

(2008) 12 MAD CK 0108

In the Madras High Court

Case No : Writ Petition No. 18439 of 2008 and M.P. No's. 1 to 3 of 2008

S. Manokaran

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Constitution of India, 1950 — Article 215, 226

Criminal Procedure Code, 1973 (CrPC) — Section 145(1), 154(3), 156(3), 200, 36

Penal Code, 1860 (IPC) — Section 147, 294, 341, 452, 506

Citation : (2009) WritLR 342

Hon'ble Judges : A.K. Ganguly, C.J;K. Chandru, J

Bench : Division Bench

Advocate : S. Sathiya Chandran, for the Appellant; Raja Kalifullah, G.P. R1 to R7 and N. Jothi, for V. Karthikeyan, (R8), for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. This writ petition is filed for a direction to respondents 1 and 2 to constitute a Committee consisting of senior I.A.S. and I.P.S. cadre Officers

who are known for their integrity and commitment within two days and direct them to visit the Salem City and examine the vital aspects of the

violation against the order of this Court made in W.P. No. 15156 of 2008 and W.P. No. 15824 of 2008 dated 27.6.2008 and 07.07.2008

respectively and submit a status report within three days with regard to the role of the 8th respondent and such other persons in crippling the

district administration, police as well as revenue, which resulted in violation of orders of this Court.

3. A further direction is sought to the third respondent to verify in person as to how the police machinery in Salem City has become ineffective and

why the DIG of Police, Salem and the Commissioner of Police, Salem City, who are fifth and sixth respondents respectively and their subordinates

defaulted and neglected in exercising their power in the burning situation indicated by the writ petitioner in the present writ petition as well as in

earlier writ petitions in W.P. Nos. 15156 and 15824 of 2008 and submit a status report within five days.

4. The petitioner also sought for further direction to the first respondent to pay a just and reasonable amount as compensation to the victims of

lawlessness generated by the public servants functioning under the first respondent and also for a direction to respondents 9 and 10 to deposit a

sum of Rs. 10 lakhs into this Court as a token arrangement for disbursing it as compensation to the affected people within three days.

5. This petition is filed by one S. Manokaran, a member of the Bar who also claims to be the All India General Secretary of Indian Association of

People's Lawyers. When this writ petition came up for orders on 31.7.2008, this Court recorded the undertaking of the learned Government

Pleader that there will be no demolition of the building in question after this Court had passed an order of restraint and also to submit a reply, if any

and the other respondents have been directed to be served with private notice. Further extension was granted for filing the counter affidavit and

status quo order was also passed on 28.8.2008.

6. Subsequent to the direction, detailed counter affidavits have been filed by the eighth respondent dated "nil" (August 2008); by the fourth

respondent dated 18.8.2008; and by the sixth and seventh respondents dated 29.8.2008. The sixth and seventh respondents have also filed typed

set of papers containing documents in support of their stand. The petitioner has filed a rejoinder affidavit to the counter affidavit filed by the fourth

and eighth respondents.

7. Earlier one G. Haribabu, claiming to be the General Secretary of Centre for Protection of Civil Liberties filed W. P. No. 15156 of 2008,

seeking for a direction to the police Authorities to take cognizance of the complaint dated 15.2.2008 and to restore the said occupied properties at

Angammal Colony, Salem Town. He also sought for a direction to the CBI to hold a fair enquiry. This Court, by an order dated 27.6.2008,

passed the following order:

4. There is a complaint dated 20.1.2008 by one of such persons who is said to have been evicted and it appears from such complaint that possibly

the private respondents 6 to 11 acted with the help of some political parties in the State. We are not going into those questions as it is difficult to

decide such factual controversy.

5. We merely give liberty to the actual residents of the area to lodge specific complaint with the Commissioner of Police, Salem City. We make it

clear that if any such complaint is made with the Commissioner of Police, the Commissioner of Police will hold an immediate inquiry in the matter

and will promptly bring the offenders to book. While taking such steps, the Commissioner shall be guided by legal provisions and by obviously

ignoring any political affiliations of any parties. We want the Commissioner to restore the law and order in the area if the same has been violated.

We further direct the Commissioner to ensure that no person is evicted from his home without any authority of law. Proper steps should be taken

to see that the evicted persons enter their original home if there is no legal bar. The Commissioner shall make inquiry before restoring that position.

We, however, make it clear that we are not making any observation with regard to the right, title and interest of any person's property.

