

(2008) 03 MAD CK 0162

In the Madras High Court

Case No : W.P.No. 11453 of 2007 and M.P.Nos.2 and 3 of 2007

Thiyagavalli Panchayathai Serntha Nochikkadu Grama
Vivasayigal Pathukappu Mattrum Makkal Pothunala Sangam

APPELLANT

Vs

The Chairman, Tamil Nadu Electricity Board, Anna Salai,
Chennai -2, The Inspector General of Registration, Santhome
High Road, Santhome, Chennai - 28, The Joint-II Sub
Registrar, Thiruppadiripuliyur, Cuddalore -2 and The District
Registrar, District Registrar's Office, Cuddalore District

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Constitution of India, 1950 — Article 300A
Electricity (Supply) Act, 1948 — Section 29(2)

Citation : (2008) 03 MAD CK 0162

Hon'ble Judges : A.P. Shah, C.J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Chitra Sampath, for the Appellant; G. Masilamani, Advocate General for Mr. S.N. Kirubanandam for Respondent No. 1 and Mr. Raja Kalifulla, Government Pleader, assisted by Mr. V.R. Thangavel, Government Advocate for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner society claims to represent the agriculturists of the villages of Thiyagavalli Panchayat. According to the petitioner, the Government of Tamil Nadu issued a notification in G.O.Ms.No.1986, Public Works Department, dated 8.8.1986 declaring that the lands in the villages of Thiyagavalli and Kudikkadu measuring an extent of 800.00.00 hectares out of the total extent of 910.40.5 hectares were to be acquired for the establishment of a Thermal Power Station by the first respondent Board.

2. It is stated that subsequent to the said G.O., a draft scheme was also published on 29.10.1986 as per Section 29(2) of the Electricity (Supply) Act,

1948. However, it is stated that no steps were taken and the villagers who owned their lands in the above referred to extent as mentioned in the notification were dealing with their lands by way of transfer, sale, etc. without any hindrance.

3. The present grievance of the petitioner is that certain lands were registered by the third respondent in favour of a private company limited, called "Cuddalore Power Company Ltd.", under document No.26 of 2007, dated 4.1.2007 and document No.156 of 2007, dated 18.1.2007. However, when one Thiru. Kennedy, who owned some lands in the said village presented a sale agreement, dated 29.1.2007 in favour of the deponent to the affidavit, the third respondent refused to register the document by referring to a notice displayed in the office of the third respondent, dated 23.10.2006, as well as by referring to G.O.Ms.1986, dated 8.8.1986 and the letter of the first respondent, dated 8.9.2006.

4. The petitioner would submit that when enquiries were made with the third respondent and when a legal notice was issued on 1.2.2007, objecting to the refusal of the third respondent to receive the documents for registration, the fourth respondent in his communication, dated 10.2.2007 informed the petitioner's counsel that they have been advised to register only such documents which are in favour of "M/s. Cuddalore Power Company Ltd.".

5. It is based on the above averments, the petitioner has come forward, with this writ petition seeking for issuance of writ of Certiorarified mandamus to call for the records in relation to the notice, dated 23.10.2006 affixed in the office of the third respondent and the letter of the fourth respondent, dated 10.2.2007, to quash the said proceedings and direct the respondents to receive and register all the documents presented to them for registration pertaining to the lands situated in the villages of Thiyagavalli and Kudikkadu under the provisions of the Registration Act.

6. When the writ petition was moved, the learned Government Pleader took notice. Subsequently, the writ petition was admitted on 26.4.2007 and an interim order directing the third respondent to register the documents presented by the deponent to the affidavit was ordered on the said date. On behalf of the State Government, counter affidavit has been filed by the Inspector General of Registration.

7. In paragraph 6, the second respondent has tacitly admitted that he issued an order to the third respondent not to consider the conveyance deeds with respect to the lands situated in Thiyagavalli and Kudikkadu villages in the light of certain communication from "M/s. Cuddalore Power Company Limited" and the office of the second respondent, dated 21.11.2006 and 11.12.2006 respectively.

