

(2012) 03 MAD CK 0054

In the Madras High Court

Case No : Writ Petition (MD) No. 10500 of 2010

Murugan and Others

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Constitution of India, 1950 — Article 17, 51(A)
Criminal Procedure Code, 1973 (CrPC) — Section 144
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 12(4), 13, 3
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 13, 7(1)

Citation : (2012) 2 CTC 561

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : U. Nirmala Rani Mr. C.K. Rajan Mr. T. Lajapathi Roy, for the Appellant; S. Rozario Sundar Raj for R-3 in WP (MD) No. 10365, 10376, 10415 10583 of 2010 for R-7 in WP (MD). 10373, 10500 of 2010 Mr. M. Govindan, Spl. G.P. For RR1, 2, 4 to 7 in WP (MD). 10365, 10376, 10415 and 10583/2010 for RR1 to 6 in WP (MD). 10373, 10500 of 2010 Mr. Veerakathiravan for RR8 to 11 in WP (MD). 10500 of 2010, for the Respondent

Judgement

Honourable Mr. Justice K. Chandru

1. When Berlin Wall crumpled, no one wept for its fall. On the other hand, people of both sides were joyous and were celebrating it. The

souvenirs collected from the ramparts of the ideological barrier are even now kept in many homes all over World. But that will not be a case where

human walls erected on the basis of colour or creed or caste. When colored people of the USA were denied dignity and equal treatment in

transport, Rosa Park, a brave black woman, led a successful protest against apartheid and blatant discrimination. On the Montgomery March, the

champion of civil rights in America Martin Luther King had to say this :

You know, my friends, there comes a time when people get tired of being trampled over by the iron feet of oppression. There comes a time, my

friends, when people get tired of being plunged across the abyss of humiliation, where they experience the bleakness of nagging despair. There

comes a time when people get tired of being pushed out of the glittering sunlight of life's July, and left standing amid the piercing chill of an alpine

November.

And we are not wrong. We are not wrong in what we are doing. If we are wrong, the Supreme Court of this nation is wrong. If we are wrong, the

Constitution of the United States is wrong. If we are wrong God Almighty is wrong. If we are wrong, Jesus of Nazareth was merely a utopian

dreamer that never came down to earth. And we are determined here in Montgomery to work and fight until justice runs down like water and

righteousness like a mighty stream.

Perhaps it is easy for those who have never felt the stinging darts of segregation to say, ""Wait."" But when you have seen vicious mobs lynch your

mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick, and even kill your

black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the

midst of an affluent society.

When you are forever fighting a degenerating sense of ""nobodiness"" - then you will understand why we find it difficult to wait. There comes a time

when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our

legitimate and unavoidable impatience.

[quoted in ""There comes a Time - The Struggle for Civil Rights""; by Milton Meltzer (2000) - Landmark Books, Random House, New York; p.

77, 93 and 94]

He ridiculed the people who advocated patience and for a slow change in their attitude towards social change.

2. It took two hundred years after the American declaration that all men were created equal to declare that the school children in USA cannot be

segregated on the basis of color. The U.S. Supreme Court took a pro-active role in ordering admission of children in all schools disregarding color

or creed. The great civil right lawyer Marshall, who was later elevated to the Supreme Court and who argued the case in Brown Vs. Board of

Education, sat in a bench dealing with reverse discrimination. Recalling the reminiscence of the School Bus Case, he wrote in the judgment as

follows:

It is unnecessary in 20th century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of

our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact. The experience of Negroes in

America has been different in kind, nor just in degree, from that of other ethnic groups. It is not merely the history of slavery alone but also that a

whole people were marked as inferior by the law. And that mark has endured. The dream of America as the great melting pot has not been

realized for the Negro; because of his skin color he never even made it into the pot.

[The Bakke, 438 U.S. at 400 (Marshall, J ,) - quoted in "'All Deliberate Speed'" by Charles J.Ogletree, Jr. - W.W.Norton & Company, New

York & London (2004) p.326]

3. Dr.Ambedkar convened a conference for deciding a direct action in respect of Chowdar Tank in Mahad (Maharashta), in which area pollution

theory still persisted and dalits were never allowed to enter.

4. This second Mahad conference took place in December 1927. Ambedkar's speech called for a root and branch abolition of the caste system.

The values he invoked were those of the French Revolution, and he even compared the Mahad conference to the Etats Generaux de Versailles,

where, for the first time, the Third Estate had expressed its revolt in a collective and formal fashion. The purpose of the meet was spoken to by him

on the following lines:

At the outset, let me tell those who oppose us that we did not perish because we would not drink water from this Chowdar Tank. We now want

to go to the Tank only to prove that, like others, we are also human beings [...]. This Conference has been called to inaugurate an era of equality in

this land. Removal of untouchability and inter-castes dinners alone will not put an

end to our ills. All departments of services such as courts, military, police and commerce should be thrown open to us [...]. Hindu society should be reorganised on two main principles - equality and absence of casteism."

