

Thirunagar Panchayat

Vs

Madurai Co-Operative House Construction Society

Civil Appeal No. 374 of 1965

(K. Subha Rao, V. Ramaswami-I JJ)

31.03.1966

JUDGMENT

RAMASWAMI, J.-

This appeal is brought, by special leave, from the judgment and decree of the Madras High Court dated August 9, 1963 in Letters Patent Appeal No. 45 of 1962.

The suit which is the subject-matter of this appeal was filed by the Tirunagar Panchayat, hereinafter called the 'Panchayat', against the Madurai Co-operation House Construction Society (hereinafter called the 'Society') in the District Munsif's Court of Tirumangalam. The Tirunagar Colony has been formed by the Society. The Colony consists of about 300 houses and its total population exceeds 1,500. At its inception the colony was within the jurisdiction of the Tirupparakundram Panchayat. On February 21, 1955 the Tirunagar colony was excluded from Tirupparakundram Panchayat and was declared as a separate village and was constituted as a separate Panchayat known as Tirunagar Panchayat. In the formation of the colony the Society has laid out and set apart and formed public roads, parks, play grounds and other public common places. There was a change in the Board of Directors of the defendant-Society and as consequence of this change the Society passed a resolution on July 23, 1956 cancelling its previous resolution handing over the roads, streets and scavenging arrangements to the Panchayat. The Panchayat therefore filed a suit - O.S. 38 of 1957, in the District Munsif's Court of Tirumangalam for an injunction restraining the Society and its servants from obstructing and interfering with its lawful exercise of statutory duties relating to the roads and streets in Tirunagar and cleaning of latrines, public and private, lighting the houses and roads and making arrangements for the civic needs of the village of Tirunagar. The Society contested the suit on the ground that the constitution of the Panchayat was illegal as the provisions of the Madras Village Panchayats Act (Madras Act 10 of 1950), hereinafter to be called the 'Act', had not been complied with. The Society also contended that the public cannot use the roads or streets as a matter of right, that the entire colony was a closed one and no outsider except the members of the Society had the right to enter the colony and that the Parks, central oval, play grounds and open spaces were the exclusive properties of the Society. The contentions of the Society were all over-ruled by the trial court and a permanent injunction was granted to the plaintiff-Panchayat, as prayed for. The decision of the trial court was affirmed by the Subordinate Judge of Madurai in A.S. 92 of 1958. The Society took the matter in Second Appeal to the High Court. The appeal was partly allowed by Ramakrishnan, J. who held that the streets and roads in Tirunagar colony alone would vest in the Panchayat and that the injunction passed by the lower appellate court should be confined only to streets and roads in the colony and should not be extended to any other place like the parks, oval park, play grounds, schools, library or club and such other amenities which the Society had provided for the residents of the colony. The decision of

Ramakrishnan, J. was affirmed by the High Court in Letters Patent Appeal and the injunction granted by the lower courts was accordingly confined to roads and streets and the cleaning of public and private latrines, and the decree of the lower courts was set aside so far as the injunction related to the parks, play grounds, bus-stand and other public places.

The question presented for determination in this appeal is whether there is a statutory vesting in the panchayat of the parks, play grounds, schools, libraries and other public places which the Society provided for its members and whether the Panchayat is entitled to a permanent injunction restraining the Society and its servants in the manner decreed by the trial court.

On behalf of the appellant reference was made to ss. 56 and 58 of the Act relating to vesting of the property in the Panchayat. Section 56 of the Act reads as follows :-

"56. (1) All public roads in any village (other than district roads and roads which are classified by the Government as national or State highways), shall vest in the panchayat together with all payments, stones and other materials thereof, all works, materials and other things provided therefore, all sewers, drains, drawings works tunnels and culverts, whether made at the cost of the panchayat fund or otherwise, in, alongside or under such roads, and all works, materials and things appertaining thereto.

