

(2017) 12 MAD CK 0077

In the Madras High Court

Case No : 22507 of 2017?and?W M P (MD)No 18791 of 2017

Sankar Kumar

APPELLANT

Vs

The District Collector & Anr

RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 12 MAD CK 0077

Hon'ble Judges : M.Venugopal, R.Tharani

Bench : DIVISION BENCH

Advocate : M.Venugopal, R.Tharani

Judgement

1. The Petitioner has come forward with the present Writ Petition seeking for the issuance of a Writ of Mandamus, directing the Respondents herein to construct the Manonmaniam Sundaranar Arts College at any alternative suitable place instead of in the property comprised in S.No.371, Kutrapanchan Falls Road, Panagudi, Tirunelveli District, on the basis of the Petitioner's representation dated 09.08.2017.

2. Heard the Learned Counsel for the Petitioner, the Learned Special Government Pleader for the first Respondent and the Learned Counsel appearing for the second Respondent.

3. No counter is filed on behalf of the Respondents 1 and 2.

4. According to the Petitioner, he is an Erstwhile Vice President of Panagudi Town Panchayat and he is one of the Committee Members of Manonmaniam Education Development Committee. As a matter of fact, the second Respondent/University had established one Manonmaniam Sundaranar Arts College at Panagudi, in the year 2010 and more particularly, in a rented building.

5. The version of the Petitioner is that the Hindu Religious and Charitable Endowments Board is possessing land in Survey Nos.460, 461 and 462

measuring an extent of 20 Acres, which belongs to Ramalingasamy Temple. While that being so, the Panagudi Town Panchayat passed a Resolution by making a request to the first Respondent/District Collector, Tirunelveli, to get the aforesaid extent of temple property transferred to the name of the first Respondent/District Collector for utilising the same for permanent construction of the building for the second Respondent/College, which is now under a rented building. A resolution was passed by the Panchayat and a request was also sent to the Respondents in this regard and that a copy of the Resolution and request were later submitted to the first Respondent/District Collector, Tirunelveli and also to the Hindu Religious and Charitable Endowments Department, Tirunelveli.

6. The grievance of the Petitioner is that during the year 2012, the District Revenue Officer had fixed the rate of land belonging to the Temple as Rs.4,69,000/- per Hectare and the same was communicated to the Respondents also. However, no action was taken by the Respondents. Per contra, the Respondents had taken necessary steps to construct the permanent College building at Survey No.371 situated at Kutrapanchan Falls Road, Panagudi, Tirunelveli.

7. At this stage, a perusal of the contents of Paragraph No.6 of the affidavit of the Petitioner in W.P.(MD)No.22507 of 2017 points out that adjacent to the proposed place of construction of the College building, there was a water body, viz., Vakkanam Pudur pond/tank and in the year 1988-1989, the Agricultural Engineering Department, in order to stop rearing of lot of cattle and for feeding purposes of such cattle, closed the same through the District Revenue Officer, Tirunelveli on 24.11.2017 and further that, the place, where the College is now being established, is very near to the Western Ghats, where dangerous animals are frequently moving and there is every likelihood of danger to the students studying in the said College. Indeed, according to the Petitioner, one Forest Guard, viz., Kandaiah got injured during the year 2006 due to an attack by a tiger. Likewise, one Kittu, a Villager died due to attack by a tiger and these deaths drew wide publicity through Newspapers in the same place.

8. The Petitioner, in his Writ Petition, has come out with a plea that the proposed College is far away from the town viz., more than 6 Kilometres and it is very difficult for the students as well as the parents of such students to travel all the way when there is no proper facility to the interior place where the College is being established. In reality, the College is being established at the deadend and there is no facility for the buses to enter and get back by taking a turn.

9. The Petitioner, in his Writ Petition, proceeds to aver that a sum of Rs.4,69,000/- was fixed as rate per Hectare for purchasing the Temple property. In this regard, the Petitioner emphatically projects an argument that with oblique motives, the second Respondent/Management had failed to avail that facility, which is very cheaper also and in fact, there are five alternative sites available within the town itself, which runs as under: "(1) land in S.No.322 Pushpavanam Road, Panagudi which is 1/2 km distance from the bus stand; (2) Ramalinga

temple land of HR&CE Department; (3) land in S.No.1354 near by the Panagudi Police Station; (4) Valliyur Panchayat Union Chathiram land; (5) land belongs to Panaivella Co-operative Society in S.Nos.301, 301/2, 316, 317/1, 317/2 C, 318 and 319/3 situated at Panagudi Village, Radhapuram Taluk, Tirunelveli District."