[Dr.B.R.Ambedkar; Quoted by D.Keer, "" Mahatma Jotirao Phoolley - Father of Indian Social Revolution"" Popular Prakashan,1972]

5. Elaborating on the need for a direct action in eradication of untouchability, he made the following passionate appeal :

I am convinced that it will be ineffective in the matter of uprooting Untouchability. The silent infiltration of rational ideas among the ignorant mass of caste Hindus cannot, I am sure, work for the elevation of the Depressed Classes. First of all, the caste Hindu like all human beings follows his

customary conduct in observant Untouchability towards the Depressed Classes. Ordinarily people do not give up their customary mode of

behaviour because somebody is preaching against it. But when that customary mode of behaviour has or is believed to have behind it the sanction

of religion mere preaching, if it is not resented and resisted, will be allowed to waft along the wind without creating any effect on the mind. The

salvation of the Depressed Classes will come only when the Caste Hindu is made to think and is forced to feel that he must alter his ways. For that

you must create a crisis by direct action against his customary code of conduct. The crisis will compel him to think and once he begins to think he

will be more ready to change than he is otherwise likely to be. The great defect in the policy of least resistance and silent infiltration of rational ideas

lies in this that they do not compel thought, for they do not produce crisis. The direct action in respect of Chawdar Tank in Mahad, the Kalaram

Temple in Nasik and the Guruwayur Temple in Malabar have done in a few days what million days of preaching by reformers would never have

done. I therefore strongly recommend this campaign of direct action for securing civic rights of the Depressed Classes, for adoption by the Anti-

Untouchability League. I know the difficulties of this campaign, and from such experience as I have of it I am convinced that the forces in charge of

Law and Order must be on our side, if it is to end in success.

[Dr.B.R.Ambedkar quoted in The Essential Writings of B.R.Ambedkar; Edited by Valerian Rodrigues - Oxford University Press, New Delhi,

2002 (p.362)]

Constitutional Battle against Untouchability :

6. Dr.Ambedkar, who became the Chairman of the Drafting Committee, drafting the Indian Constitution did not forget his past experience and was

thoughtful enough to insert Article 17 prescribing abolition of untouchability in all forms. Perhaps, it is the only constitution where under the

Fundamental Rights Chapter, a provision has been incorporated making certain practices as an offence. Article 17 reads as follows:

17.Abolition of untouchability.-""Untouchability"" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out

of ""Untouchability"" shall be an offence punishable in accordance with law.

7. On the inauguration of the Constitution and being aware of the existing social system, in his inaugural speech, he had to make the following

observations :

On 26 January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will

have inequality. In politics we will be recognising the principle of one man one vote and one value. In our social and economic life, we shall, by

reason of our social and economic structure, continue to deny the principle of one man one value. How long should we continue to live this life of

contradiction? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by

putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality

will blow the structure of political democracy which this Assembly has so laboriously built up.

[""Constituent Assembly Debates, Official Report, Book No. V, Lok Sabha Secretariat, New Delhi: 1999"", Third print, p. 979]

8. Even after insertion of Article 17, citizenry of India never realized their fundamental duty to promote harmony and common brotherhood.

Therefore, in the year 1976 Article 51-A introduced fundamental duties on its citizens. Article 51-A(e) reads as follows:

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or

sectional diversities;

(Emphasis added)

9. But the ever increasing atrocities against the scheduled castes and scheduled tribes made the Parliament to enact the Scheduled Caste and

Scheduled Tribes (Prevention of Atrocities) Act, 1989. The objects and reasons appended to the Act reads as follows:

Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc , they are trying to

assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against

them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interest try to cow them down and terrorise

them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for

the dominant and they mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes

is resented and more often these people become victims of attacks by the vested interests.

[Objects and Reasons - SC and ST (Prevention of Atrocities) Act, 1989]

10. When the pernicious practice of untouchability never ceased, M.Katju,J , after recalling the equality principle incorporated in the Americanl

Declaration of Independence lamented about the existing Indian situation and had to say this :

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator by certain inalienable rights, that

among these are life, liberty, and the pursuit of happiness.

- American Declaration of Independence, 1776

Over two centuries have passed since Thomas Jefferson wrote those memorable words, which are still ringing in history, but a large section of

Indian society still regard a section of their own countrymen as inferior. This mental attitude is simply unacceptable in the modern age, and it is one

of the main causes holding up the country's progress.

[See Arumugam Servai Vs. State of Tamil Nadu,

11. The cancerous growth of the caste system had its echoes on the Supreme Court and it observed as follows :

The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly.

