

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 30.4.2008

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos. 20034, 20336, 20337 and 30671 of 2007
and
M.P. No.1 of 2007 in respective W.Ps.

W.P. No. 20034 of 2007:-

R. Ravichandran
Manager
Kodanad Estate
Kothagiri Taluk
The Nilgiris District

.. Petitioner

vs.

1. The President
The Executive Authority
Kodanad Village Panchayat
Kothagiri Taluk
Keradamattam
The Nilgiris District
2. Kodanad Village Panchayat
Kothagiri Taluk
Keradamattam
The Nilgiris District

.. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorari calling for the records pertaining to the order in Na. Ka. No. 1/2007 dated 05.6.2007 and quash the same.

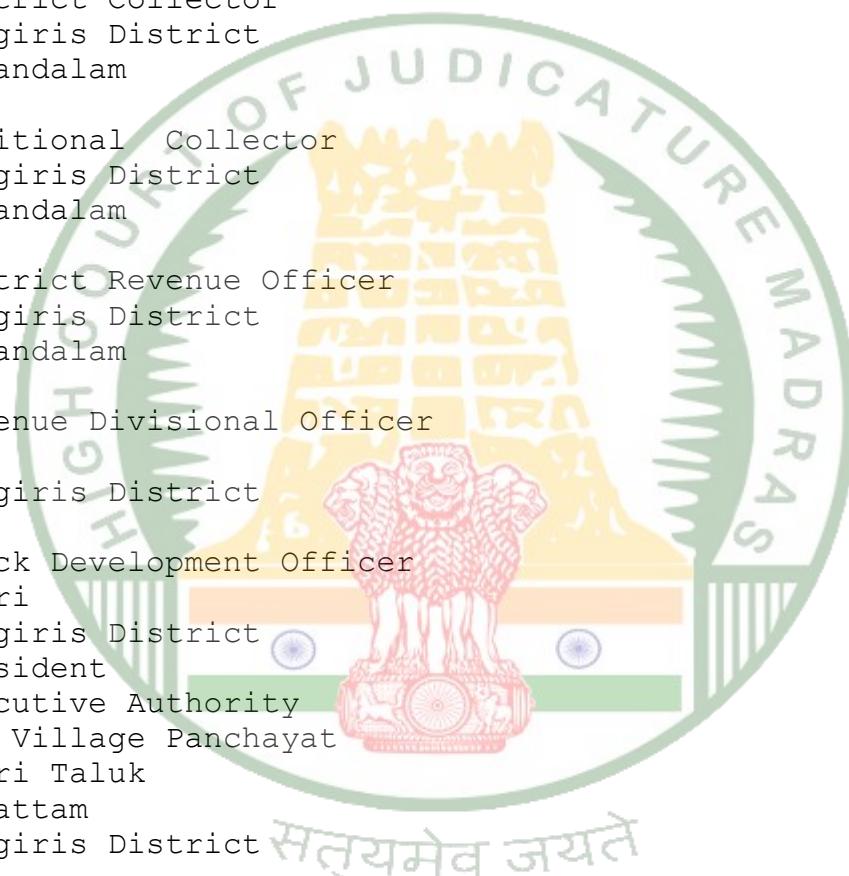
W.P. No. 20336 of 2007:-

R. Ravichandran
Manager
Kodanad Estate
Kothagiri Taluk
The Nilgiris District

.. Petitioner

vs.

1. The Chief Secretary
Government of Tamil Nadu
Secretariat
Chennai - 9
2. The Director
Information and Public Relations
Secretariat
Chennai
3. The District Collector
The Nilgiris District
Udhagamandalam
4. The Additional Collector
The Nilgiris District
Udhagamandalam
5. The District Revenue Officer
The Nilgiris District
Udhagamandalam
6. The Revenue Divisional Officer
Coonoor
The Nilgiris District
7. The Block Development Officer
Kothagiri
The Nilgiris District
8. The President
The Executive Authority
Kodanad Village Panchayat
Kothagiri Taluk
Keradamattam
The Nilgiris District
9. Kodanad Village Panchayt
Kothagiri Taluk
Keradamattam
The Nilgiris District



WEB COPY .. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Declaration declaring that the alleged inspection claimed to have been made by the respondents 3 to 7 on 31.5.2007 in Kodanad Estate by forcible entry into the Estate is not authorized or enforceable under the Tamil Nadu Panchayats Act, 1994 and Rules framed thereunder.

W.P. No. 20337 of 2007:-

R. Ravichandran
Manager
Kodanad Estate
Kothagiri Taluk
The Nilgiris District

.. Petitioner

vs.

1. The Chief Secretary
Government of Tamil Nadu
Secretariat
Chennai - 9

2. The Secretary to Government
Rural Development Department
Secretariat
Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Declaration declaring that the proviso to Rule 4(1)(d) of the Tamil Nadu Panchayats Building Rules, 1997 as invalid, void, excessive to the rule making power vested in Section 242 of the Tamil Nadu Panchayats Act, 1994 apart from being repugnant to Articles 14, 19(1)(e) and (g) and 21 of the Constitution of India.

W.P. No. 30671 of 2007:-

R. Ravichandran
Manager
Kodanad Estate
Kothagiri Taluk
The Nilgiris District

.. Petitioner

vs. *सत्यमेव जयते*

1. The President
The Executive Authority
Kodanad Village Panchayat
Kothagiri Taluk
Keradamattam
The Nilgiris District

2. Kodanad Village Panchayt
Kothagiri Taluk
Keradamattam
The Nilgiris District

3. M. Ponthose

.. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorari calling for the records pertaining to the proceedings of the first respondent in proceedings dated 10.9.2007 and quash the same.

For Petitioner : Mr. G. Rajagopal, SC
in all W.Ps. for Mr. A. Navaneethakrishnan

For Respondents : Mr. G. Masilamani, AG
in all W.Ps. for Mr. G. Sankaran, Spl. GP

COMMON ORDER

1. Backdrop:-

1.1. Kodanad Estate represented by its Manager, is the petitioner in all the four writ petitions. The said Estate is situated within the Kodanad Village Panchayat coming under the Kothagiri Taluk, Nilgiris District. Within its sprawling 825 Acres, there are several buildings including servant quarters, guest houses, security quarters, godown, office buildings. The management of the present Estate came into possession of the Estate during February 1995 after purchasing the Estate from its erstwhile partners and re-constituting the partnership.

1.2. The erstwhile management of the Estate made an application to the Government for issuance of licences for constructing a residential building in Survey No. 168 (Field No. 4) Bancaad Division and also another residential building in Survey No. 159 (Warbreacan Division) at Kodanad Village, Kothagiri Panchayat Union, The Nilgiris District. The request of the erstwhile owner, Tmt. Radha Venkatachalam was placed before the Architectural and Aesthetic Aspects Committee [for short, 'AAA Committee']. The AAA Committee, in its meeting held on 15.3.1995, recommended her request for grant of permission subject to the condition that they must plant enough shade bearing trees around the Buildings. Thereafter, the Government, on considering the recommendations of the AAA Committee, accorded permission by virtue of G.O. (D) Nos. 67 and 68 Municipal Administration and Water Supply Department dated 17th March 1995, for construction of residential building as requested by her with the same condition. The Building plans perused by them were returned and copies of the Government Orders were also marked to appropriate authorities.

1.3. A perusal of these two orders clearly shows that the Commissioner of Panchayat Union, Kothagiri was dealing with the said

issue at the relevant time. Thereafter, necessary licence fees were paid to the Panchayat and they were subjected to the House Tax, which was also paid. The copies of Licence fee receipts, proceedings of the Panchayat granting Building Licence as well as House Tax receipts in respect of these buildings are kept in a typed set filed along with W.P. No. 30671 of 2007. The partnership had undergone changes due to reconstitution in the years 1995 and 2000.

1.4. It is seen from the records that the Kodanad Village gram sabha, by a resolution dated 27.3.2007, took a decision to issue notice to all the unlicensed buildings and buildings which were not taxed for House Tax. By a letter dated 15.4.2007, the President of the Kodanad Village Panchayat informed the petitioner Estate that new buildings are being constructed and since they want to impose House tax in terms of the Tamil Nadu Panchayats Act [for short, 'Panchayats Act'], they were directed to furnish all the documents to the Panchayat Union Office.