6. One thing is made clear that if any person is evicted by force, the authorities of law and order must restrain such action if they are informed in

time. We are taking this view having regard to the fact that the persons who are affected are slum dwellers and obviously are poor people. So, the

authorities of law and order shall see that the persons of weaker sections of the community are not subjected to harassment at the instance of those

who have the strength of money and power behind them. We expect that the Commissioner shall act in terms of the directions given in this order.

7. With these directions, the writ petition is disposed. We make it clear that this order is passed in favour of the actual residents of the area and not

on the basis of this writ petition. The Commissioner will act in terms of the order within two weeks from the date of filing of any complaint. The

connected Miscellaneous Petitions are closed.

(Emphasis Added)

8. Likewise, an organisation naming itself as the Centre for Protection of Civil Liberties represented by one P. Dhamayanthi, claiming to be its Joint

General Secretary had filed W.P. No. 15824 of 2008 to declare 184 years old historical and heritage valuable building of Salem Collectorate as

ancient monument and consequently maintain, protect and save its heritage value and not to demolish the same. This Court, by an order dated

7.7.2008, disposed of the said writ petition. The directions found in the order is quoted below:

2. With such prayer, a representation was made on 26.6.2008 and on the basis of such representation, the petitioner submits that the Central

Inspection Team came to see the said building on 3.7.2008. The petitioner's prayer is that the authorities must consider the representation of the

petitioner in its proper perspective.

3. Considering these facts and also after seeing the pictures of the said building, we direct the petitioner to make a fresh representation along with a

copy of this order to the respondents. If such representation is made within a period of seven days from today, the authorities should make an

enquiry and consider the representation in its proper perspective and pass a reasoned order. Before the aforesaid steps are taken, no effort should

be made to demolish the building in question. If no such representation is made within the time stipulated above, the authorities are at liberty to take

steps in accordance with law. The writ petition is thus disposed of. There shall be no order as to costs. Consequently, M.P. No. 1 of 2008 is

closed.

(Emphasis Added)

9. It was stated that after these two orders were obtained, the ninth respondent had filed a criminal complaint against those two petitioners. The

said criminal complaint has also been registered by Salem Town police station in Crime No. 1212 of 2008 under Sections 147, 452, 294(b), 341

r/w. 506(ii) I.P.C. Thereafter, several representations were sent by the two original writ petitioners but to no avail. Because of these developments,

the present petitioner herein, who was the counsel on record in the earlier writ petition, has come forward to file the present writ petition. On behalf

of the eighth respondent, two miscellaneous petitions have been filed. In M.P. No. 2 of 2008, it was prayed to decide the maintainability of the

present writ petition as a public interest litigation. In M.P. No. 3 of 2008, a direction is sought to make the petitioner to deposit Rs. 50,000/- as a

pre-condition to proceed with the writ petitions.

10. With reference to the prayer made in the writ petition, the District Collector, Salem, the fourth respondent in his counter affidavit, dated

18.8.2008 has averred in paragraphs 9, 11, 12, 14 and 15 as follows:

Para 9 : It is submitted that the allegations made in para 6 are totally incorrect. In so far as the allegations relating Angammal Colony is concerned,

already a Writ Petition has been filed before this Hon''ble Court in W.P. No. 15156 of 2008 wherein this Hon''ble Court has already held that

there is no serious complaints made by any of those persons who are allegedly evicted by force and liberty was given to the actual residents to file

complaints before the Commissioner of Police, Salem and if such complaint is made, the Commissioner of Police was directed to take appropriate

action in accordance with law. This Hon''ble Court has made it clear that the order passed in the Writ Petition is to facilitate the actual residents of

the area. The petitioners are fully conscious of the fact that the area called Angammal Colony is concerned, it belongs to a private party and the

authorities have no role to play on the title in the said issue. The petitioner, who in no way concerned with the land owners or alleged occupants, is

taking the issue for some ulterior motive and in the bargain commenting badly on the district administration.