[Lata Singh Vs. State of U.P. and Another,

12. However, noticing the continuing practice of untouchability in many forms despite the constitutional injunction and legal prohibition by two

enactments, the bureaucracy entrusted to ensure the implementation of those laws had to wake up from its slumber. The Supreme Court vide its

judgment in Arumugam Servai Vs. State of Tamil Nadu, , had observed as follows:

We would also like to mention the highly objectionable two tumbler system prevalent in many parts of Tamil Nadu. This system is that in many tea

shops and restaurants there are separate tumblers for serving tea or other drinks to Scheduled Caste persons and non-Scheduled Caste persons.

In our opinion, this is highly objectionable, and is an offence under the SC/ST Act, and hence those practising it must be criminally proceeded

against and given harsh punishment if found guilty. All administrative and police officers will be accountable and departmentally proceeded against

if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits.

Uthapuram Wall"" - Uncovered :-

13. It is in this backdrop, Uthapuram, a non descript village near Madurai city shot into prominence though for wrong reasons. A wall running 600

feet was erected to divide the Scheduled Caste section from the main village. It made the Scheduled Caste people to take a detour of more than

2-1/2 kms. to reach the other side. Significantly, the Tamil Nadu Untouchability Eradication Front (for short TNUEF) undertook a survey in the

villages around Madurai. The report given by it identified various caste practices adopted by Caste Hindus against Scheduled Castes in those

areas. Atrocities unlimited :

14. The TNUEF in Uthapuram found extensive practices of Untouchability. It is necessary to refer to the caste practices found in the Uthapuram

village. In Uthapuram village, the scheduled caste people are not allowed to worship in the Muthalamman Temple including the worship of the

Peepal tree found in front of the temple. Whenever they built a small bridge over

the sewage canal, they were demolished. The sewage water let out from the Caste Hindus got mixed with the water line of the Dalit people. The Dalit people are not allowed to put up Arches and decorate the streets during functions held in their houses. Most significantly, they found a brickwall of 600 feet was erected to prevent the Dalit people from entering into Caste Hindus streets.

15. The report of the TNUEF became an eye opener. It hit the headlines of national newspapers. About 200 people of the South Street, Uthapuram sent a representation to the Tahsildar not to grant patta in S. No. 433/21 lying in front of Muthalamman Temple on the ground that it was used by the public in general and pattas should not be granted in favour of one individual and in favour of a section of a caste Hindus. When public opinion mounted against the existence of caste wall between the two groups in bringing ignominy and blatant caste discrimination. The State Government unable to bear the public protest, helped to demolish a portion of the brickwall and provided a thoroughfare into the street of the main village on 6.5.2008. On the day of demolition, over 100 strong police force including the top officials of the District administration supervised the demolition on the direction of the State Government. While it brought great excitement for the scheduled caste people of the village, the caste Hindus irked by such move held a counter protest. They left the village enmasse and protested against the action. This led to several unwanted incidents leading to filing of criminal cases against both sides by the District Police.

AIDWA advances the cause :-

16. On October 1, 2008 as a sequel to the demolition of the Wall, Dalit houses were attacked. More than 70 houses in the Dalit settlement were targeted. Ironically, the reprisal was on a day before the 139th Birthday of the Mahatma Gandhi, who tirelessly fought for the eradication of untouchability and the day was declared as an Anti Untouchability Day.

17. It was at this stage, the All India Democratic Women's Association (AIDWA) represented by its Madurai District Secretary S.K.Ponnuthai filed a writ petition before this court in W>P.(MD) No. 11072 of 2008 seeking for a direction to the respondent State to take precautionary measures under the provisions of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 in Uthapuram and other

vulnerable areas and also to provide adequate compensation to the affected scheduled caste people.

Court steps in :-

18. The said writ petition was heard by a division bench of this court and was disposed of by an order dated 22.01.2009. The division bench

found that already the State Government had appointed an one man commission headed by a retired District Judge to go into the death of one

Suresh, S/o.Karupiah and who lost his life due to commotion on 04.11.2008 in E.Kottaipatti village, Peraiyur Taluk. It was fallout of the tension

prevailed in Uthapuram village. The one-man commission was notified by G.O.Ms. No. 1265, dated 06.11.2008. The division bench in

paragraphs 6 and 7 gave the following interim directions :-

6....we are of the considered opinion that the Commission which has been directed to hold an enquiry in respect of the incident resulting in the

death of an individual on 04.11.2008 in E.Kottaipatti village of Peraiyur Taluk, can be asked to visit the Uthapuram Village also to enquire into the

various grievances expressed by the petitioner on behalf of the people of Scheduled Caste community of the said village. Inasmuch the

Commission has been directed by the State Government in G.O.Ms. No. 1265 dated 06.11.2008 which is confined to the incident happened on

04.11.2008 in E.Kottaipatti village, while this Court is not inclined to interfere with the work of the said Commission, this Court is of the

considered view that the service of the said Commission can be utilized for the purpose of getting a report as regards the grievances of the

Scheduled Caste people of Uthapuram Village by directing the said retired District Judge to visit the Uthapuram Village also.