1.5. It is the case of the petitioners that subsequent to the said notice, on 31.5.2007, the President of the Kodanad Village Panchayat, sent a letter to the Assistant Director of Local Fund Audit, Udhagamandalam stating that Estate has given documents on notice and till such time those documents are considered and a decision is made, no further action need be taken. Thereafter, a notice was given to the Estate by a letter dated 30.5.2007 stating that since the President of the Panchayat was not able to serve notice and he was told that the Manager of the Estate was out of station and the office premises was locked, he informed the Estate that the officials of the Revenue and concerned authorities will visit the Kodanad Estate for inspection on 05.6.2007 at about 9.30 am.

1.6. However, serious objections were raised with reference to these two documents by the respondents and they stated that no such document exists though the signatures found in those documents tally with the signature of the President of the Village Panchayat in the first letter dated 31.5.2007 and his subsequent correspondences. In any event, by a letter dated 30.5.2007, the Estate was sought to be informed about the impending inspection of the new buildings constructed without permission, to be conducted on 31.5.2007 at 9.30 am and the Estate Manager was directed to co-operate with the same.

1.7. The original Notice was produced along with the file in which an endorsement is found to the effect that when the said letter was sought to be served, the petitioner Estate refused to receive the same and signatures of the two witnesses (who were the former Panchayat Assistant and Basic Health Servant) were also affixed. It was, thereafter, the entire dispute started between the parties.

2. History of the confrontation:-

2.1. While the claim of the petitioner was that there was an illegal trespass into the Estate by certain officials including the respondents, it is stated that an inspection was conducted on 31.5.2007 by a team comprising of various officials which includes the President of the Panchayat, Village Administrative Officer, Tahsildar, Block Development Officer, Revenue Divisional Officer, Coonoor, Assistant Director, Town Planning and Kothagiri Panchayat Union Chairman and Kothagiri Panchayat Union Member of Ward II.

2.2. The original file was produced by the respondent State in respect of W.P. Nos. 20336 and 20337 of 2007. It is seen that a representation dated 19.5.2007 was addressed to the Chief Minister by stating that they could not conduct Grama Sabha meeting on 01.5.2007 at Anna Nagar hamlet. It was signed by the Chairman of the Kothagiri Panchayat Union, the President of the Kodanad President and a Ward Member II. The said representation was received by the District Collector, Udhagamandalam and forwarded to the Government with a covering letter dated 20.5.2007. Thereafter, another letter dated 19.5.2007 was sent by the Chairman of the Kothagiri Panchayat Union and also General Council Member of the DMK political party in his letterhead, to the Chief Minister of Tamil Nadu stating that the present owners have cheated the Government by not paying the Stamp Duty while purchasing the Estate and that they are building a big bungalow with 90 rooms and they are preventing the people from using the Estate Road to go to Anna Nagar hamlet. He requested the Government to take action and punish the persons responsible for the same.

2.3. It was thereafter, by D.O. Letter dated 21.5.2007, the Secretary to Government, Public Department, informed the Collector of the Nilgiris District to take necessary action and also requested him to be in touch with the Department concerned and to take necessary remedial measures. A further D.O. letter of the same date was sent to the District Collector informing him that there are buildings constructed without getting clearance from the Hill Area Conservation Authority [for short, 'HACA'] in the Kodanad Estate owned in the benami name of the former Chief Minister Ms.J.Jayalalitha and he was also informed that any construction exceeding 300 square metres requires clearance from the HACA. The District Collector, who himself was a member of the HACA and also the Chairman of the AAA Committee, was told to bring it to notice of the HACA any violation, deviation or non-compliance with the procedure stipulated by the HACA or the Government. He was also permitted to inspect the premises as well as to check the various points and send a detailed report to HACA and other auhtorities.

2.4. On the same day, the Director of Town and Country Planning addressed to the Secretary to Government, Housing and Urban Development Department informing that the Kodanad Village Panchayat was coming under an Hilly Area and the development in the said Panchayat should be regulated as per the Tamil Nadu Hill Areas Special Building Rules, 1981 and the Tamil Nadu Panchayat Building Rules, 1997. The Secretary was also informed that for buildings of more than ground and first floor, buildings housing more than two families, commercial and office buildings of more than 300 square metres area, etc. permission should be obtained from the HACA. The Government also notified that the Special Building Rules will apply to the Panchayat Union and AAA Committee must give specific recommendations to the HACA and after getting clearance from the HACA, building licence will be given by the executive authorities. He also informed the Regional Joint Director of the Town and Country Planning, Coimbatore that if any proposal is received in this regard from the Panchayat President, the same will be placed before the AAA Committee and HACA and also to send a factual report consulting the District Collector.

2.5. In response to these queries, the District Collector informed the Secretary to Government, Housing and Urban Development Department, by a letter dated 22.5.2007 that an inspection by the Additional Collector (Development) and Chairman of AAA Committee was organised on 22.5.2007 and the two Inspection Reports given by the Additional Collector (Development) and also the report submitted by the Joint Director and Deputy Director (in charge) of the Town and Country Planning Department were also sent. In another Inspection Report dated 22.5.2007, it was stated that when the inspection team comprising of the Panchayat President, Village Administrative Officer, Revenue Divisional Officer, Coonoor, Block Development Officer and Deputy Director of Town Planning, went to inspect the building constructed without proper permission, they were stopped at the gate and they were told that the details sought for by them will be given to them and they were not allowed to go inside the Estate because at that time, a V.V.I.P. was staying in the Estate and for security reasons, they were refused entry.

2.6. Again, on 29.5.2007, the Additional Collector informed the District Revenue Officer, Udhagamandalam, that when they went to the Estate on 28.5.2007 and 29.5.2007, the team of officials could not inspect the building since the Estate did not permit them for various reasons. Therefore, the assistance of the District Revenue Officer - cum - Executive Magistrate was sought, for carrying out the inspection. In this regard, the District Revenue Officer - cum - Additional District Magistrate, Udhagamandalam, by a letter dated 29.5.2007, permitted the Additional Collector (Development), Udhagamandalam, Regional Joint Director, Town and Country Planning, Coimbatore and their survey team to measure the property and do survey

works in the properties in Patta Nos. 517, 531 and 553 of Kodanad Tea Estate in exercise of his powers conferred under the Tamil Nadu Survey and Boundaries Act, 1923.

2.7. Once again, the Tahsildar, Kothagiri, informed the Deputy Superintendent of Police, Udhagamandalam, that since they wanted to carry out building survey work in the Kodanad Estate on 30.5.2007, they need police protection with top police officials. The District Revenue Officer - cum - Additional District Magistrate, Udhagamandalam, also gave a direction to the Revenue Divisional Officer - cum - Sub-Divisional Magistrate, Coonoor, that he was requested to make necessary bundobust arrangements in consultation with the Superintendent of Police, The Nilgiris, to carry out the survey and other related work in the Kodanad Tea Estate on 31.5.2007. It was thereafter, the notice dated 30.5.2007 was sought to be served and it was stated that the same was refused to be received.

3. Entry into the Estate:-

3.1. In the meanwhile, the petitioner Management sent a telegram to the District Revenue Officer asking him to inform them as to under what provision of law and authority, they are descending on the Estate and was also asked to stop their coercive activities and they were requested not to obey political diktats. It transpires that despite the objection by the petitioner Estate, the team of officials referred to above, visited the Estate on 31.5.2007 and took survey of the building and structures in the Estate and submitted a report on the same day, viz., 31.5.2007. It was stated by them that they were prevented by the Estate workers and the Superintendent of Police cleared them without any force. After crossing the main entry and when proceeded for about 100 Mts. into the estate premises with bundobust, they were again stopped at the second gate by a group of persons.

3.2. Then, after crossing the barrier, the team went to the building and recorded the actual measurement of the buildings from outside. It was also stated the structure of the building seems to be luxurious. The report submitted by the team was signed by the Panchayat President, Kodanad Village Panchayat, Tahsildar, Kothagiri, Deputy Director of Town and Country Planning, Village Administrative Officer of Kodanad, two officials of Town and Country Planning staff, Revenue Divisional Officer, Coonoor Division and Field Surveyor.

3.3. The Inspection report contained the following details:

Details regarding construction work (New Building)				
Sl. No.	Details of construction work	Land survey	Extent of building (in Sq. Mts.)	Present stage
1.	Residential Bungalow	65 (New No. 168)	Residential Bungalow	Construction work completed
	Cellalr floor		1205.85	Construction work completed
	Ground Floor		1339.87	Construction work completed
	First Floor		1205.85	Construction work completed
2	Guest House 1	65	83	Construction work completed
3	Guest House 2	65	106	Construction work completed
4	Watchman quarters	65	50.41	Construction work completed
5	Godown and Watchman shed	219/1 (New No. 160/4)	36+36 = 72.00	Construction work completed
6	Lake View Guest house	219/1 (New No. 160/4)	230.69	Construction work completed
7	Office Building		60	Construction work completed

3.4. The petitioner also sent two telegraphic notices to the Additional District Collector, Project Director and Chairman of AAA Committee stating that he had attempted to trespass into the Estate. When demanded for an written order, he did not give the same. When they came as a team, they had also brought newspaper men (including people from electronic media). He was also asked to furnish the legal provisions under which such activities were carried out in the Estate.