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Section 58 is to the following effect :-

"Any property or income which by custom belongs to, or have been administered for the benefit of, the villagers in common, or the holders in common of village land generally or of lands of a particular description or of lands under a particular source of irrigation shall vest in the panchayat and be administered by it for the benefit of the villagers or holders aforesaid."

The rules framed under the Co-operative Societies Act for the formation of House Building Societies required that when an area is set apart for a residential colony provisions for schools, markets, theatres, hospitals, clubs, religious places etc. should be made in the layout. Reference was made, on behalf of the appellant, to the layout plan Ex. A-44 for the Tirunagar Housing colony. There is evidence in this case that the Government had assigned to the House Building Society free of cost an area of about 5 acres for the proposed public amenities like schools, markets etc. It was submitted on behalf of the appellant that the parks, play grounds, hospitals, schools etc. of the Tirunagar Housing Colony would vest in the Panchayat under s. 58 of the Act. We do not consider that there is any justification for this argument. Under s. 56 of the Act all 'public roads' in any village shall vest in the Panchayat together with all pavements, stones and other materials thereof, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the panchayat fund or otherwise. Under s. 2(20) of the Act a 'public road' means "any street, road, square, court, alley, passage, cart-track, footpath or riding-path, over which the public have a right of way". Section 58 of the Act provides for vesting of the communal property in the panchayat. By this section the legislature has provided that any property or income which by customs belongs to the villages in common, or the holders in common of village land generally or of lands of a particular description shall vest in the panchayat. The legislature has further provided in this section that any property or income which by custom has been administered for the benefit of the villagers in

common or the holders in common of village land generally or of lands of a particular description shall vest in the panchayat and be administered by it for the benefit of the villagers or the holders aforesaid. In enacting s. 58 of the Act the legislature had made a provision for vesting of two kinds of property or income : (1) property or income which by custom belongs to the villagers in common or the holders in common of village land generally or of lands of a particular description, and (2) property or income which has been administered by custom for the benefit of the villagers in common or the holders in common of village land generally or of lands of a particular description. Having regard to the grammatical structure and the context, we are of opinion that the expression "by custom" qualifies not only the property and income which belongs to the villagers but also property and income which has been administered for the benefit of the villages in common. It is manifest that s. 58 provides for the vesting of such property and income to which the villagers have acquired title as a matter of custom or which has been administered for the benefit of the villagers as a matter of custom. It was argued on behalf of the appellant that if parks or play grounds or markets had been dedicated to the public the Panchayat would acquire title to such properties under s. 58 of the Act. We do not think that dedication is a relevant circumstance in considering the scope and meaning of s. 58 of the Act. In the enactment of this section the legislature did not contemplate that parks, play grounds, schools or temple or hospital dedicated to the public should vest in the panchayat merely by the fact of such dedication. What is required by s. 58 for the purpose of vesting is the proof of customs by which the villagers in common acquire title to any property or income. Vesting of rights takes place under s. 58 if there is proof of customary right of administration of any property or income for the benefit of the villagers in common. Unless therefore there is proof of customary right, the Panchayat cannot claim title to the property or income administered for the benefit of the villagers in common. For example, the Society may have established a library or a social club or a school for the benefit of its members. Again, a private individual may have created a trust for the provision of amenities like parks, ground and hospital for the residents of the village. In a case of this description the legal ownership of the Society or of the trustees will not vest in the Panchayat because of the provisions of s. 58 of the Act. It cannot be supposed that such a startling and unjust result was contemplated by the legislature in enacting s. 58. We are accordingly of the opinion that the scope of s. 58 of the Act must be confined to communal property and income of the panchayat which by custom belongs to the villagers in common or had been administered for their benefit as a matter of custom, and the scope of that section cannot be extended to include parks, play grounds, hospitals, libraries and schools provided by the Society for the benefit of the members of the Tirunagar colony.

For these reasons we hold that the judgment and decree of the High Court in Letters Patent Appeal No. 45 of 1962 is correct and this appeal must be dismissed with costs.

Appeal dismissed.

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