7.In order to facilitate the Commission to carry out the above said exercise, this Court feels it appropriate to direct the Secretary of the District

Legal Services Authority, Madurai also to accompany the Commission on the date and time when the Commission decides to visit Uthapuram

Village. We accordingly, direct Thiru S.Tirupathi, retired District Judge who has been appointed as Commission of Enquiry in G.O.Ms. No. 1265

dated 06.11.2008 to visit along with the Secretary of the District Legal Services Authority, Madurai on the date and time to be decided mutually

by both of them, hold a full-fledged enquiry into the various allegations relating to the alleged damage to men and material caused on

01/02.10.2008 at Uthapuram village and based on such spot enquiry, they are directed to submit a joint report to this Court in order to enable this

Court to ascertain the facts and pass appropriate orders, depending upon the outcome of such report. Such exercise shall be carried out and the

report shall be filed within four weeks from the date of receipt of a copy of this order.

19. The matter was again listed before an another division bench on 4.8.2009. Objections were raised regarding the enquiry of one man

commission. In paragraphs 3 to 8 of the order, the division bench had observed as follows:

3.The main objection of the respondents to the recommendations made by the Commission is that the police officers were not examined and that

without reference to any medical record, the Commission had recommended payment of adhoc compensation and that therefore, such a

recommendation cannot be accepted.

4.However, we find from the report of the Commission that immediately after the occurrence, a medical camp was organised by the Government

Health Department in the Village. The relevant portion of the report of the Commission reads as follows:-

We submit, that the fact, that a Medical Camp was organized by Government Health Department in the village after the occurrence, would go to

prove the fact that the number of victims injured is on the higher side. We submit that bearing all these circumstances in mind, we have to proceed

on the basis of the allegation in their affidavits and personal narration on 7.4.2009.

5.The fact that a medical camp was organised by the Government Health Department is also accepted by the District Collector in his counter

affidavit. In paragraph 19(1) of the counter affidavit filed by the District Collector in January 2009, it is stated as follows:-

On the direction given by the Collector, Madurai, team consisting of doctors from the Primary Health Centre, Elumalai was deputed to the village.

This is being done for every village immediately after a law and order problem so that people who sustained injuries could be attended to on the

spot. In view of the fact that on 1.10.2008, there was a major law and order incident between two section of people who resorted to stone

throwing, bomb throwing etc , and hence the District Collector thought it fit to send a medical team to attend to the injured, if any. It is prudent

action by the District Administration.

6.From the report of the Commission and the counter affidavit of the District Administration, it is clear that a medical camp was certainly organised

by the Health Department after the occurrence and that there is no dispute on either side about the medical camp conducted. The actual dispute is

as to whether the occurrence was directly as a result of police action or as a result of two groups fighting each other. This is something which has

to be resolved in the course of final hearing of the Writ Petition, after considering the report of the Commission with the relevant records on the

basis on which the Commisison arrived at such a finding. In fact, the recors of the Health Department which organised medical camp are not now

before Court. Therefore, prima facie, when it is seen that there was a medical camp organised and that there were some injuries, we are of the

considered view that as an interim measure, the recommendation of the Commission for payment of compensation to the injured persons alone can

be accepted without going into the merits of the rival claims and without recording any finding as to whose fault it was.

7.The exercise of calling for the report of the Government Health Department and examining the records of the medical camp and a detailed

enquiry into the actual amount to be paid or not to be paid will take its time. Now, a period of more than ten months have passed from the date of

the alleged occurrence. Therefore, when we made a suggestion that the respondents could make payment of compensation atleast to those who

have suffered in the occurrence irrespective of whose fault it was, the suggestion was gracefully accepted by the learned Additional Advocate

General.

8.In view of the above, there will be an interim direction to the respondents to pay as an interim measure the compensation as fixed by the

Commission only in respect of those who have suffered actual physical injuries. It is made clear that this order is passed without prejudice to the

claim made on behalf of the petitioners and the contentions raised by the

respondents, all of which may have to be adjudicated at the time of final hearing. The respondents shall disburse the interim compensation within a period of six weeks from the date of receipt of a copy of this order. The respondents are also directed to produce the records of the medical camp organized by the Government Health Department immediately after the occurrence. The amount of compensation shall be disbursed through the District Legal Services Authority and the beneficiaries shall be identified by the learned counsel for the petitioners. Post this matter after six weeks.