3.5. It was on the strength of this report, the Panchayat President informed the petitioner Estate by a letter dated 04.6.2007 that when an inspection was conducted on 31.5.2007, no building plans and permission or approved plan were submitted to him. Therefore, it was presumed that the building was not authorised. Unless the owner or the persons in enjoyment of the property or their authorised representative shows the plan and permission, he will presume that they have nothing to offer in terms of Rule 34 of the Tamil Nadu Panchayat Buildings Rules Act read with Section 217 (j) of the District Municipalities Act, 1920 and action will be taken. Seven days time was given in the said notice for submission of the said plan

and permission.

3.6. In the notice after extracting the description of six buildings, it was stated in Tamil by the Kodanad Panchayat President which, if translated, will read as follows:-

"Construction work will have to be started only after getting a building licence in terms of the Tamil Nadu Panchayats Building Rules. But it is clear that you have not obtained any permission."

"During the year 1995, Mrs. Radha Venkatachalam applied for licence for construction of residential building under the District Municipalities Act and got Government Orders in G.O. Nos. 67 and 68 on 17.3.1995 and obtained permission for the same in Survey Nos. 168 (Field No. 4) Bancaad Division and 159 Warbrecan Division respectively at Kodanad Village, Kothagiri Panchayat Union approximatedly to an extent of 2900 sq. mts."

"However, after obtaining the Government order, Tmt. Radha Venkatachalam did not take any further steps through the executive authority as per law and no approval for the building plan was obtained and no licence fee was paid and also no construction work was carried out in that land. The land in which permission was obtained and the present land in which buildings were constructed, were in different lands."

"In terms of Section 217(f) of the Tamil Nadu Municipalities Building Rules and Tamil Nadu Municipalities Hill Areas Building Rules, if the work was not begun, after obtaining building approval, within one year, the said licence will lapse. After recording the same, he came to the conclusion to issue notices under Section 31(4) and 32(4) of the Panchayats Act."

4. Show Cause Notice dated 05.6.2007:-

4.1. Once again, another notice dated 05.6.2007 was sent by the Panchayat President informing the details of the structures found in the Estate as per the inspection (already referred to above). He informed that in terms of G.O. No. 44 Planning and Development (TC II) Department dated 02.01.1990 read with G.O. No. 49 Housing and Urban Development Department dated 24.4.2003, in respect of hill areas, for any construction beyond 300 sq. mts., permission should be obtained from the HACA and before that, the plan should be submitted to the AAA Committee and only after getting plan approval with recommendation from the concerned Committee, proposal should be sent in terms of Rule 4 of the Tamil Nadu Panchayat Building Rules. Only after getting the building licence, construction can be started in terms of the Tamil Nadu Panchayat Building Rules.

4.2. According to him, the buildings mentioned in the tabular statement have been completed and that it was stated that building work in respect of one building is still going on and it was asked as to whether the approval was obtained for all the buildings and as to whether the buildings were constructed in terms of the Rules and since the same was not replied, it was presumed that such Rules were not followed while constructing such buildings.

4.3. Therefore, the petitioner was directed to submit the building plan, topo sketch, approval obtained for the building plan and the documents relating to ownership of the land within seven days on receipt of the notice dated 05.6.2007. Till such time such details are furnished and a decision is taken, they were advised to stop new constructions. If such documents are not furnished within the stipulated period, it will be presumed that these buildings will be construed as an unauthorised construction and legal steps will be taken. It was also stated that the said notice was given in terms of Rules 32 and 34 of the Tamil Nadu Panchayat Building Rules.

5. High Court was approached:-

5.1. As soon as this notice was received, the petitioner filed W.P. No. 20034 of 2007 and challenged the Show Cause Notice. Thereafter, W.P. No. 20336 of 2007 was filed seeking for a Declaration declaring that the inspection carried on 31.5.2007, when the official respondents 3 to 7 therein have forcibly entered into the Kodanad Estate, was not authorized or enforceable under the Tamil Nadu Panchayats Act, 1994 and the Rules framed thereunder.

5.2. On the same day, the petitioner filed another writ petition being W.P. No. 20337 of 2007 seeking for a Declaration declaring that the proviso to Rule 4(1)(d) of the Tamil Nadu Panchayats Building Rules, 1997 as invalid, void, excessive to the rule making power vested in Section 242 of the Tamil Nadu Panchayats Act, 1994 and also being repugnant to Articles 14, 19(1)(e) and (g) and 21 of the Constitution of India.

5.3. In W.P. No. 20034 of 2007, a counter affidavit dated 22.6.2007 has been filed by the Kodanad Panchayat President. In W.P. No. 20336 of 2007, the District Collector of The Nilgiris District has filed a counter affidavit on 18.6.2007. A counter affidavit dated 19.6.2007 was filed in W.P. No. 20337 of 2007 on behalf the Chief Secretary to Government and Secretary of Rural Development Department and an additional counter affidavit dated 31.7.2007 was filed. Thereafter, by an order dated 12.7.2007, panchayat minutes was ordered to be produced in original before this Court.

5.4. Even when before all these writ petitions were being heard, the Kodanad Panchayat President issued a notice dated 10.9.2007

purporting to be under Rule 34 of the Tamil Nadu Panchayat Building Rules informing that he considers that building work was carried on without the permission of the executive authority and, therefore, the owners of the building were directed to demolish those buildings in terms of his provisional order issued under Rule 34(i)(iii) of the Building Rules. Pursuant to the said provisional order issued under Rule 34(1) of the Building Rules, a further show cause notice was given to the petitioner Estate as to why the provisional order should not be confirmed and the petitioner was asked to show cause and submit explanation within 15 days. It is against this order dated 10.9.2007, W.P. No. 30671 of 2007 has been filed.

5.5. In W.P. No. 30671 of 2007, a counter affidavit was filed in October 2007 by the President of the Kodanad Village Panchayat. He was named in his personal capacity as the third respondent. Rejoinder affidavit was also filed to the said petition and set of documents were produced.

6. Petitioner's challenge summed up:-

6.1. After the matter having been directed to be posted before this Court by the orders of the Hon'ble Chief Justice, all these four writ petitions were clubbed together and with the consent of the learned counsel appeared for the parties, the writ petitions were taken for final disposed. The respondents waived service.

6.2. Heard the arguments of Mr. G. Rajagopal, learned Senior Counsel leading Mr. A. Navaneethakrishnan appearing for the petitioner Estate and Mr. G. Masilamani, learned Advocate General appearing for Mr. G. Sankaran, learned Special Government Pleader representing the official respondents and have perused the records.

6.3. Mr. G. Rajagopal submitted that out of seven buildings noted in the show cause notice dated 05.6.2007, six buildings are having extent of less than 250 sq. mts. and, therefore, the relevant proviso to Section 4(1)(d) of the Building Rules will not apply. Even as early as 1995, the Government had granted approval in terms of the relevant provisions and, therefore, raking up old issues which are concluded already, is only with a view to wreak vengeance on the petitioner Estate. He also submitted that for entering the Estate on 31.5.2007, no notice was given and the officials have trespassed into the Estate and collected some materials behind the back of the petitioners and without their authorisation. Therefore, the resultant inspection will be vitiated. He also brought the attention of this Court to the letter given by the Panchayat President wherein it is stated by him that an inspection team will be visiting the Estate on 05.6.2007. But he had claimed that they have visited the Estate on 31.5.2007 itself. This itself will show strong suspicion over the conduct of the respondents.

6.4. Further, he submitted that there seems to be more than one force working against the petitioner Estate just because one of the present owners of the Estate is the former Chief Minister of the Tamil Nadu, who is a staunch political rival of the present party in power. He also submitted that the present Government is using all their might with a view to harass her. Therefore, the entire exercise was mala fide and a clear abuse of power vested on the Government.