Para 10: In pursuance of the directions of this Hon''ble Court in W.P. No. 15156 of 2008, the Revenue Divisional Officer, Salem inspected the

disputed site. The detailed enquiry held by him, revealed that one Tr. Kumarasamy Chettiar who has purchased the property from one Thiru

Ramasamy Gounder during 1922 in Document No. 1912. The said T. Kumarasamy Chettiar sold 2.36 acres to one Thiru Muniya Gounder in

Document No. 2205/1928 by retaining an extent of 98 centres. The property in dispute lies in the above said extent. The said Thiru. Kumarasamy

Chettiar died leaving behind his two sons by name Poornia Chettiar and Arunachala Chettiar. The said Arunachala Chettiar died unmarried. The

Poornia chettiar also died leaving behind his two sons by name Chidambaram Chettiar and Venkatachalam Chettiar @ Muthusamy Chettiar who

also has died unmarried. The said Chidambaram Chettiar died on 20.01.2001 leaving six legal heirs as per the legal heir certificate of Musuri

Tahsildar''s D.Dis.B1/7593/2006, dated 20.01.2006. It is learnt that the

occupants of the said site settled with the said legal heirs after receiving adequate compensation by executing proper documents to the said legal heirs. None of them preferred any complaint of any sort to any one. The property is now covered with fence. Nobody is residing in the disputed property now. The disputed property is a vacant site. There is no Law and Order problem on the issue. Hence, the Revenue Divisional Officer, Salem passed an order on 4.8.2008 stating that no proceedings is necessary u/s 145(1) Cr.P.C.

Para 11: After receiving the order of the Hon''ble High Court in W.P. No. 15824 of 2008 on 8.7.2008 at 8.30 p.m. the demolition of the Collectorate building was immediately stopped on 8.7.2008.

Para 12: Based on the Hon''ble High Court's direction a committee was formed consisting of the District Collector, Salem, superintending Archaeologist and Superintending Engineer, P.W.D. and send a report to Government on the representation of the petitioner in W.P. No. 15824 of 2008. The Committee inspected the main building on 28.7.2008 and the superintending Archaeologist who as a technical expert observed in her report sent to the Government as below.

The building is architecturally not very significant except for the fact that it follows colonial style of architecture with huge halls/long verandahs as was the vogue then. The buildings apparently have no historical significance as no reference are was to them seen in the Salem Gazeteer Part I & II published in 1918. The memorial plaque of the 1st World War and that of the T.L.R. Chandran, I.C.S., First Officer Prohibition, Salem, now kept in the Campt Office of the District Collector may please be refixed at appropriate places. As the building possesses some structural artifacts of the District Museum at Salem, and Fort Museum, Chennai for display.

Para 15: It is submitted that the District Collectorate Office, Salem was housed in dilapidated Collectorate building which is more than 180 years old. In the said old dilapidated Collectorate building, there are various offices like Office of the Revenue Divisional Officer, District Adi Dravidar Welfare Office, Post Office, Metrological Office, Canteen, Assistant Elementary Educational Office, District Registrar Office, Agricultural Office, Information Centre etc. Which are in fragile and dilapidated condition. During rainy season, the records maintained by the above office are being

spoiled due to leakage of water. Further, there was no proper security for the records. Considering all these aspects, the District Administration has requested the Government for allotment of sufficient fund for construction of new Collectorate building. After several reminders, and sincere efforts taken by the 8th respondent the Minister from the district, the Government of Tamil Nadu sanctioned funds for construction of new Collectorate at Salem. On receipt of the sanction order, tenders were invited for demolition of the old Collectorate Buildings and other buildings in the campus. The successful contractor was awarded with the contract and the demolition work was started after following the procedure in June 2008. It is at that stage after the commencement of demolition, the present writ petition is filed alleging that the old building is a heritage building and should not be demolished even though no complaint was made by Archaeology Department claiming that this is a heritage building. In pursuant to the directions of this Hon"ble Court, a committee was constituted and the Committee had also submitted its report. The Government will consider the said report and take further action in the above matter.

(Emphasis Added)

11. Similar stand was taken by the sixth and seventh respondents in their common counter affidavit. A detailed counter affidavit has been filed by the eighth respondent, the then Minister of Agriculture, Government of Tamil Nadu (and presently a Minister without portfolio), refuting the allegations of malafides made against him.

12. Though the petitioner has made several allegations against the eighth respondent, he has not substantiated it in the manner known to law.

Perhaps, it is for that reason he has come up with the plea to form a Committee consisting of Senior Civil Servants. It is needless to state that it is

for the petitioner to prove such allegations and it is not for this Court to conduct a roving enquiry to find materials to support the case of the

petitioner. If any authority for the said proposition is required, an useful reference may be made to the decision of the Supreme Court in E.P.