Temple Entry denied :-

20. Even earlier a suit was filed in O.S. No. 70 of 2008 which was pending before the District Munsif Court. Subsequently, when the temple

festival for Arulmigu Mariamman and Arulmigu Sathiya Muthalamman was conducted during August, 2009, once again there was a dispute

between the Caste Hindus and the scheduled caste people of the village. This led to formation of a peace committee by the revenue officials. As

there was no hope for any settlement, an order was passed on 12.8.2009 by the Inspector of Police, Elumalai Circle, Madurai District refusing to

grant permission for conducting the festival. At this juncture, one V.Marimuthu Pillai claiming to be the trustee of the temple filed W.P. No. 8290 of

2009 before this Court seeking to challenge the order of the Inspector of Police prohibiting them from conducting temple festival. The same person

also filed another writ petition in W.P. No. 8338 of 2009 seeking to challenge an order passed by the Tahsildar, Peraiyur and Executive

Magistrate dated 19.8.2009 by which the power was exercised under the provisions of the Cr.P.C to avert the breach of peace. Pursuant to the

directions issued by this court and on the basis of the preliminary findings, the State Government had accepted the recommendations made by the

Committee appointed by this Court. Having found the Scheduled Caste people were subjected to harassment, it had granted compensation as

suggested by the Commission by G.O.Ms. No. 920, Public (Law and Order) Department, dated 12.09.2009.

Court's Door knocked Again :-

21. It was at this juncture, six petitioners who are the residents of South Street, Uthapuram village, filed W.P.(MD) No. 10500 of 2010 seeking

for a direction to the respondents 2 and 5 to provide protection of para military

forces to the writ petitioners to worship the peepal tree situated at Natham Poramboke in front of Muthalammal Temple and also further direction to the respondents 1 to 3 to remove all disabilities imposed on the members of the writ petitioners as they were Adi Dravidar community and in the name of untouchability such disabilities are imposed and also to restore their civil rights to lead a dignified life as well as for a direction to the fourth respondent to facilitate the smooth transition of this process.

22. Even before the said writ petition was filed, certain other persons belonging to the same village filed writ petitions before this court. One

Periasami, S/o.Veetteli @ Periakaruppan, resident of the said Uthapuram village filed W.P.(MD) No. 10365 of 2010 seeking for a direction to the

first respondent to hand over the investigation in Crime No. 193 of 2008 on the file of the Ezhumalai Police Station to the third respondent for fair

and proper investigation and to take action against the errant police officers under the Act for negligence in their duty and to direct the second

respondent to implement Rule 13 in Uthapuram regarding social composition of police recruitment and to direct the fourth respondent to engage all

statutory mechanisms of the Act in Uthapuram in order to restore the feelings of security in the minds of people.

23. W.P.(MD) No. 10373 of 2010 was filed by one Paulraj, S/o.Ayyanan belonging to the same street in the same village, seeking for a direction

to the second respondent to reopen and hand over the investigation in Crime No. 55 of 2008 on the file of Ezhumalai police station to any other

police officer not below the rank of Superintendent of Police, who is sensitive to the issues of caste prejudice, after taking into consideration the

provisions of the SC&ST (Prevention of Atrocities) Act for fair and proper investigation and also to provide relief amount as per the provisions of

the said Act and to take action against the errant police officer for their negligence of duty as well as dereliction of duty.

24. In W.P.(MD) No. 10376 of 2010, the petitioner is one Rajammal, W/o.Mahalingam belonging to the same street and the same village.

She filed the writ petition seeking for a direction to the Home Secretary, Government of Tamil Nadu to hand over the investigation in Crime

Nos.152 of 2008 and 153 of 2008 on the file of the Inspector of Police, Ezhumalai Police Station, Peraiyur Taluk to the third respondent CBI for

fair and proper investigation and to take action against the police officers under the provisions of the SC&ST (Prevention of Atrocities) Act for

their negligent in their duty and for a direction to the Home Secretary to implement Rule 13 of the said Act in Uthapuram village regarding social

composition of police recruitment and to direct the fourth respondent to engage all statutory mechanisms of the Act in Uthapuram so as to restore

the feelings of security in the minds of the people.

25. W.P.(MD) No. 10415 of 2010 was filed by one Subbulakshmi, W/o.Ganesan seeking for relief in respect of handing over crime Nos.147 of

2010 and 141 of 2008 to the CBI and for similar prayer as that of W.P.(MD) No. 10376 of 2010.

