
(1990) 11 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 17091 of 1990

M/s. Pandian Tea and Produce Co. Pvt. Ltd.

APPELLANT

Vs

The Sub Inspector of Police, Devala, Nilgiris

RESPONDENT

Date of Decision : 19-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 147, 447

Citation : (1990) 11 MAD CK 0043

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : S. Gopalaratnam, for the Appellant; P. Arivudainambi, Government Advocate, for the Respondent

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is as follows:

...to issue a writ of mandamus or any other order, appropriate writ, direction or order directing the respondent, to take immediate action on the

complaint filed by the petitioner before the respondent on 30-10-1990 and evict the trespassers from R.S. Nos 198/2, 198/2 and 198/4 of Devala

Village, Nilgiris District...

The petitioner, owner of Tea Estate, owns R.S. Nos. 198/2, 198/3 and 198/4 in Devala Village among other lands in an estate called Rousdon

Mulai Estate. It is alleged in the affidavit filed in support of the petition that on 30-10-1990 some of the residents of Devala Valavayal attempted to

trespass into the property of the petitioner by removing the fencing erected by the petitioner and tried to erect huts. It is further alleged in the

affidavit that the said persons were asked by the members of staff of the petitioner, by 8:00 a.m. on that day, to quit and vacate the premises

illegally entered into and occupied by them, and that they were adamant and refused to vacate. It is further stated in the affidavit filed in support of the petition that thereupon the Sub-Inspector of Police, Devala, the respondent herein, was addressed to take appropriate action immediately by a letter signed by one of the Directors of the petitioner, that a complaint was registered at Devala Police Station as Devala P.S.G. No. 225/90 under Ss.147 and 447 I.P.C. and that a copy of the F.I.R. was given to the Judicial Magistrate, Gudalur. It is further alleged in the affidavit that the action of the trespassers who have cut and removed the fencing, illegally entered the premises belonging to the petitioner and squatting on the same will clearly amount to an offence of rioting and criminal trespass which are cognizable offences. It is further alleged in the affidavit that the Police authorities are bound to take action to prevent the commission of such offence by the accused persons, and that though a complaint had been initiated immediately, the respondent has not taken any action to evict the respondents from the property of the petitioner, as statutory obligation. It is also stated in the affidavit that a copy of the said complaint had been sent to higher officials besides Tahsildar and Revenue Divisional Officer, that the continuous inaction by the respondent despite his having been requested to evict the trespassers amounts to a wilful neglect in the discharge of his duties which has necessitated him to approach this Court. It is further stated in the affidavit filed in support of the petitioner that the inaction of the respondent has caused irreparable harm and prejudice to the petitioner, that if the same continues, then the petitioner will lose his right to his property and that it is the duty of the respondent to protect the right of citizens. With these allegations, the petitioner is before me with the prayer stated supra.

3. Notice of motion has been ordered by me on 5-11-1990.

4. Mr. P. Arivudainambi, learned Government Advocate appears with instructions. Mr. S. Gopalaratnam, the learned Senior Counsel refers to me

the decision of P.S. Kailasam, J. (he then was) in A.S.V. Varadachariar v. The Commissioner of Police, Madras and others 1969 2 MLJ 1 with

regard to the Jurisdiction of this Court to issue a Writ of Mandamus to the Police Officer, whose duty is to enforce the law of the land. The learned

Senior Counsel further contends that since a complaint has been made on

30-10-1990 itself when the alleged trespass was made by certain

persons, the respondent herein ought to have taken action immediately. The learned Senior Counsel also contends that it is the duty of the

respondent herein to investigate the matter and remove the persons from the place where they had trespassed.

5. Mr. P. Arivudainambi, the learned Government Advocate on instructions states that action is being taken by the respondent on the complaint

made by the petitioner, and that the Revenue Divisional Officer is asked to look into the matter. The learned Government Advocate further submits

that the investigation is on and as such there is no need for this Court to issue a Writ of Mandamus as if the respondent has failed to perform his

statutory duty.

6. I have carefully considered the arguments advanced by Mr. S. Gopalaratnam, the learned Senior Counsel and of Mr. P. Arivudainambi, the

learned Government Advocate. There cannot be any doubt about the proposition laid down by P.S. Kailasam, J. (as he then was) in A.S.V.

Varadachariar v. The Commissioner of Police, Egmore. Madras and others 1969 2 M.L.J. 1. It need not be said that the respondent has got to

perform the duty to enforce the law of the land. Suffice it to extract the passage from the judgment of Lord Denning, M.R. in R. v. Metropolitan

Police Commissioner 1968 1 All E.R. 763 which runs as follows:

...I hold it to be the duty of the Commissioner of Police, as it is of every Chief Constable, to enforce the law of the land .. In all these cases, he is

not the servant of anyone, save of the law itself... The responsibility for law enforcement lies on him. He is answerable to the law and to the law

alone...

7. But, whether it is necessary to issue a writ of mandamus on the facts of the case, is the question to be decided. Even according to the petitioner

the occurrence had taken place only on 30-10-1990 and a complaint had also been registered with the respondent in Devala Police Station but

this Writ Petition is filed on 2-11-1990. In such circumstances, I do not see how it can be said that the respondent has failed in performing the

statutory duty. After all, the respondent has to enquire and investigate into the matter and take action according to law. That is what the learned

Government Advocate also states. I do not see any ground, on the facts of the

case on hand, to issue a writ of mandamus automatically. In my view, the petitioner herein has failed to make out a prima facie case for the issuance of a writ of mandamus as prayed for. In Halsbury's Laws of England, Fourth Edition, Volume I Pages 111 and 112, the law is stated thus:

Nature of mandamus: The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person. Corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy defects of justice: and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right, and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effective... Grant is discretionary: The grant of an order of mandamus is as a general rule, a matter for the discretion of the Court. It is not granted as of right and it is not issued as a matter of course. Accordingly, the Court may refuse the order, not only upon the merits, but also by reason of the special circumstances of the case...

Again at page 135, it is stated as follows:

...The Court will, as a general rule, and in the exercise of its discretion, refuse an order of mandamus, when there is an alternative specific remedy at law which is not less convenient, beneficial and effective...

I am of the view that the issue of a Writ of Mandamus is reserved for extraordinary emergencies, being a supplementary means of obtaining substantial Justice where there is a clear legal right and no other adequate legal remedy. It is settled law that the jurisdiction vested in this Court under Art. 226 of the Constitution is an extraordinary one and the grant of relief is discretionary. With regard to the case on hand. I am of the opinion that where the police protection is sought for life or personal liberty is entirely different and distinct from those cases where protection is sought for property. On the facts and circumstances of the case. I do not think that this is a fit case in which the request of the petitioner can be acceded to. Since I am told that investigation is on and action is being taken, I do not think it is necessary to issue a Writ of Mandamus. In my

view, the petitioner has rushed suddenly to this Court over-enthusiastically. There are no merits in the writ petition and accordingly it is dismissed.

No costs.