8. We perused the impugned proceedings, dated 23.10.2006 and reply notice of the fourth respondent, dated 10.2.2007. The impugned proceedings dated 23.10.2006 is stated to be a notice affixed in the office of the third respondent, which reads as under:-

9. In the reply notice, the fourth respondent has made it in no uncertain terms that as per the proceedings of the second respondent dated 11.12.2006 and the G.O.Ms.No.1986 P.W.D., dated 8.8.1986, the lands in the villages, namely, Thiyagaalli and Kudikkadu, measuring an extent of 910.40.5 hectares, which fall within the jurisdiction of the third respondent, have been decided to be conveyed to "M/s. Cuddalore Power Company Limited", and that the documents relating to and in favour of the said company alone could be registered.

10. Taking note of the categorical stand of the third respondent in the impugned proceedings, we are at a loss to understand as to how and under what provision of law such a prohibition came to be imposed by the respondents restraining any individual land owners in the above two villages from transferring their lands either by way of sale or by any other mode to any third party other than "M/s. Cuddalore Power Company Limited" and refuse to register such documents.

11. Under Article 300-A of the Constitution, a right of a citizen to own a property and retain the same has been well protected and such right cannot be deprived of except by authority of law.

12. If at all the respondents can seek protection for their action, it could have been under the provisions of the Registration Act. The only provision under which the prohibition from registration can be traced is Section 22-A of the said Act which specifically provides that the State Government may by notification in the Tamil Nadu Government Gazette declare that the registration of any document or class of documents is opposed to public policy and notwithstanding anything contained in the Act, the registering officer can refuse to register any document to which a notification issued under sub-section (1) is applicable. The provision came to be inserted by way of an amendment with effect from 28.8.1997. Invoking the said provision, a notification came to be issued in G.O.Ms.150, Commercial Taxes, dated 22.9.2000. Under the said notification, the documents relating to conveyance of properties belonging to the Government, local authorities, religious institutions or conveyance of properties assigned to or held by the Tamil Nadu State Government Boodan Yagna Board and the Tamil Nadu Wakf Board have been declared as documents opposed to public policy. Therefore, it was notified that no registration of any document with reference to those properties can be entertained.

13. That apart, there is no other provision under which the State Government or the respondents herein can validly issue any directions refusing to register any document for which registration is permissible under the provisions of the said Act. If that be so, it is shocking to note as to under what provision of law or "any other authority, the second respondent issued such directions directing the third respondent not to register any sale deed in the villages of Thiyagavalli and Kudikkadu except in favour of "M/s. Cuddalore Power Company Ltd." Any such directions issued by the second respondent and the impugned proceedings of the third respondent based on such a directive of the second respondent clearly infringes the constitutional right of any land owner as a citizen of this country. In

such circumstances, the impugned proceedings are wholly devoid of merits and are liable to be set aside.

14. In this context it is worthwhile to refer to the decision of the Hon''ble Supreme Court reported in Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, are relevant for our present purpose which read as under:

27. The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorizes their acts. In State of M.P. v. Thakur Bharat Singh, the Court repelled the contention that by virtue of Article 162, the State or its officers may, in the exercise of executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued. It was observed:

Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority.

The same principle was reiterated by the Court in Satiuant Singh Sawhney v. Dr. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Smt. Indira Nehru Gandhi v. Raj Narain.

41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law. The decisions in Wazir Chand v. State of H.P. and Bishan Das v. State of Punjab are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law.

15. The above proposition of law laid down by the Hon''ble Supreme Court was subsequently followed in the reported decisions in Hindustan Times and Others Vs. State of U.P. and Another, and State of Bihar and Others Vs. Project Uchcha Vidya, Sikshak Sangh and Others, Applying the above said principle to the fact of this case, we have no hesitation to hold that the impugned proceedings of the respondents are liable to be set aside as non-est in law. Accordingly, setting aside the proceedings, the prayer of the petitioner stands allowed and the respondents are directed to receive and register all the documents present by them for registration pertaining to the villages namely, Thiyaagavalli and Kudikkadu, if such documents satisfy the stipulations contained in the

Registration Act or any other enactment governing such registration.

The Writ Petition stands allowed. No costs. Connected M.Ps. are closed.