26. W.P.(MD) No. 10583 of 2010 was filed by N.Shanthi, D/o.Sankaralingam for withdrawal of case in Crime Nos.141 of 2008 and 147 of

2010 on the file of the Inspector of Police, Ezhumalai Police Station and to hand over the case to the CBI for investigation by the competent police

officer and to file the final report before the jurisdictional magistrate.

27. When these matters came up before this court on 16.8.2010, this court admitted the writ petitions. In M.P. (MD) Nos.2,2 and 2 of 2010 in

W.P. (MD) Nos. 10365, 10376 and 10415 of 2010, the prayer is to transfer the Superintendent of Police, Madurai and the Inspector of Police,

Ezhumalai Police Station to some other place by way of interim direction.

28. In M.P.(MD) No. 1 of 2010 in WP (MD) No. 10365 of 2010, the prayer is to stay further proceedings in Crime No. 193 of 2008. In M.P.

(MD) No. 1 of 2010 in WP (MD) No. 10376 of 2010, the prayer is to stay further proceedings of Crime No. 152 of 2008. In M.P. (MD) Nos.

1 and 1 of 2010 in WP (MD) Nos. 10415 and 10583 of 2010, the petitioners seeks to stay further proceedings in Crime Nos.147 of 2010 and

141 of 2008 on the file of the Ezhumalai Police Station. In all these M.Ps , notice was taken by the learned Special Government Pleader.

29. In M.P.(MD) No. 1 of 2010 in WP (MD) No. 10500 of 2010, one Pushpam, W/o.Basi, the then President of Uthapuram Village Panchayat,

P.Selvarajan, P.Sivaji and C.Murugan sought to implead them as party respondents in W.P.(MD) No. 10500 of 2010. When the matter came up

before this court on 03.09.2010, the matter was directed to be posted along with main writ petitions. On 10.12.2011, this MP was ordered and

they were impleaded as party respondents 8 to 11.

30. All these writ petitions came to be posted on being specially ordered by the Administrative Judge of this court vide order dated 08.12.2011.

When these matters came up on 10.12.2011, this court directed the Superintendent of Police, Madurai District to file a status report on or before

16.12.2011. Accordingly, status report was filed by the Superintendent of Police Mr.Asra Garg, IPS along with a copy of the agreement reached

between the two warring groups in the village of Uthapuram coming under the Ezhumalai police station limits and the past events that took place.

31. Subsequent to the filing of the present writ petitions, it transpires that the Scheduled Caste people of the village led by the activists of TNUEF

attempted to enter into the temple along with certain elected representatives of legislative assembly. In Uthapuram village alone as per the report of

the police 495 persons were arrested and prohibitory orders were imposed u/s 144 Cr.P.C. In the entire district of Madurai, around 586 persons

were arrested. Around 2000 police were posted to ensure that no untoward incidents took place. Will power wields the key :-

32. Thereafter, when the matter came up for hearing on 10.12.2011, this court directed the Superintendent of Police, Madurai Rural Mr.Asra

Garg, IPS to appear before the Court and also to file a status report on the ongoing disputes between the Scheduled Caste people and the Caste

Hindus of Uthapuram village. Accordingly, the said officer was present and filed the status report. He also at length had explained the various steps

that were taken by the State and the development that took place in the Uthapuram village. In the report he had stated as follows:

IV.In order to make a fresh attempt to bring peace between both the warring groups, leaders from both the communities from outside the village

having influence over the villagers of both the communities were engaged and involved in this process. Accordingly a preliminary meeting was held

in Uthapuram village on 15.10.2011 in Police Out Post in which myself, Additional Superintendent of Police, Crime, Madurai District and DSP,

Usilampatti and leaders from both the communities participated. All those present expressed their views. Both the sides were advised to iron out

their differences to make lasting peace.

34. In the final round of discussions between the representatives of two

communities held in the office of the Superintendent of Police, Madurai

Rural, Mr. Asra Garg, IPS and due to his tireless efforts, an agreement was reached and signed by the representatives of both sides. Some of the

agreed terms as set out in the report reads as follows:

a. Pillaimar community people accepted that they have no objection to the SC community people worshiping in the Muthalamman temple. Similarly,

the SC(PL) community people have accepted that the management and administration of the temple will rest with Pillaimar community people.

b. SC community people agreed that there is no need for demolition of compound wall around the temple if they are permitted to enter the temple.

c. A place has been identified for bus shelter near the police OP which is acceptable to the SC community people and hence SC community

people have dropped the demand of constructing a bus shelter in the temple premises. Similarly, Pillaimar community people accepted to give the

said land for construction of bus shelter.

d. Pillaimar community people accepted the demand of SC community people for broadening the new pathway by removing obstructions and also

to withdraw the case filed by them in the Civil Court objecting to the demolition of the old wall.

e) Both the sides have also accepted to withdraw criminal complaints lodged against each other which are under investigation so as to ensure

lasting peace in the village.