6.5. He further submitted that there are variations between the notices dated 05.6.2007 and 10.9.2007. The buildings in the Estate have been properly constructed with approved plans and necessary sanction and they have also paid the licence fee and also the buildings were subsequently assessed to House Tax, which are also being paid by them. They have also enclosed copies of the various receipts in the typed set of papers. When the Estate is law abiding and complying with all the legal requirements, the Panchayat President has been made as a tool to harass the petitioner Estate. Further, he also drew the attention of this Court to the press statements issued on behalf of the State Government attacking the former Chief Minister personally by spending huge amounts on press advertisements paid out of the public coffer for such blatant political propaganda. He also questioned the bona fide of the Village Panchayat President, who was using his powers under the Panchayats Act for oblique purposes. Even before his mission for demolition, he wrote to the Chief Minister of Tamil Nadu on 19.5.2007 along with two ruling party politicians complaining about the Estate and its inmates and thus wanted to please his political masters. The petitioners have filed all the approved drawings in respect of the buildings in which construction has been carried out long ago.

6.6. The learned Senior Counsel referred to the conduct of the Panchayat President, who after issuing the impugned order dated 10.9.2007, issued a press release stating that the building constructed by the petitioner was an huge one and there was no such big building in the Nilgiris District and the construction activity carried on by the petitioners has created dangerous atmosphere for the environmental and geological safety of the Nilgiris District. That in respect of details sought for regarding the plan and building permission, till the date of notice, it was stated in the press release that no such plans were forthcoming and that he had already given a notice for demolishing the illegal construction in which unfortunately a big responsible leader was residing. It was further found in the press release that it was constructed contrary to the Rules. Learned Senior Counsel stated that such conduct of the Panchayat President, being the executive authority, is blatantly political and he was acting as a pawn in the hands of certain political forces. He further submitted that at the time when the buildings were constructed, proper sanction was obtained in terms of

the provisions of the District Municipalities Act and the relevant Building Rules found therein, which were extended to the Panchayats by virtue of Section 5 of the Panchayats Act read with the Notification dated 04.6.1993 issued by the District Collector.

6.7. Learned Senior Counsel further submitted that when the stand of the petitioners was that the plans have been properly approved by the AAA Committee, the question of going into the vires of Rule 4(1)(d) of the Building Rules may not arise. Alternatively, the learned Senior Counsel argued that the District Municipalities Act defines the term 'Hill Station' under Section 3(10), which states that an Hill Station is a place specified in Schedule II and includes any other place which may be notified by the [State Government] as an hill station. Ootacamund, Coonoor in Nilgiris District and Kodaikanal in Madurai District have been notified as Hill Stations in Schedule II and, therefore, in respect of buildings constructed only in those areas, the application of Chapter X A of the District Municipalities Act will arise. If the District Collector extends the provisions of Chapter X of the District Municipalities Act by a notification under Section 5, then it has to be understood that the Kodanad Panchayat Union will not come within the Special Building Rules coming under Chapter X A because it is not an hill area in terms of Schedule II. In any event, the learned Senior Counsel contended that if a delegated authority is empowered to extend Rules having sweeping powers on their own discretion, then it is an excessive delegation.

6.8. Learned Senior Counsel further submitted that the Tamil Nadu Panchayats Building Rules 1997 was brought into force on 18.12.1997 and before that, the petitioners were covered only by the notification dated 01.8.1993 published in the Nilgiris District Gazette issued by the authority of the District Collector and that alone will apply and hence, the buildings of the petitioners do not come within the Panchayats Building Rules, 1997. If this is not accepted, then Rule 4(1) of the Tamil Nadu Panchayat Building Rules suffers from excessive delegation as it gives arbitrary powers to the delegated authority. In Tamil Nadu, even though there are many other hill stations, this particular notification singles out only the villages in the Nilgiris District alone and, therefore, it is discriminatory. He also submitted that for issuing the impugned notices dated 05.6.2007 and 10.9.2007, there was no credible material in the hands of the Panchayat President and he cannot embark upon an enquiry to try to fish out information from the petitioners and then decide whether he wants to exercise Rule 34 of the Tamil Nadu Panchayat Building Rules or not.

6.9. Learned Senior Counsel submitted that a perusal of the impugned order clearly shows that there is no application of mind. If it is now conceded that the buildings were authorised by the

Government Order and out of seven buildings, six do not come under Rule 4(1) (d) of the Building Rules, then the notice incorporating that even the buildings not coming under the wrath of Rule 4(1) were also stated to be constructed without authorisation and were contrary to Rules, must necessarily be a statement made without any factual basis and it will clearly show the mala fide on the part of the Panchayat President. In any event, if a notice covers seven buildings and even as per the admission of the respondents, six buildings are not coming within the wrath of Rule 34, then the entire notice issued by the Panchayat President should be set aside since it was based upon misapprehension and without any legal foundation. He also submitted that the entry by the team of officials into the Estate on 31.5.2007 using brutal force was a criminal trespass by the officials and the Panchayat President did not invoke any power vested on him under the Panchayats Act and any material collected in the absence of the petitioners, cannot be used for any further legal proceedings as it is a tainted material. The said inspection was done under the authority of the Panchayat. But he was one among the crowd of higher bureaucrats who descended on the Estate after being told to do so from the State Government.

6.10. Further, even in respect of one building, the fact that they have measured from outside, calculating the plinth area, is not enough to state the extent of the cellar area or the first floor of the said building and a statutory notice cannot be based upon assumptions and presumptions. He further submitted that measuring the building from outside cannot be calculated as a plinth area or the extent of any building as it may not count the open spaces within the building and it cannot be a safe bet for issuing such notice. Further, he submitted that the respondent Panchayat President cannot pass a provisional order - cum - show cause notice and it shows that he has a pre-determination and the basis for arriving at the provisional conclusion was not on any credible materials.

6.11. The learned Senior Counsel further submitted that the Panchayat President had not only trespassed into the Estate and illegally gathered materials which formed part of the show cause notice but during the relevant period, i.e., after issuance of the first show cause notice, he gave evidence before the Sub-Divisional Magistrate against the petitioners in respect of the Estate Road and showed his animus. Even after issuing the show cause notice during July 2007, he gave evidence before Sub-Divisional Magistrate, Coonoor. Again on 20.9.2007, he deposed as P.W. 1 before the Sub-Divisional Magistrate in respect of case relating to access through the Estate Road, which formed the basis for the Sub-Divisional Magistrate issuing an order under Section 133 Cr.P.C. This personal conduct of the Panchayat President clearly shows that he was biased and pre-determined and he ought not to have issued the impugned notice with mala fide motive. In that view of the matter, the learned Senior

Counsel wanted all the writ petitions to be allowed and apart from setting aside the impugned orders, also the Rule 4(1)(d) of the Tamil Nadu Panchayat Building Rules to be held ultra vires of the Tamil Nadu Panchayats Act and the Constitution.

7. Respondents justify their actions:-

7.1. Per contra, the learned Advocate General representing the respondents first took up the contention regarding the vires of Rule 4 (1)(d) of the Building Rules and stated that the Rule has got universal application and covers the entire Nilgiris District, and, therefore, it is not as if the petitioner alone has been singled out for any special treatment. Secondly, even before the Rules were notified under the Panchayats Act, the Rules framed under the Municipalities Act were invoked by exercise of power under Section 5 of the Panchayats Act and the Rules framed under the District Municipalities Act as well as the Panchayats Act are having similar features. The Rules relating to hill areas were framed with a view to preserve the hill areas and protect them from environment hazards as well as geological safeguards and the Rules are having sufficient guidelines. Both the AAA Committee and the HACA were presided over by high officials and, therefore, any application made will be scrutinised by the AAA Committee and the HACA and proper decision will be taken. Even if any orders are passed by the executive authority of the Panchayat, the same is appealable to the Inspector of Panchayats subject to further judicial review by this Court and, therefore, the Rule cannot be held to be arbitrary or suffers from excessive delegation.

7.2. Secondly, he submitted that the argument of the petitioners that Schedule II of the Act covers only two Municipal Towns, viz., Ootacamund and Coonoor in Nilgiris District and, therefore, even if the provisions of Chapter X A of the District Municipalities Act are invoked together with the Rules framed thereunder, that will not be available to a Panchayat, must only stated to be rejected. Under the Panchayats Act, delegation has been given to the Government as well as the District Collector to invoke the provisions of the District Municipalities Act through a Gazette Notification and this Notification has been issued as early as in the year 1993 covering the Panchayat areas coming under the Nilgiris District. It is not as if the Kodanad Village alone is covered by the Notification but all Village Panchayats, where urbanisation and construction activities are bound to take place, are covered under the Notification. When Schedule II is prescribed to the District Municipalities Act, it can only cover the Municipalities because the said Act dealt only with Municipalities and, therefore, Schedule II of the Municipalities Act not mentioning any Panchayat, does not change the law in this regard. By virtue of the power exercised under Section 5 read with Section 242 of the Tamil Nadu Panchayats Act, other hill areas in the district

have been covered and no exception can be taken. Learned Advocate General also submitted that the Building Rules are more or less based upon the Rules framed under the Municipalities Act and no special features have been added and they have not been questioned for more than 15 years and it is too late for the petitioners to question the same just because they are put to inconvenience. No other case has come up before this Court challenging the Rules. The Rules are intended to safeguard the pristine glory of the hill areas in the Nilgiris district. Therefore, the challenge to the Rules will have to necessarily fail.

