

(2010) 03 MAD CK 0228

Madras High Court (Madurai Bench)

Case No: S.A. No. 74 of 2009 and M.P. No. 1 of 2009

C. Subramanian

APPELLANT

Vs

Government of Tamil Nadu and
The Block Development Officer,
Manoor Panchayat Union

RESPONDENT

Date of Decision: March 12, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Tamil Nadu Panchayats Act, 1994 - Section 205, 205(1), 205(12), 45

Citation: (2010) 5 LW 601

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: H. Arumugam, for the Appellant; K.A. Thirumalaiappan, Additional Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

M.M. Sundresh, J.

The Plaintiff is the Appellant. The suit is filed by the Plaintiff in O.S. No. 580 of 2007, on the file of the First Additional District Munsif Court, Tirunelveli seeking the relief of declaration declaring the proceedings No. A6/5151/2006 dated 20.09.2007 issued by the Second Defendant, removing the Plaintiff from the post of President as null and void and also for permanent injunction restraining the Defendants from intervening the functioning of the Plaintiff as the President of the Panchayat.

2. The Appellant herein is the President of the Panchayat duly elected. The Appellant made several complaints to the Defendants as well as the police stating that the Clerk of the Panchayat who is none other than the daughter of the erstwhile President has taken the entire records of the Panchayat. Ex.A2 to 9 are the complaints given to the police by the Defendants. However, proceedings have been

initiated by the second Defendant u/s 205(1)(a) of the Tamil Nadu Panchayat Act 1994, to show cause as to why he could not be removed from his post for the alleged irregularities committed by him.

3. In pursuant to the said show cause notice, the second Defendant has directed the Tahsildar to convene a meeting of the Panchayat as required u/s 205(1)(a) of the Tamil Nadu Panchayat Act 1994, for the purpose of calling for the report so as to enable him to proceed further. Thereafter, the second Defendant has passed an order removing the Appellant from the post of Panchayat President, and challenging the same, the Appellant has filed the suit. The trial court after considering the various documents filed by the Appellant under Exs. A1 to 16, and also after considering the evidence of Defendants 1 and 2, Exs. B1 to 10, has come to the conclusion that the procedure contemplated u/s 205(1)(a) of the Tamil Nadu Panchayat Act 1994, has been violated, inasmuch as the resolution of the Panchayat along with report of the Tahsildar has not been forwarded to the second Respondent and even assuming the same is forwarded, the order passed by the second Respondent which has been challenged in the suit does not disclose the consideration of the said report. The trial court has also found that the majority of the members have voted in favour of the Appellant, thereby resolving that the Appellant need not be removed. The trial court accepting the case of the Appellant/Plaintiff, decreed the suit as prayed for. Challenging the said judgment and decree of the trial court, the Respondents filed an appeal and the lower appellate court has reversed the judgment and decree of the trial court, on the sole ground that the suit is not maintainable, in view of the provision u/s 205(12) of the Tamil Nadu Panchayat Act, 1994, which provides for an appeal against the order of the second Defendant. Challenging the same, the second appeal has been preferred.

4. At the time of the admission the following substantial questions of law have been framed:

A. Whether the lower Appellate Court is correct in dismissing the suit as not maintainable by giving a finding that the jurisdiction of civil court is ousted when the jurisdiction of civil court is not barred under the Tamil Nadu Panchayat Act, 1994 and the provisions contemplated under the Panchayat Act to remove the president of Panchayat have not been followed and hence warrants interference by this Hon"ble Court?

B. When no statutory appeal is contemplated against the removal of panchayat president under the Tamil Nadu Panchayat Act, 1994 and the provision available u/s 205(12) of the Act is only the discretion of the Government can it be held that the civil Court has no jurisdiction ignoring the principles that the civil court alone competent to decide all the disputed question of law and facts?

C. When the trial Court has discussed all the issues and gave finding on the same and decreed the suit whether the lower appellate Court, the final Court of law and facts is right in rejecting the suit without discussing the issues involved in the suit?