Historic Agreement :-

34. However it will be important to extract the terms from the original agreement (written in Tamil) which is as follows :

1. gs;sh; rKjhaj;jpdh; Kj;jhyk;kd;> khhpak;kd; Mya topghL nra;tjw;f;F gps;iskhh; rKjhaj;jpdh; mDkjpgf;f Ntz;baJ.

2. tpohf;fhyq;fs;py; Njhuzq;fs;> rPhpay; iyl;Lfs; cj;jGuk; g];];lhg;gpy; itj;Jf;nfh;s,U rKjhaj;jpdUk; rk;kjpgf;fg;gl;lJ.

3. cj;jGuk; kf;fs;; gad;gLj;j epow;Fil xd;wpid jw;NghJ NghyP]; OP Mf;nray;gl;L tUk; fl;blj;jpd; xU gFjpia mfw;wp jf;f,l trjpAld; mikf;f,U

rKfj;;jpdUk; rk;kjpgj;jdh;. fl;bl,ltrjpia gps;iskhh; Vw;ghL nra;J juntz;Lk;.

4. jw;n;ghJ Vw;gLj;jg;gl;Ls;s Gjpa ghijapy; cs;s,lw;ghLfis mg;Gwg;gLj;jp ghijapid mfyg;gLj;j Ntz;baJ>,jw;;F gps;iskhh; rk;kjpgj;jdh;.

5.Gjpaghij Rth;,bg;G rk;ge;jkhf gps;iskhh; njhlh;e;Js;s tof;fpid mth;fs; thg];
ngw Ntz;baJ.

6 , Ujug;gpdh; kPJk; gjpe;Js;s tof;Ffis KbTf;F nfhz;;Ltu khtl;l SP mth;fspd;
cjtpapd; Kyk; jPh;T fhz Ntz;baJ.

7.Kj;jhyk;kd; Mya,lk; rk;ke;jkhd gl;lh ngWtJ gw;wp,Ujug;gpdUk; gpd;dh; chpa
Kiwapy;; khtl;l eph;thfj;ij mDf Ntz;baJ.

8.Kj;jhyk;kd;> khhpak;kd; Mya chpik> eph;thfk;> gukhkpg;G Mfpait gps;iskhh;
trk;,Ug;gJ Nghd;Nw njhlh;e;J,Uf;fNtz;baJ.

9.cj;jGuk; fpuhkj;jpy; Vw;gLfpw gpur;rpidfSf;F fhty;JiwiaAk;> khtl;l
eph;thfj;jijAk; mDfp rhpahd Kiwapy; jPh;Tfis,UrKjhaj;jpdUk;;Nkw;nfhz;L

rl;l; XOq;fpid gukhkpf;f xj;Jiof;f Ntz;oaJ.

10.vjph;fhyj;jpy;;U rKjhaj;jpdUk; gu];guk; ed;ik> jPikfis gfph;e;J
xj;JiOg;NghLk;> xw;WikNahLk; tho;tJ. Nkw;gb KbTfs; jpU rpd;kah

NrhkRe;juk; kw;Wk; jpU.Nf.MjpKyK; MfpNahh;fs; Kd;dpiyapy; Nkw;nfhz;sg;gl;lJ.

Another Vaikam at Uthapuram :-

35. Subsequent to the agreement reached between the parties, the Scheduled Caste people of the village were allowed to enter the temple to give

their offerings on 10.11.2011. The news report appeared in the Hindu, an English Daily covering the said incident (a copy of which was produced

before the Court) reads as follows:

The Dalits of Uthapuram village near here, where the "untouchability" wall was demolished in 2008, on Thursday entered a temple under the

control of the upper caste Hindus, with police protection.

Though scores of upper caste Hindus received the 11 Dalit persons outside the temple with folded hands, the scene was marred by the loud wails

of women from the nearby streets, who were opposed to the entry of Dalits to their temple.

The Dalits, led by their leaders K.Ponnaiah and Sankaralingam, offered prayers at the Sri Muthalamman, Sri Mariamman temple around 4 p.m.

They offered a garland, coconuts and fruits to the presiding deity.

The priest performed "puja" and "deeparathana," even as Madurai (Rural) Superintendent of Police Asra Garg, along with a huge posse of

policemen, waited outside the temple.

The Communist Party of India (Marxist), instrumental in demolishing the wall

that divided the Dalits from the upper caste Hindus, hailed the temple entry as a "historic" event.

We are entering the temple premises for the first time after 1989," said Mr.Ponnaiah. The Dalits used to offer prayers at the peepul tree on the temple premises during the festival of the Karuppasamy temple (belonging to the Dalits).