7.3. Thereafter, the learned Advocate General submitted that either by the Rules framed under the District Municipalities Act (which are applicable by virtue of notification under Section 5 of the Panchayats Act) or by the Rules framed under the Panchayats Act itself after 1997, the petitioner Estate is covered by the Rules and for any infraction to the Rules, action can be taken against them for violation of the Rules. There is no excessive delegation under the Act and the Rules are intra vires of the Panchayats Act as well as Articles 14, 19 and 21 of the Constitution and, therefore, the petitioner Estate cannot escape from the invocation of the Rules. He also submitted that when innocuously details were sought for from the Estate, it is they who were stonewalling from providing any information relating to the Estate which they are bound to provide, if a demand is made by the executive authority of the Panchayat. If the petitioners have nothing to hide, they can provide the information sought for by the Panchayat and in the absence of their information, the executive authority of the Panchayat decided to inspect the Estate and even that was sought to be prevented by mobilising the Estate workers.

7.4. It was thereafter, the executive authority and the District Collector were directed to bring in reinforcement from conducting a safe inspection. He also submitted that the executive authority has right to inspect any property in the Panchayat areas, if he is of the opinion that there were violations of the Building Rules or that those buildings were constructed without licence, after due notice to the parties. The notice was served on the petitioner Estate and when they refused to receive, it was affixed on the Estate gate as provided in law. Even if the inspection was carried out by measuring the plinth area from outside the buildings, that was enough for finding out the violations of Buildings Rules while constructing various buildings in the Estate. The inspection was lawful and the materials gathered during the inspection can certainly form basis of the show cause notice. He also submitted that the Courts have held that even materials collected by illegal means cannot be rejected. It is one thing to say that the materials were collected unlawfully but the other thing is the admissibility of evidence of such materials gathered. In this context, he referred to the decision of the Supreme

Court in Pooran Mal v. The Director of Inspection (Investigation), New Delhi and others [1974 (1) SCC 345].

7.5. Learned Advocate General submitted that when the petitioners had not given any explanation to the show cause notice dated 05.6.2007 based upon inspection made on 31.5.2007, the power under Rule 34 of the Buildings Rules was invoked by the Panchayat President and it is for the petitioners to give reply to the same. There was nothing wrong in the Panchayat President in giving a provisional order - cum - show cause notice, which are also contemplated under the Buildings Rules. He also submitted that the materials produced by the petitioners in the Court may show that six out of seven buildings may not come within the mischief of the Rule but, yet, the show cause notice can still stand with reference to the seventh building, which was constructed unlawfully and contrary to the Building Rules. There is no bias in the action taken by the executive authority. Being an elected representative, he cannot shut his eyes from taking appropriate action. He also denied the two letters dated 30.5.2007 and 31.5.2007 said to have been addressed by the Panchayat President to the Assistant Director of Local Fund Audit. If the petitioners have sufficient materials which they have produced before this Court, there is nothing wrong in their answering the show cause notice issued by the authority. He also submitted that the petitioners are precluded in challenging the Rules after obtaining G.O. Nos. 67 and 68 dated 17.3.1995 from the Government and they are prevented to put such constructions on the basis of issue estoppel.

7.6. He also submitted that this Court under Article 226 of the Constitution will not interfere with the show cause notice and this is not a fit case where the power exercised to be nibbed in the bud.

7.7. The learned Advocate General further submitted that the press report issued by the State Government at the state expenses was only to clarify the people because newspapers were carrying out write-ups and it was the duty of the State to clarify the real position. He also submitted that there was nothing wrong in the Panchayat President granting a press release and it cannot be said that he was biased in issuing the notice under Rule 34 of the Tamil Nadu Panchayat Buildings Rules.

8. Statutory Provisions scanned:-

8.1. In order to appreciate the rival contentions made by the parties, it is necessary to set out the relevant statutory provisions and notifications quoted at the bar.

8.2. The petitioner Estate had obtained two Government Orders in the year 1995 relating to grant of approval to construct buildings in the Estate and they may be reproduced for better appreciation of the

facts.

The Government Order in G.O. (D) No. 67, Municipal Administration and Water Supply Department dated 17th March 1995 reads as follows:

"Tmt. Radha Venkatachalam, Kodanad Tea Estate, Kothagiri Taluk, The Nilgiris District has applied for issue of licence for the construction of a residential building in S. No. 168 (Field No. 4) Bancaad Division, Kodanad Village, Kothagiri Panchayat Union, The Nilgiris District.

2. The request of Tmt. Radha Venkatachalam has been placed before the Architectural and Aesthetic Aspects Committee for its consideration and recommendation and the Committee at its meeting held on 15.3.1995 has recommended the request of the individual to grant permission subject to the condition that she should plant adequate number of shade bearing trees.

3. The Government after careful examination, accept the recommendation of the Architectural and Aesthetic Aspects Committee and accord permission to Tmt. Radha Venkatachalam, Kodanad Tea Estate, Kothagiri Taluk, The Nilgiris District for the construction of a residential building in S.No. 168 (Field No. 4) Bancaad Division, Kodanad Village, Kothagiri Panchayat Union, the Nilgiris District, subject to the condition that she should plant adequate number of shade bearing trees.

4. The plans in original are returned herewith. The Director of Town and country Planning, Madras is requested to acknowledge the receipt of the same early.

(BY ORDER OF THE GOVERNOR)

H.M. PANDEY
SECRETARY TO GOVERNMENT"

8.3. The Government Order in G.O. (D) No. 68, Municipal Administration and Water Supply Department dated 17th March 1995 reads as follows:

"Tmt. Radha Venkatachalam, Kodanad Tea Estate, Kothagiri Taluk, The Nilgiris District has applied for issue of licence for the construction of a residential building in S. No. 159 Warbreacan Division, Kodanad Village, Kothagiri Panchayat Union, The Nilgiris District.

2. The request of Tmt. Radha Venkatachalam has been placed before the Architectural and Aesthetic Aspects Committee for its consideration and recommendation and the Committee at its meeting held on 15.3.1995 has recommended the request of the individual to grant permission, subject to the condition that she should plant adequate number of shade bearing trees.

3. The Government after careful examination, accept the recommendation of the Architectural and Aesthetic Aspects Committee and accord permission to Tmt. Radha Venkatachalam, Kodanad Tea Estate, Kothagiri Taluk, The Nilgiris District for the construction of a residential building in S.No. 159 Warbreca Division, Kodanad Village, Kothagiri Panchayat Union, the Nilgiris District, subject to the condition that she should plant adequate number of shade bearing trees.

4. The plans in original are returned herewith. The Director of Town and country Planning, Madras is requested to acknowledge the receipt of the same early.

(BY ORDER OF THE GOVERNOR)

H.M. PANDEY
SECRETARY TO GOVERNMENT"

8.4. Since arguments had centred around the District Municipalities Act, 1902 regarding Hill Stations, the relevant provision may be quoted. Section 3 (10) of the Tamil Nadu District Municipalities Act, 1920 and Schedule II read as follows:-

"(10) 'Hill Section'. -- 'Hill station' means a place specified in Schedule II and includes any other place which may be notified by the [State Government] as a hill station"

SCHEDULE II
LIST OF HILL STATIONS.
[See Section 3 (10)]
Ootacamund, the Nilgiri District.
Coonoor, the Nilgiri District.
Kodaikanal, [Madurai District].

8.5. Before 1997 Tamil Nadu Panchayats Buildings Rules, the Rules framed under the District Municipalities Act were made applicable by the powers vested under Section 5 and Section 5 of the Tamil Nadu

Panchayats Act, 1994 reads as follows:

"5. Extension of provisions of Tamil Nadu District Municipalities Act, 1920 or of any rules made thereunder.-- (1) The Inspector may, whether at the request of the village panchayat or otherwise, by notification, declare that any of the provisions of the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) or of any rules made thereunder, shall be extended to, and be in force in, the panchayat village or any specified area therein.

(2) The provisions so notified shall be construed with such alterations (not affecting the substance) as may be necessary or proper for the purpose of adapting them to the panchayat village or specified area therein.