Royappa v. State of Tamil Nadu reported in (1974) 3 SCC 3. The view taken in E.P. Royappa's case has once again been re-emphasized in the

case relating to M. Sankaranarayanan, IAS Vs. State of Karnataka and others, .

13. Further, the present writ petition is only confined to deputing senior I.A.S.

and I.P.S. Officers to visit the Salem City and find out the implementation of the orders of this Court. It must be stated that the prayer made by the petitioner is very strange. When this Court had passed final orders viz. on 27.6.2008 and 7.7.2008 in the earlier writ petitions and if the present petitioner finds that there was any violation, the only course open to the petitioner is to file a contempt application. In such cases, it is open to this Court to ascertain whether there was any violation of the orders of this Court and whether the orders of this Court have been complied with or not. On the contrary, it is not known as to how the petitioner being an advocate and a civil libertarian can come forward to file the writ petition, seeking direction of this Court to appoint a Committee of senior Civil Servants to go into the issue of violation of this Court's order. The violation of this Court's order has to be ascertained only by this Court and not through a Committee consisting of senior I.A.S. and I.P.S. Officers.

14. If the petitioner has information that his associates were threatened by any person or his civil liberties are hampered, it is well open to him to move the appropriate police station by making a specific complaint, and failing which, to move the Criminal Court with a private complaint. We are not called upon to constitute any Committee consisting of I.A.S. and I.P.S. Officers to go into the violation of the orders passed by this Court. It is only when the provisions of the Contempt of Courts Act, 1971 as well as the inherent powers of this Court vested under Article 215 of the Constitution of India are invoked, this Court can go into such issues regarding violations of the earlier orders of this Court. We feel that the present prayer made by the petitioner is misconceived and does not deserve any consideration in this writ petition.

15. In this context, it is necessary to refer to the latest decision of the Supreme Court reported in the case of Sakiri Vasu Vs. State of U.P. and

Others, , wherein in paragraphs 26 and 27, it is held as follows:

Para 26 : If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police u/s 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate u/s 156(3) CrPC instead of rushing to the High Court by

way of a writ petition or a petition u/s 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint u/s 200 CrPC. Why then should

writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

Para 27 : As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper

investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate

himself). The High Court should discourage the practice of filing a writ petition or petition u/s 482 CrPC simply because a person has a grievance

that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this

grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, u/s 156(3) CrPC before

the Magistrate or by filing a criminal complaint u/s 200 CrPC and not by filing a writ petition or a petition u/s 482 CrPC.

16. In the very same decision, the Supreme Court also dealt with the scope of power under Article 226 of the Constitution of India to order an

enquiry by the Central Bureau of Investigation and it is necessary to refer the following passages found in paragraphs 33 and 34:

Para 33 : In *Secy., Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* 15 (SCC vide para 6) this Court observed that although

the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record

comes to a conclusion that such material discloses prima facie a case calling for investigation by CBI or by any other similar agency. A CBI inquiry

cannot be ordered as a matter of routine or merely because the party makes some allegation.

Para 34 : In the present case, we are of the opinion that the material on record does not disclose a prima facie case calling for an investigation by

CBI. The mere allegation of the appellant that his son was murdered because he had discovered some corruption cannot, in our opinion, justify a

CBI inquiry, particularly when inquiries were held by the army authorities as well as by GRP at Mathura, which revealed that it was a case of

suicide.

17. In the present case, we do not find any material to order C.B.I. Investigation, especially when the petitioner has not moved any criminal Court

or lodged any complaint in the concerned police station by making any specific allegations against any of the respondents or the agents of those respondents.

18. Similarly, with regard to the direction sought for by the petitioner to the Director General of Police to conduct enquiry into the inaction of DIG

of Police, Salem and the Commissioner of Police, Salem City is concerned, we do not think, we are called upon to give any such direction. If the

respondents 5 to 7 have acted contrary to law, it is well open to the third respondent to take appropriate action departmentally, but this Court

cannot give any positive direction to take departmental action against respondents 5 to 7.

19. It should be noted that the Supreme Court has cautioned that in such PIL matters, no such direction can ever be issued. In this context, an

useful reference may be made to the decision of the Supreme Court in the case of Neetu Vs. State of Punjab and Others, . The following passage

found in paragraph 16 may be usefully extracted:

Para 16: As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else.

It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can

legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large

number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which,

as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra this Court

held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts

and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision.