The devotees, who perform the role of Lord Karuppasamy, Vairavan and Agni, used to go around the peepul tree as a ritual.

Our belief is that the ritual will keep the evils out of our village. But it was stopped after people threw stones at us during the festival in 1989," he said. Since then, there were clashes between the two groups, followed by the construction of the wall.

What next ?

36. The Superintendent of Police, Madurai Rural Mr.Asra Garg, IPS also in his report made the following recommendations :-

VIII) Several criminal cases were registered against both sides and are pending. As mentioned above in the said agreement we are taking steps for early disposal of these criminal cases by mutual consent.

IX) The other issues i.e ,

i) Erection of Bus Shelter at a place agreed by the Pillaimar Community.

ii) Broadening the new pathway by removing obstructions,

iii) Starting of improvement of drainage system etc , will further help to cement the gap between the two communities as already agreed to by both

of them in the said agreement. Moreover, during interaction with villagers, it was found that imparting vocational skills to the youth, easy loans for

self owned business, organizing job mela etc , will help in ensuring long lasting peace in the village.

X. Hence after decades of unrest in the village, better sense prevailed on both the warring sides who understood the futility of waging war against each other and hence peace descended on the village after a long wait.

37. In the light of this historical agreement reached between the groups due to the efforts of the District Administration more particularly the police

led by Mr.Asra Garg, IPS, the reliefs claimed in these writ petitions have become almost infructuous. Insofar as the prayer in W.P.(MD) No.

10500 of 2010 was concerned, it is needless to state that the District Administration will take all steps to ensure peace and to implement the terms of settlement in its letter and spirit, so that the strifes between two sections for over two decades will be remembered as a thing of the past and the constitutional spirit of Article 17 can be firmly established.

38. The District Administration (R-5) will also give suitable orders within two weeks from today to implement all the demands agreed to in the agreement, dated 20.10.2011. The erecting of bus shelter and removal of obstruction in the pathway and improvement in drainage system shall be implemented at the earliest. They will also monitor the terms of the agreement between the parties. With reference to the withdrawal of criminal cases pending against both parties, as suggested by the Superintendent of Police, Madurai, early steps will be taken to recommend to the Government for issuing appropriate orders for withdrawal of various crime numbers after complying with all legal requirements under the provisions of the Cr.P.C. A decision in this regard shall be taken within eight weeks from the date of receipt of copy of this order and the first respondent State shall issue appropriate orders to the District Administration to withdraw those cases.

39. The Superintendent of Police, Madurai District shall continue to monitor the happenings in the village and to take appropriate corrective action.

He shall be responsible in implementing the agreement reached between the two groups which was filed before this court and accepted as part of the settlement of issues arose between the two sections of the Uthapuram village.

40. Though Compensations were provided on the basis of the recommendations made by the report submitted by the committee appointed by the court, the offences committed on the Scheduled Caste people are offences attracting u/s 3 of the SC and ST (Prevention of Atrocities) Act. Rule

12(4) provides for grant of relief as per Annexure I in the schedule. The amount of compensations have been revised by the Central Government

by way of Gazette notification, dated 23.12.2011. The said compensation will have to be given in two installments, one before trial and an another

after conclusion of the trial. In this case, the parties have reached compromise on the major social issues and have also agreed to withdraw the

criminal cases, the District Administration without waiting for completion of any

trial shall grant compensation in terms of the offence committed against the scheduled caste people as per the enhanced compensation ordered by the Central Government vide its notification dated 23.12.2011.

The same shall be paid within 12 weeks from the date of receipt of copy of this order. If already any amounts were paid towards compensation pursuant to G.O.Ms. No. 920, dated 12.09.2009, the same can be adjusted against balance compensation to be paid. Apart from the recommendations made by the court appointed committee and accepted by the State Government, if there are any other claims made by other members belonging to Scheduled Castes of Uthapuram Village, those claims also should be entertained by the District Collector and appropriate compensation should be paid in terms of the SC and ST (Prevention of Atrocities) Act, 1989.

A word of Praise :-

41. This Court places on record the untiring efforts of the Superintendent of Police, Madurai, Mr. Asra Garg, IPS in not only helping this court from arriving at a proper resolution of the dispute, but also for brokering peace between the two warring groups. The Court also places on record services rendered by counsels appearing in this case for helping this court to give proper direction.

42. All the writ petitions are disposed of with the directions contained in paragraphs 38 to 41. No costs. Consequently connected miscellaneous petitions stand closed.

EPILOGUE :

The Uthapuram experience shows that if the Will of the people are strong, they can find solutions among themselves even in the absence of a State intervention. Such was the fundamental duty imposed under Article 51-A(e) of the Constitution. Ultimately Uthapuram message is very clear. It was a case of a Wall (caste) which divided but their Will (power) united them.