(3) Without prejudice to the generality of the foregoing provisions, all references in the provisions so notified to a municipal council or the chairman or the executive authority thereof shall be construed as references to the village panchayat or the president or the executive authority of the village panchayat and all references to any officer or servant of a municipal council as references to the corresponding officer or servant of the village panchayat, and all references to the municipal limits as references to the limits of the panchayat village or specified area therein, as the case may be."

8.6. Under Section 242(2) of the Tamil Nadu Panchayats Act, 1994, Tamil Nadu Panchayats Buildings Rules, 1997 were formed and notified to come into effect from 18.12.1997. Rule 4(1) of the Tamil Nadu Panchayats Buildings Rules, 1997 impugned in W.P. No. 20337 of 2007 reads as follows:-

"4. Application for approval of sites for buildings and huts.-- (1) Every person who intends, to construct or reconstruct or alter or add to a building or to a hut shall submit an application to the executive authority for the approval of the site and for permission to execute the work, in the Form specified in Appendix-B, with such variations as circumstances may require which shall be accompanied by--

(a) a site plan (in triplicate) of the land on which the building or hut is to be constructed, reconstructed or altered or added to as far as may be

necessary, complying with the requirements specified in Appendix-C;

(b) a plan or plans (in triplicate) of the building or hut to be constructed, reconstructed or altered or added to as far as may be necessary, complying with the requirements specified in Appendix-D;

(c) a specification (in triplicate) as far as may be necessary complying with the requirements specified in Appendix-E; and

(e) the information as to the purpose for which the building or hut is proposed to be constructed, reconstructed or altered or added to:

[Provided that the construction or reconstruction or addition or alteration to residential houses, all such other public buildings like commercial buildings, hotels, resorts and factory buildings exceeding a plinth area of 250 square metres in the panchayats of Nilgiris District shall be approved by the executive authority after obtaining the permission of the Committee for Architectural and Aesthetic Aspects headed by the Collector of Nilgiris District]."

8.7. Since much reliance was based upon the Rules relating to inspection by the Executive Authority, the relevant rule in this regard may be reproduced. Rules 2(1) to (3) of the Tamil Nadu Panchayats (Restrictions and Control on Powers of Entry and Inspection) Rules, 1999 read as follows:

"(1) no entry shall be made by the executive authority or commissioner or Secretary, as the case may be, or any person authorised by him between sunset and sunrise;

(2) no dwelling house, or any part of a public building used as a dwelling place, shall be entered into by the executive authority or commissioner, or secretary, as the case may be, or any person authorised by him, without the consent of the occupier thereof, unless the said occupier has received at least six hours previous notice of the intention to make such entry;

(3) sufficient notice shall be given by the executive authority or commissioner, or secretary, as the case may be, or any person authorised by him, in

every case when any premises may otherwise be entered without notice under clause (2) of rule 2(3) to enable the inmates of any apartment appropriated to women to move to some part of the premises where their privacy may be preserved;"

8.8. Since lack of proper notice was complained by the petitioner, the relevant rule relating to manner of publication of notice may be quoted. Rule 6 of the Tamil Nadu Panchayats (Manner of Publication of Notification or Notice and Manner of Service of Documents to the Public) Rules, 2000 reads as follows:

"6. Manner of service of document or notice other than a notice of the meeting.--

(1) When any document or notice other than a notice of the meeting is required by the Act or any rules or bye-law or regulation or order made thereunder, to be served on or sent to any person, the service or sending thereof shall be effected in the manner specified below and a record of service maintained in the office of the village panchayat or panchayat union council or district panchayat, as the case may be--

(i) by giving or tendering the document or notice in person to the person concerned;

(ii) if such person is not found, which shall be recorded by the person deputed for effecting the service, by giving or tendering the same to an adult member or servant of his family; or by leaving such document or notice securely at a conspicuous place, at his last known place of abode or business, which shall be specified in the record of service; or

(iii) if such person is reported to be not residing in the village and his address elsewhere is known to the executive authority or the commissioner or secretary, as the case may be, by sending the same by registered post with acknowledgment due; or

(iv) if none of the means aforesaid is available, by affixing the same in some conspicuous part of such place of abode or business.

(2) The manner of service specified above shall be tried one after another in the above order and not in any other order."

9. Legal Authorities cited by the learned Advocate General:-

9.1. The learned Advocate General relied upon the following three decisions of the Supreme Court for the purpose of showing that the power of the Court to interfere with the show cause notice is limited:-

- (i) State of Uttar Pradesh v. Shri Brahm Datt Sharma [1987 (2) SCC 179];
- (ii) Special Director and another v. Mohd. Ghulam Ghouse [2004 (3) SCC 440]; and
- (iii) Muni Suvaratwami Jain S.M.P. Singh v. Arun Nathuram Gaikwad and others [2006 (8) SCC 590]

9.2. He also relied upon the following four decisions of the Supreme Court in support of the proposition that the unauthorised buildings constructed in violation of the Rules will have to be necessarily dealt with severely:-

- (i) Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal [1983 (2) SCC 422];
- (ii) Palani Hill Conservation Council v. State of Tamil Nadu [1995 (2) Writ L.R. 737];
- (iii) Pleasant Stay Hotel v. Palani Hill Conservation Council [1995 (6) SCC 127]; and
- (iv) Piedade Filomena Gonsalves v. State of Goa and others [2004 (3) SCC 445]

9.3. The learned Advocate General further placed reliance upon the decisions of the Supreme Court in Bhanu Kumar Jain v. Archana Kumar and another [2005 (1) SCC 787] and Ishwar Dutt v. Land Acquisition Collector and another [2005 (7) SCC 190] for the purpose of raising the ground of issue estoppel.

9.4. He further submitted that the materials collected in the absence of the petitioners cannot be held to be illegal and it will not impeach the admissibility of such evidence. For this purpose, he relied on the decision of the Supreme Court in Pooran Mal 's case (cited supra).

9.5. For the purpose of showing that mala fide cannot be alleged against the Government in the absence of necessary parties before the Court, the learned Advocate General relied on the following decisions of the Supreme Court:-

(i) Swaran Lata v. Union of India [1979 (3) SCC 165];

(ii) All India State Bank Officers' Federation and others v. Union of India and others [1997 (9) SCC 151]; and

(iii) Indian Railway Construction Co. Ltd. v. Ajay Kumar [2003 (4) SCC 579]

In view of the above, it is necessary to deal with the relevant issues raised in all the writ petitions.

10. Whether the inspection carried on 31.5.2007 is authorised by the Rules:-

In so far as the question of vires of the Rule is concerned, as correctly contended by the learned Advocate General, the Rules are intended for covering the wider range of areas in the Nilgiris District and were issued to prevent environment degradation and ecological disaster in a hill area and the Rules do not suffer from any excessive delegation. Even before framing of the Rule, Section 5 of the Panchayats Act authorised utilising the Rules framed under the District Municipalities Act and the present Rule is almost identical to the Rules framed earlier. So long as the Nilgiris District itself is held to be hill area and the petitioner Estate is also coming within that hill area, no exception can be taken against the Rule. Especially, Rule 4(1)(d) of the Buildings Rules is intended to provide clearance from high level Committee, viz., AAA Committee, which consists of higher officers drawn from various Departments and coupled with the fact that there is an appeal against the decision of the executive authority to the Inspector of Panchayats and judicial review is also available. Therefore, the Rules cannot be said to be ultra vires either the Act or the Constitution.

11. Whether the inspection conducted on 31.5.2007 by the executive authority of the Panchayat was in accordance with law:

11.1. The executive authority of the Panchayat has power to enforce the provisions of the Act under the Rules, which are validly made under Section 242 of the Panchayats Act and his inspection powers are also provided under the Buildings Rules as well as Tamil Nadu Panchayats (Restrictions and Control on Powers of Entry and Inspection) Rules, 1999. Rule 2 of the said Rules puts restrictions on the Inspection and it states that without the consent of the occupier, one cannot enter into the building and also it requires a six hours previous notice of the intention to make such entries.

Rule 3 also provides for a sufficient notice to be given by the executive authority.

11.2. In the present case, the attempt to affix notice dated 30.5.2007 on the Estate premises is not supported by the Rules framed under the Tamil Nadu Panchayats (Manner of Publication of Notification or Notice and Manner of Service of Documents to the Public) Rules, 2000. Rule 6 of the said Rules provides for method of serving a notice on any person and Rule 6(2) clearly states that the process shall be tried one after the other in the order indicated and not in any other order. In the present case, the document produced and the affidavit filed in support of the said averment does not show that such a method has been followed. Even the previous inspections said to have been attempted on 20.5.2007, 22.5.2007 and 29.5.2007 also were not authorised in terms of the Act. Therefore, the so-called inspection conducted not only by the executive authority but by a wide range of officers drawn from other Departments without specifying the purpose, clearly shows certain command performance from the higher-ups and it is not based upon any legal requirement under the Buildings Rules.