5. Mr. H. Arumugam, learned Counsel appearing for the Appellant submitted that the judgment and decree of the Court below is totally wrong and perverse since under the Tamil Nadu Panchayat Act 1994, the jurisdiction of the civil court has not been ousted since there is no express bar. The learned Counsel for the Appellant further submitted that the provision for filing an appeal u/s 205(12) of the Tamil Nadu Panchayat Act 1994, is only discretionary and not mandatory. He further submitted that in a case where there is a total violation of statutory provision, Principle of natural justice and the action of the Defendants are contrary to the common law, a suit is maintainable before the civil court since it is always open to the party to agitate his civil right in a civil court. In support of his contention the learned Counsel for the Appellant has relied upon the judgment of the apex Court reported in [Dhulabhai and Others Vs. The State of Madhya Pradesh and Another](#), and [Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa](#), and judgment of this Court reported in 2010 (1) L.W. 353 The Special Officer, The Rasipuram Silk etc. Society Limited v. K. Raja in support of his contention that the alternative remedy is not mandatory, the learned Counsel relied upon the judgment reported in 2006 (3) MLJ 537 J. Maria Selvam v. Government of Tamil Nadu and also relied upon the judgment of the Gauhati High Court, reported in 1998 AIHC 2972 Begum Nessa v. Anandiram Mankimura and submitted that in such a situation, the suit for declaration to declare an order which is void is maintainable. The learned Counsel also relied upon the full Bench judgment of this Court reported in 2009 (4) CTC 609 The District Collector and Inspector of District Panchayat v. Devi Parasuraman and submitted that the proceedings of the second Defendant is quasi judicial in nature and the second Defendant while differing with the resolution passed by the Panchayat will have to afford a fresh opportunity by enclosing a copy of the resolution and a copy of a such report will have to given to the Appellant before proceeding to pass the final order.

6. Per contra, the learned Additional Government Pleader submitted that, the suit is not maintainable since without exhausting alternative remedy as provided under the Tamil Nadu Panchayat Act, the Appellant ought not to have filed the suit.

7. In the present case on hand, a reading of the order which is sought to be set aside by the Appellant would clearly show that neither the report of the Tahsildar nor the resolution of the Panchayat has been taken into consideration before passing the same. The impugned order specifically refers to the calling of the report and the opinion of the Panchayat. It also refers to the convening of the Panchayat for the above said purpose. However, it does not show anything about the said decision taken in the Panchayat. Further, the impugned order does not show the reason for removing the Appellant.

8. The documents produced before the trial court by the Appellant show that the entire records taken by the erstwhile President's daughter who is working as a clerk in the Panchayat. The Appellant has given a number of complaints and petitions to the Defendants and the police. Admittedly, no action was taken on the above said complaints. The trial court has found that the Appellant was not able to put his defence in view of the non-availability of the records. The trial court also on evidence found that the Panchayat has resolved not to remove the Appellant and the report of the Tahsildar also indicates the said decision taken by the Panchayat. Admittedly, there is no reference about neither the report nor the decision of the Panchayat. When the Section 205(1) of the Tamil Nadu Panchayat Act 1994, mandates the consideration of the views of the Panchayat, the second Defendant cannot ignore the same and pass the impugned order, more so, when after calling for such a report. The trial court has also considered the evidence of D.W. 1 and 2 and came to the conclusion about the facts narrated above. The trial court also drew an adverse inference and held that the report of the Tahsildar has not been marked which is relevant for the said issues.

9. Any citizen of the country got every right to approach the civil court to establish his rights. The Civil court is a normal court to determine the rights of the person and therefore unless the powers of the civil court are specifically excluded such right cannot be taken away. Admittedly, in the present case on hand, there is no prohibition under the Tamil Nadu Panchayat Act 1994.

10. Therefore, in the absence of any express prohibition the lower appellate court is not correct in holding that the suit is not maintainable. When the common law remedy is available and a person's right is infringed, it is always open to the said person, to approach the civil court and such rights can also be agitated when there is a violation of statutory provisions. Similarly, a suit can be filed when there is a violation of principle of natural justice and an order passed by the competent authority is arbitrary and contrary to the provisions of the enactment. In the judgment reported [Dhulabhai and Others Vs. The State of Madhya Pradesh and Another](#), the Hon'ble apex Court as enunciated the following paragraphs 1 to 7 which are extracted hereunder:

1) Where the statute gives a finality to the orders if the special tribunals the civil courts jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provisions, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies

and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into a question on a revision or reference from the decision of the Tribunals.

4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

7) An exclusion of jurisdiction of the Civil Courts is not readily to be inferred unless the conditions above set down apply; Case law discussed.

11. A reading of the above said judgment would clearly show that in a case where there is a violation of the statute and where there is no express bar a suit is maintainable. The said judgment of the Apex Court was followed by the learned single judge of this Court judgment reported [Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa](#), wherein the Hon'ble Supreme Court has observed as follows paragraph 31, 36 and 48.

