court. It is in these circumstances, seeking to challenge the concurrent findings of the

Courts below, the second appeal has been preferred.

3. Learned Counsel for the appellant Corporation vehemently contends that all public streets vest in the Corporation by virtue of Section 236 of

the Madurai City Municipal Corporation Act. As to what is meant by a "public

street" is defined u/s 2, Clause (33). Merely because the suit

temple is on a platform and not on the road, it cannot be held that there is no encroachment, as has been done by the Courts below. This finding is

clearly opposed to the statutory provisions above referred to. Equally, the findings of the Courts below that there was no vesting of the suit

property in the appellant Corporation is wrong, because Section 236 clearly speaks of the vesting. In answer to these contentions, learned Counsel

for the respondent, Mr. P. Pandi, would submit that it has been clearly brought out in evidence by way of Exhibits B-2 and B-7, that the suit

temple exists on the Government poramboke. Such a poramboke does not vest u/s 236 of the Act. Even otherwise, the definition of a "public

street" in Section 2(33) would not take in the property belonging to the Government. The suit property, being a Government poramboke, no

vesting at all ever took place. In view of the above contentions, I have got to necessarily refer to the important statutory provisions in the Madurai

City Municipal Corporation Act of 1971, hereafter referred to as the Act. As to the vesting of the public streets, Section 236 may be referred to.

That section reads thus:

236. Vesting of public streets and their appurtenances in Corporation. - (1) All public streets including tunnels, sub-ways and flyovers in the city

not reserved under the control of the Government or the Central Government, with the pavements, stones and other materials thereof, and all

works, materials, implements and other things provided for such streets including all sewers, drains, street-lights, drainage works, tunnels and

culverts, whether made at the cost of the municipal fund or otherwise in, along side, or under any street, whether public or private, and all works,

materials, implements and other things appertaining thereto and all trees not being private property growing on public streets or by the side thereof,

shall vest in the Corporation.

(2) * * *

(Sub-section (2) omitted.)

A careful reading of the above two sections, i.e., Section 2(33) and Section 236(1) does not suggest that the porambokes would vest in the

Corporation. There is a reference to the property belonging to the Government under Sub-clause (c) of Clause (33) of Section 2. It requires to be

noted that it is in relation to the drains and not a general sub-clause dealing with property belonging to the Central or the State Government. Even

u/s 236, there is no indication that poramboke would vest. Exhibit B-2, in the instant case, is the extract from the Town Survey Register showing

the suit temple in T.S. Nos. 1241/1A and 1242/1. The evidence of D.W. 1 also shows that the temple is in this poramboke land. Exhibit B-7 is the

extract from the register of Government and Municipal lands. That mentions T.S. No. 1241/1A as well as T.S. No. 1242/1 as ""G, V.M. Alagar

Koil Road"". If really these, survey numbers have vested in the Corporation, there is absolutely no reason why in the Town Survey Register (Exhibit

B-2) it should be classified as Government poramboke. In this connection, the judgment of Venkatadri, J., reported in Apparao v. Corporation of

Madras (1966) 1 M.L.J. 187, may be usefully cited. After referring to the similar definition in relation to "public street" in the Madras City

Municipal Corporation Act, the learned Judge observed that though the land, over which the objectionable construction is put up, might belong to

the Government, if it has vested in the Corporation and is entered in the other registers as a public place, then the Corporation would be entitled to

take proceedings under the said provision. Unfortunately, in this case, having regard to the description in Exhibit B-2, it is impossible to hold that

there has been a vesting of the Government poramboke. It may not be out of place to mention that the Act in question is nothing more than a

replica of the Madras City Municipal Corporation Act of 1919. The said Act and the Madras District Municipalities Act, 1920, have very many

identical provisions. Neither of these Acts contains a provision in relation to the vesting of Government porambokes. It may be, useful, in this

connection, to mention, though there were few fore-runners to these Acts, it was only pursuant to the recommendation of the Royal Commission

on Decentralisation these Acts came to be passed to implement the resolution of the Government of India on local self-government in 1918. One

plausible explanation maybe, when these local self-governments were constituted, the idea was to confer upon them the powers of self-governors.

The then rulers, being the British, would not have wished that these local self-governments exercise powers over the properties belonging to the

Government. The reason why I want to make mention of this is, u/s 86 of the Tamil Nadu Panchayats Act, Sub-section (2) of the said section

vests the stated porambores under that sub-section. Why such a provision is not found in neither of the above two Acts, it is very difficult to explain. Once the Act in question is a replica of the Madras City Municipal Corporation Act, though it is a later Act, and obviously no provision like Section 86 of the Tamil Nadu Panchayats Act found therein, it is a matter for the Legislature to consider. As the provisions of the Act in question now stand, I am unable to conclude that the Government poramboke would vest in the appellant-Corporation so as to enable it to issue the impugned notice (Exhibit A-1) u/s 258. The said section authorises the removal of an encroachment, as would be seen by a reading of Sub-section (1), thereof, provided the encroachment or obstruction is in, or over, any street or public place, the control of which is vested in the Corporation. But once, as has been found, there has been no vesting at all, I am unable to hold that the impugned notice under Exhibit A-1 is, in any way, valid. In view of this, the concurrent judgments of the Courts below will have to be necessarily upheld, the result being, the second appeal fails and is hereby dismissed. There will be no order as to costs.