10. The Petitioner had addressed a representation to the Hon"ble Chief Minister of Tamil Nadu on 09.08.2017, narrating necessary facts and the second Respondent gave a reply stating that the Government had allotted the land comprised in S.No.371 at Kutrapanchan Falls Road, Panagudi, Tirunelveli District, for the proposed College and the second Respondent/University allotted a fund of Rs.1 Crore for the purpose of construction of the College and also stated that the second Respondent/Registrar, Manonmaniam Sundaranar University, Tirunelveli, is making efforts for obtaining funds from the Government. According to the Petitioner, except the above, there is no other communication whatsoever. Also, the Petitioner draws the attention of this Court that even general public and other educated persons, Traders Sangam, etc., addressed numerous representations to the first Respondent and Higher Authorities, wherein a request was made not to establish the College in question in the land at Panagudi in Survey No.371, Kutrapanchan Falls Road, Panagudi, Tirunelveli District and the College may be constructed in any alternative sites as afore-stated. Since there is no response from the Respondents, the Petitioner has filed the present Writ Petition.

11. In response, the Learned Special Government Pleader for the first Respondent/District Collector, Tirunelveli District, informs this Court that 2 Acres of land was assigned by the State Government to the second Respondent/University and that construction work had commenced. As such, no need has arisen now to shift the College to a different place.

12. The Learned Counsel for the second Respondent contends that the Writ Petitioner has no "locus standi" to file the present Writ Petition before this Court, because of the reason that choosing a location for construction of a College is an act to be performed by an Executive Authority and in that, the Petitioner has no role to play nor he can even step in. Also that, when the Petitioner has not established as to how his rights are affected or infringed, then the filing of the present Writ Petition is per se not maintainable in the eye of law and to lend support to his contention, the Learned Counsel seeks-in-aid of the order of this Court in R.Nanjappan v. The District Collector, Coimbatore & Others reported in 2005 Writ L.R. 47, wherein, at Paragraph No.2, it is observed as under: "2. Heard the learned counsel for the petitioner. In our opinion, this writ petition is to be rejected in limine. It is well settled that writ jurisdiction is discretionary jurisdiction. Even if there is violatin of any law, we are not bound to exercise our discretion under Art.226 of the Constitution. In J.R.Raghupathy v. State of Andhra Pradesh (AIR 1988 SC 1681), the Supreme Court observed that interference by the High Court in exercise of its jurisdiction under Art. 226 of the Constitution in the Government's decision regarding the location of Mandal

Headquarters on the ground of breach of guidelines is not warranted. In Chandra Singh V. State of Rajasthan (JT 2003(6) SC 20-Para 42) it was held that the writ jurisdiction is discretionary jurisdiction. Similar view was taken in Mafatlal Industries Limited V. Union of India (1997 [89] ELT 247 SC). Moreover, petitioner has not been able to show any of his rights has been violated or infringed by shifting the Village Administrative Office. This is not a fit case, in our opinion, for exercise of our discretionary jurisdiction under Art.226 of the Constitution. The writ petition is, therefore, dismissed."

13. Undoubtedly, the width and amplitude of the power of a Court of Law under judicial review is very limited. It cannot be gainsaid that a Court of Law cannot go into the aspect of a policy decision of the Government or question the wisdom of the Government in respect of any action/policy action taken by it. However, if the action of the State Government is in negation of the violation(s) of the provisions of the Constitution of India or any breach of Statutory Law, etc., then a Court of Law can intervene, provided the subject matter in issue in a given case suffers from arbitrariness, capriciousness and smacks of mala fides, in the! considered opinion of this Court. Also that, it is not for this Court to govern the administration.

14. A Court of Law cannot interfere with policy either on the basis it is an erroneous one or on the ground that a fairer, better or wiser alternative is very much available. In reality, the legality of the policy and not the wisdom or soundness of the policy is the subject matter of Judicial Review, as per the decision in Black Gold Rubber v. State of H.P. reported in 2008(2) Shim LC 298 : 2008 Latest HLJ 26(HP).

15. Besides the above, coming to the aspect of the present Writ Petition being filed by the Petitioner under the caption "Public Interest Litigation", this Court is of the considered view that the present Writ Petition, considering the facts and circumstances of the case, which float on the surface, is not a Public Interest Litigation and by no stretch of imagination, it can be termed in that manner. Obviously, the Petitioner has made an endeavour in filing the present Writ Petition basically suffering from chimerical deluge. Looking at from any angle, the present Writ Petition sans merits.

16. In fine, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.