12. Whether tainted or illegal material obtained behind the back of the owner can be used as basis of the Show Cause Notices dated 05.6.2007 and 10.9.2007:

12.1. Even though the learned Advocate General relied upon the Pooran Mal's case (cited supra), it came to be considered by the Constitution Bench of the Supreme Court in the judgment in State of Punjab v. Baldev Singh, [(1999) 6 SCC 172]. In this context, it is relevant to refer to the following passages found in paragraphs 43 and 45 to 47 of the judgment:

Para 43: "The judgment in Pooran Mal case has to be considered in the context in which it was rendered. It is a well-settled proposition of law that a decision is an authority for what it decides and not that everything said therein constitutes a precedent. The courts are obliged to employ an intelligent technique in the use of precedents bearing it in mind that a decision of the court takes its colour from the questions involved in the case in which it was rendered."

Para 45: "The judgment in Pooran Mal case therefore, cannot be understood to have laid down that an illicit article seized during the search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act can be used as evidence of unlawful possession of the illicit article on the

person from whom that contraband had been seized during an illegal search. Apart from the position that in Pooran Mal case on facts, it was found that the search and seizure conducted in the cases under consideration in that case were not vitiated by any illegality, the import of that judgment, in the present context, can only be to the effect that material seized during search and seizure, conducted in contravention of the provisions of Section 132 of the Income Tax Act cannot be restrained from being used, subject to law, before the Income Tax Authorities in other legal proceedings against the persons, from whose custody that material was seized by issuance of a writ of prohibition. It was not the seized material, in Pooran Mal case which by itself could attract any penal action against the assessee. What is implicit from the judgment in Pooran Mal case⁴ is that the seized material could be used in other legal proceedings against an assessee, before the Income Tax Authorities under the Income Tax Act, dealing with escaped income. It is, therefore, not possible to hold that the judgment in Pooran Mal case⁴ can be said to have laid down that the "recovered illicit article" can be used as proof of unlawful possession of the contraband seized from the suspect as a result of illegal search and seizure. If Pooran Mal judgment is read in the manner in which it has been construed in State of H.P. v. Pirthi Chand (though that issue did not strictly speaking arise for consideration in that case), then there would remain no distinction between recovery of illicit drugs etc. seized during a search conducted "after" following the provisions of Section 50 of the NDPS Act and a seizure made during a search conducted "in breach of" the provisions of Section 50 of the NDPS Act. Prosecution cannot be permitted to take advantage of its own wrong. Conducting a fair trial for those who are accused of a criminal offence is the cornerstone of our democratic society. A conviction resulting from an unfair trial is contrary to our concept of justice. Conducting a fair trial is both for the benefit of the society as well as for an accused and cannot be abandoned. While considering the aspect of fair trial, the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors. Courts cannot allow admission of evidence against an accused, where the court is satisfied that the evidence had been obtained by a conduct of which the prosecution ought not to take advantage particularly when that conduct had caused prejudice to the accused. If after careful

consideration of the material on record it is found by the court that the admission of evidence collected in search conducted in violation of Section 50 would render the trial unfair then that evidence must be excluded. In *R. v. Collins* the Supreme Court of Canada speaking through Lamer, J. (as his Lordship, Chief Justice of the Supreme Court of Canada then was) opined that the use of evidence collected in violation of the Charter rights of an accused would render a trial unfair and the evidence inadmissible. In the words of the Supreme Court of Canada:

"The situation is very different with respect to cases where, after a violation of the Charter, the accused is conscripted against himself through a confession or other evidence emanating from him. The use of such evidence would render the trial unfair, for it did not exist prior to the violation and it strikes at one of the fundamental tenets of a fair trial."

(emphasis ours)

Para 46: The opinion in *Collins* case has been relied upon by the majority of the Supreme Court of Canada in *R. v. Stillman* also.

Para 47: "The question of admissibility of evidence, which may be relevant to the question in issue, has thus to be decided in the context and the manner in which the evidence was collected and is sought to be used."

12.2. Therefore, it cannot be said that in all times, the materials illegally collected can be used as admissible evidence and in the present case, the show cause notices dated 05.6.2007 and 10.9.2007 are solely based upon the Inspection Report dated 31.5.2007, which were illegally obtained and it cannot be made used of.

13. When bias is attributed and proved against the Executive Authority, whether the notices issued by him can be set aside on that ground:

13.1. In the present case, the executive authority of the Pancahyat not only conducted an illegal inspection contrary to the Rules but on 19.5.2007, he complained to the Chief Minister of Tamil Nadu by signing a representation along with two other political leaders about the Estate and its owners. He had issued a press statement condemning the petitioner Estate and its inmates [See: Press release dated 20.9.2007]. He also deposed before the Sub-Divisional Magistrate against the petitioner Estate in July 2007 and on 20.9.2007

as P.W.1 and spoke against the Estate.

13.2. In this context, it is necessary to refer to the judgment of the Supreme Court in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant [(2001) 1 SCC 182] and the relevant passages found in paragraphs 23 and 25 may be usefully reproduced:

Para 23: "Turning on to the issue of bias and for which the show-cause notice-cum-charge-sheet has been set out in extenso, be it noted that the same does reflect a state of mind...."

Para 25: "Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the Officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete."

13.3. The House of Lords in the case of R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2) [2000 (1) AC 119] held as follows:

"... In civil litigation the matters in issue will normally have an economic impact; therefore a Judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a Judge applies just as much if the Judge's decision will lead to the promotion of a cause in which the Judge is involved together with one of the parties."

13.4. Lord Hutton in the very same Pinochet case observed as follows:

"There could be cases where the interest of the Judge in the subject-matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation."

13.5. That was a case where when the extradition demand of Pinochet, who was a deposed Military ruler of Chile and was sought to be extradited to his native country, a Judge, who heard the extradition proceedings was a member of the Amnesty International, which organisation had earlier passed a Resolution for extraditing Pinochet back to his native country. The Extradition proceedings ordered were set aside on the grounds of bias for the sole reason that he was a member of the organisation and that organisation had committed to extradite the said person. It was in this context, the judgment was rendered by the House of Lords in U.K. This judgment of the House of Lords was quoted with approval in Kumaon Mandal Vikas Nigam Ltd. Case (cited supra). If that is taken note of, certainly, in the present case, the conduct of the executive authority of the Panchayat, viz., Panchayat President, is not admirable and he had not acted bona fide and without bias.

14. Whether Courts have power to interdict a Show Cause Notice?

14.1. The Supreme Court also held in State of Punjab v. V.K. Khanna [(2001) 2 SCC 330] that a show cause notice can also be interfered with if there is a malice or mala fide or motive involved. The relevant passage found in paragraph 33 of the said judgment is extracted usefully:

Para 33: "While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score...."

14.2. Though the decisions cited by the learned Advocate General that show cause notice cannot be interfered with may be

generally correct and binding, but the Courts have always left exception to the same. Therefore, the cases cited by the learned Advocate General have no relevance to the facts of the present case.

14.3. In the present case, this Court is concerned with the two show cause notices and inspection conducted by the Village Panchayat President and he was made personally a party to the writ proceedings and, therefore, the judgments cited relating to proving mala fide in the absence of parties may not be relevant.

14.4. The decisions that unauthorised constructions constructed contrary to relevant Building Rules and Town and Country Planning Act will have to be removed are relevant to cases where such constructions were constructed are held to be proved. In the present case, there is no material to show that there were unauthorised constructions and this Court is only at the stage of show cause notice and not dealing with any final order.

15. Fatal Flaws:

15.1. In respect of six buildings, admittedly, they do not come under Rule 4(1)(d) of the Tamil Nadu Panchayats Buildings Rules. Further, the buildings were constructed in the year 1995 and the Rules framed under the District Municipalities Act under Chapter X A of the Act were followed and were also supported by Government Orders issued in G.O. (D) Nos. 67 and 68 dated 17.3.1995. The fact that plans were sanctioned by the AAA Committee and approved by the Government and also subsequently licence fees were paid and the buildings were assessed for House Tax which tax are also being paid regularly by the petitioners, will clearly show that there are no violation of any Buildings Rules. Even as per the two show cause notices, the construction work for all the buildings were completed at the time of inspection.