31. Before us, however, the statutory regulations framed by the Appellant Corporation u/s 45 of the Act had been placed. We do not find that any distinction has been made in regard to the matters relating to holding of the departmental proceedings against an employee for commission of a misconduct vis-a-vis the industrial workers. The question as to whether in a case of this nature where violation is alleged as regards compliance with principles of natural justice either on common law principles or in terms of the statutory regulations framed by the Appellant Corporation, which is a fundamental right in terms of Article 14 of the Constitution of India, a civil suit will be maintainable or not, thus, have not been taken into consideration in any of the aforementioned decisions. The legal

principles, namely, presumption in regard to the jurisdiction of the civil court and interpretation of a statute involving plenary jurisdiction of a civil court had also not been taken into consideration.

36. If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Orders certified under the 1946 Act, ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in Rajasthan SRTC v. Mohar Singh. The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the facts of each case.

48. In a case where no enquiry has been conducted, there would be a violation of the statutory regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add that if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory regulation or is otherwise imperative even under the common law or the principles of natural justice, which right having arisen under the existing law, sub-para(2) of para 23 of the law laid down in premier Automobiles Ltd., shall prevail.

12. A reading of the above said judgment of the Apex Court would clearly show that when there is no proper enquiry and when there is violation of statutory provisions a civil suit will be maintainable. Recently, this Hon"ble Court in the judgment reported in 2010 L.W. 353 The Special Officer, The Rasipuram Silk etc. Society Limited v. K. Raja was considering a case where a suit was filed by an employee of the co-operative society challenging the order of the Special Officer terminating him from service in Paragraphs 19 and 20, this Court has observed as follows:

19. Moreover, it is pertinent to note that before issuance of the termination order, no notice has been issued to the Respondent-Plaintiff. The principles of natural justice has not been followed. He shall be terminated only after giving him a fair opportunity to put forth his defence and after reasonable notice before termination. When the basic right of the Respondent-Plaintiff is infringed and if he was arbitrarily terminated without following due process of law, the Civil Court can always step in to protect the right of the individual. As per the decision of this Court reported in

[Somasundaram Vs. Liyakat Ali and another, ..](#), which was relied on by the first appellate Court, the Civil Court has jurisdiction.

20. So, I am of the opinion that the first appellate Court, in paragraph 14 of its judgment, has dealt that the Civil Court has jurisdiction and when once the fundamental right of the individual is affected, the Civil Court can interfere and set right the defects. Hence, I concur with the findings of the first appellate Court.

13. The learned judge in the said case has held that notwithstanding the express provision of bar, the filing of a civil suit is maintainable, when there is a violation of mandatory provisions and violation of principle of natural justice. Therefore, on consideration of the above said judgment and applying to the principles enunciated in the above said cases, this Court is of the opinion that the judgment and decree of the appellate court cannot be sustained.

14. Admittedly, in the present case on hand, the second Defendant has differed with the view of the Panchayat. The Full Bench judgment of this Court reported in 2009 (4) CTC 609 The District Collector and Inspector of District Panchayat v. Devi Parasuraman has held that the order passed u/s 205 of the Tamil Nadu Panchayat Act, is a quasi judicial order and while exercising such a power, the authority concerned will have to furnish a copy of the report while differing with the views of the Panchayat. Admittedly, the said procedure has held by the Full Bench decision of this Court has not been complied with. The Defendants have also not raised this plea of maintainability of the suit on the ground of alternative remedy civil suit. What was raised before the trial court is that the suit is not maintainable since only an Election Petition is to be filed. In this case, it is useful to refer the judgment reported in 2006 (3) MLJ 537 J. Maria Selvam v. Government of Tamil, Nadu wherein this Hon"ble Court was pleaded to hold that Section 205(12) of the Panchayat Act does not confer a statutory right of appeal and a such right is only a discretionary right.

15. The lower appellate court has committed an error in relying upon the judgment of this Court which is not applicable to the present case on hand. This Court in the above said judgment has held that the writ petition is not maintainable without exhausting the alternative remedy which is not so in the present case on hand. It is the well settled principle of law that the relief under Article 226 of the Constitution of India is a discretionary relief and therefore this Court while exercising such power in normal circumstances without exhausting the alternative remedy will not entertain the petition. Hence, on the consideration of the above said position of law and on consideration of the materials available on record, the judgment and decree of the appellate court will have to be set aside.

In the result, this Second Appeal is allowed setting aside the judgment and decree of the first Appellant court in A.S. No. 22 of 2008. No costs.