(Emphasis Added)

Therefore, the second prayer made by the petitioner is also liable to be rejected.

20. It must also be stated that even in the earlier order in W.P. No. 15156 of

2008, this Court rejected the case of the petitioner (public interest litigant) and clearly stated that the order was passed in favour of the actual residents of the area and not on the basis of this writ petition. Therefore, if there is any violation of the said order, any of the aggrieved party ought to have come before this Court, failing which, the petitioner must have been authorised to espouse their cause in the manner known to law. Even the list of affected families with their names and full description was enclosed in the typed set. Only at the time of final hearing, learned Counsel for the petitioner had attempted to file one or two supporting affidavits received from the alleged affected parties.

21. Though the petitioner's counsel has filed a rejoinder to the counter affidavit filed by the eighth respondent, no such rejoinder has been filed to the common counter affidavit filed on behalf of the sixth respondent, Commissioner of Police. The District Collector has stated in paragraph 14 of his counter affidavit (extracted above) that the actual residents have not made any complaint. He has also stated in paragraph 10 that the occupants of the said land settled with their legal heirs after receiving adequate compensation by executing proper documents to the said legal heirs. None of them have preferred any complaint of any sort to any one and the property is now covered with fence and nobody is residing in the disputed property now and it is only a vacant site. Hence, the Revenue Divisional Officer, Salem passed an order on 4.8.2008 stating that no proceedings is necessary u/s 145(1) Cr.P.C. The said order is not challenged before any Court. These averments made by the District Collector and the Superintendent of Police are also not under serious challenge. Therefore, we have no clinching material to hold that there was violation of the order passed by this Court on 27.6.2008. We are also satisfied with the steps taken by the fourth and sixth respondents in implementing the order of this Court.

22. In respect of the second order dated 7.7.2008, the District Collector has clearly stated that their report has been sent to the State Government (the first respondent herein) with reference to the condition of the Collectorate building and other buildings in the campus. A Committee which was constituted had also submitted its report and the Government will consider the said report and take further action in the said matter. Committee's

recommendation has to be considered by the State Government and further decision has been taken only pursuant to the orders of the State

Government. Even in respect of the second prayer about the alleged violation of this Court's order dated 7.7.2008, we do not find any violation of

our order so as to appoint any Committee. The petitioner ought to have waited for the decision to be taken by the State Government and

thereafter should have taken a decision to question it in the manner known to law and should not have rushed to this Court without any cause of

action in this regard. We are not giving any direction in the public interest litigation at the instance of the petitioner. The prayer of the petitioner in

this regard is totally misconceived and devoid of merits. The prayer for compensation for the unspecified parties and for further direction to

respondents 9 and 10 to deposit amounts towards initial compensation does not arise in view of the findings rendered above. Hence, the writ

petition is liable to be rejected.

23. Mr. N. Jothi, learned Counsel leading Mr. V. Karthikeyan, learned Counsel for the eighth respondent and the learned Government Pleader

appearing for respondents 1 to 7 strongly contended that this writ petition filed by the petitioner is totally frivolous and it is a publicity oriented

litigation. Therefore, the petitioner must be mulcted with heavy costs. Mr. N. Jothi, learned Counsel had relied on the following decisions in the

case of Guruvayur devaswom Managing Committee and Anr. v. C.K. Rajan reported in AIR 2004 SC 561; and Dr. B. Singh Vs. Union of India

(UOI) and Others, . Mr. Raja Kalifulla, the learned Government Pleader had also supported his plea with the decision rendered in the case of

Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others, . There is no quarrel over the legal position propounded in those decisions.

24. However, in the present case, since the petitioner being a member of the Bar had only attempted to make a complaint about the violation of

this Court's order and wanted a Committee to go into the said violation, we are not persuaded to non suit the writ petitioner neither on the ground

of locus standi nor we are convinced that the matter should be dismissed with exemplary costs.

25. In the light of the above discussion, we have no hesitation to hold that the writ petition will have to be dismissed and accordingly, the same is

dismissed. However, there will be no order as to costs. Consequently, M.P. Nos. 1 to 3 of 2008 are also dismissed.

26. We have not dealt with the allegation of false criminal complaint lodged against the two members of the Bar referred to in the affidavit as it

does not come within the purview of this writ petition. Further, legal remedy is always open to them as pointed out in Sakiri Vasu's case (cited

supra). The said lawyers are at liberty to pursue their remedy, if any, in the manner known to law.