15.2. The Village Panchayat President was in possession of all these materials which were easily available in his office or in the Panchayat Union Office, did not care to collect those materials. Before issuing the show cause notice, he did not take note of those materials and never found his opinion on any objective materials. On this ground, the show cause notice suffers from lack of application of mind. Even in respect of the seventh building, the measurement taken from outside cannot be mechanically projected as if there is a cellar and first floor was found inside with equal plinth areas constructed. When applying Rule 34 of the Buildings Rules seeking for demolition by the owner, such assumptions and presumptions cannot be allowed to find a place in a statutory notice.

15.3. Further, the said building is also covered by the orders of the Government issued under the Tamil Nadu District

Municipalities Act under Chapter X A read with Rules and, therefore, there was no necessity to invoke the same Rule. If only there is a suspicion of any construction and in violation of the Rules, then the Panchayat President ought to have followed the due procedure and collected all the materials at his disposal and then call upon the owner to provide necessary information failing which, he can conduct an enquiry in terms of the Rules framed under the Tamil Nadu Panchayats Act and arrive at a proper determination to invoke Rule 34 of the Tamil Nadu Panchayats Buildings Rules. Since that has not been done in the present case, the notices in this regard are liable to be set aside.

16. Finale:

In view of the foregoing discussion, the following conclusions are arrived at:

- (a) Rule 4(1)(d) of the Tamil Nadu Panchayats Buildings Rules, 1997 is constitutionally valid
- (b) The inspection carried on 31.5.2007 in the petitioner Estate is illegal and not supported by the Tamil Nadu Panchayat Rules in as much as the Rules framed under the Panchayats Act, 1994 were not followed and hence, the said report cannot be relied upon for any further action.
- (c) In as much as the show cause notice dated 05.6.2007 is not based upon any credible material, it is clearly illegal and must be set aside.
- (d) The notice under Rule 34 of the Buildings Rules dated 10.9.2007 emanates from non-application of mind and it is vitiated by bias and deserves to be set aside.
- (e) Notice dated 10.9.2007 in as much as it also includes buildings, which are not opposed to the Tamil Nadu Panchayats Buildings Rules, but taken note of for issuance of a provisional order to direct the owner to demolish those buildings also, is also liable to be set aside on the ground of non-application of mind.

17. Relief:

17.1. In the result, the W.P. Nos. 20034, 20336 and 30671 of 2007 will stand allowed and consequential show cause notice dated 05.6.2007, Inspection Report dated 31.5.2007 and show cause notice dated 10.9.2007 will stand set aside.

17.2. However, W.P. No. 20337 of 2007 will stand dismissed. Consequently, Rule 4(1)(d) of the Tamil Nadu Panchayats Buildings Rules, 1997 is held to be intra vires of the Tamil Nadu Panchayats Act and the Constitution. All the Miscellaneous Petitions will stand closed. However, there will be no order as to costs.

Sd/-
Asst. Registrar.

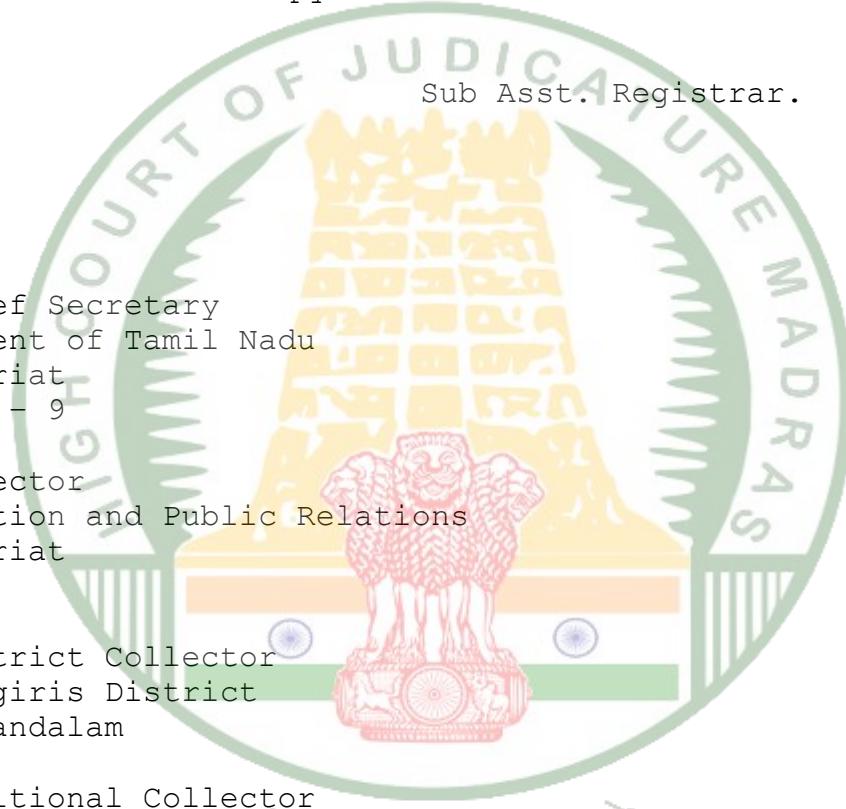
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Sub Asst. Registrar.

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To

1. The Chief Secretary
Government of Tamil Nadu
Secretariat
Chennai - 9
2. The Director
Information and Public Relations
Secretariat
Chennai
3. The District Collector
The Nilgiris District
Udhagamandalam
4. The Additional Collector
The Nilgiris District
Udhagamandalam
5. The District Revenue Officer
The Nilgiris District
Udhagamandalam
6. The Revenue Divisional Officer
Coonoor
The Nilgiris District
7. The Block Development Officer
Kothagiri
The Nilgiris District

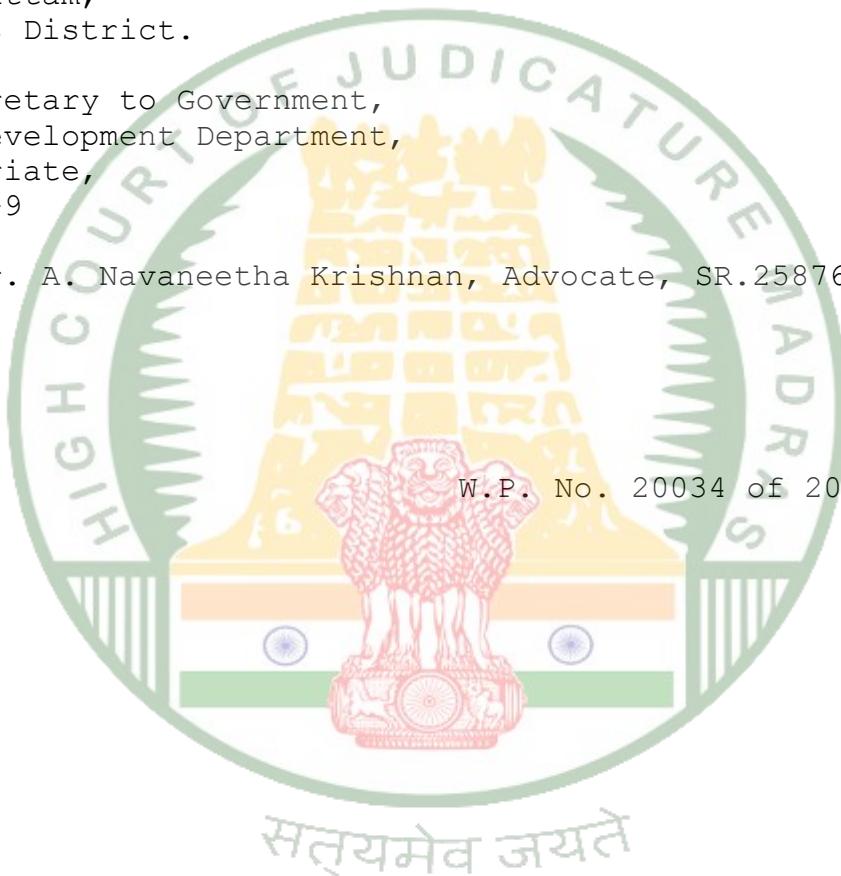


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8. The President,
Executive Authority,
Kodanad Village Panchayat,
Kottagiri Taluk,
Keradamattam,
Nilgiris District.
9. The President,
Kodanad Village Panchayat,
Kottagiri Taluk,
Keradamattam,
Nilgiris District.
10. The Secretary to Government,
Rural Development Department,
Secretariate,
Chennai-9

+ 4 ccs to Mr. A. Navaneetha Krishnan, Advocate, SR.25876

PA(CO)
RP 30.04.08



W.P. No. 20034 of 2007, etc. batch

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