
(2008) 12 MAD CK 0286
In the Madras High Court
Case No : Writ Petition (MD) No. 6734 of 2007

Sudalaikannu

APPELLANT

Vs

The Secretary, Municipal Administration and Water Supply
Department and Others

RESPONDENT

Date of Decision : 23-12-2008

Acts Referred:

Citation : (2008) 12 MAD CK 0286

Hon'ble Judges : R. Subbiah, J;R. Regupathi, J

Bench : Division Bench

Advocate : S. Meenakshi Sundaram, for the Appellant; Pala.Ramasamy, Spl.
Govt. Pleader for Respondents 1 and 2, S.P. Maharajan, for Respondent - 3 and
R.S. Ramanathan, for Respondents 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

R. Regupathi, J.—This writ petition has been filed as a probono publico seeking for the relief of issuance of a writ of mandamus directing the 2nd & 3rd respondents to take appropriate action, in accordance with law, regarding the unauthorised construction put-up by Respondent Nos. 4 to 5 in Survey No. 394, 396, 397, 398 & 399, in Block No. 2 of Ward No. 4, of Tirunelveli Municipal Corporation.

2. In the affidavit filed by the petitioner in support of the writ petition, it is stated as under:

(a) The petitioner was a Municipal Councilor of Tirunelveli Municipal Corporation from 1996 to 2001 and also a Member of Telephone Advisory Committee from 1991 to 1993. He also functioned as a Member of District Adi Dravidar Welfare Committee from 1991 to 1994. He is a devotee of Arulmigu Nellaiappar Gandhimathiammal Temple and helping the authorities in collection of arrears of rent from the lessees in respect of the properties belonged to the temple. Since he is residing within the limit of Tirunelveli Municipal Corporation, he was all

along taking independent action, by addressing communications to various authorities with regard to public grievances.

(b) Arulmigu Nellaiappar Gandhimathiamml Temple is an ancient temple and with a view to preserve its archaeological values, he has filed this writ petition before this Court. According to the petitioner, as per the Government Orders in G.O.Ms. No. 22, dated 30.01.1997, there is a special condition regarding construction of new buildings within one k.m. from the temple compound wall and further, the construction should not exceed to a height more than 9 metres. Respondents 4 to 7, who are the owners of the property comprised in Town Survey Nos. 394, 396, 397, 398 and 399 in Block No. 2 of Ward No. 4, applied for licence for construction of a departmental stores to the 2nd and 3rd respondents. As per Rules, they can construct a building upto a height of 8.1 metre but, while constructing the building, respondents 4 to 7 violated the building plan and the norms. However, respondents 4 to 7 constructed 657.22 sq.mtrs. in excess by violating the provisions of Act and Rules. In the event of allowing the building to be completed, it may lead to disturbance to devotees visiting the temple.

(c) On the request made by the petitioner, the 3rd respondent had initiated action against respondents 4 to 7 by way of issuing notices. However, respondents 4 to 7 did not stop their work of further construction. After collecting relevant materials from the authorities concerned, by filing applications invoking the provisions of Right to Information Act, the present writ petition has been filed with the prayer mentioned above.

3. The 3rd respondent, the Commissioner, Tirunelveli Municipal Corporation, has filed a detailed counter meeting each and every allegation made in the affidavit of the petitioner, in particular, in paragraph 7, stating as follows:

7. With regard to averments made in para 13 & 14 of the affidavit, it is respectfully submitted that, stop work notice was issued to owner for the deviation against approved plan on 7-3-2007 and final notice had been issued on 16-3-2007 and after that a criminal case has been filed before the Hon"ble Judicial Magistrate No. IV, Tirunelveli in STC No. 3182/2007 Coercive action is being taken. The case is still pending since the accused persons have filed Crl.O.P. (MD)No.8960 of 2007 before the Madurai Bench of Madras High Court, seeking to quash the STC No. 3182 of 2007. The following deviations are noted during the inspection which is as follows:

As per approved As on ground Plan

South of Nainarkulam road 26.27m 0 meter

Rear Open From side 4m Steps are constructed in front whole area

Eastern side 6.72m Buildings are extended

Western side 4m 0 metre

4. Learned Counsel for the 3rd respondent submitted that even before filing of

the present writ petition, a reply dated 17.07.2007 was sent to the petitioner, wherein the petitioner had been specifically informed about the proposed prosecution against Respondent Nos. 4 to 7 and, knowing fully well that the 3rd respondent is initiating action against respondents 4 to 7, such a frivolous petition, in the name of public interest litigation has been filed by the petitioner with an ulterior motive. He would further submit that respondents 4 to 7 have already filed a revised plan before the authorities concerned and a decision is yet to be reached on it.

5. The 5th respondent has filed a counter for himself and on behalf of respondents 4,6 and 7, wherein it has been stated, the petitioner, being a politician, does not have any locus standi to file the writ petition under the guise of public interest litigation. However, the writ petition has been filed for the purpose of publicity and with an ulterior motive. It is further stated that respondents 4 to 7 applied for building permission, in accordance with law and rules, and the building has been constructed without any violation of the permission granted by the authorities. Though there are some variations in the construction, without much deviation, a revised plan has been submitted before respondents 2 and 3 and it is pending for consideration. During construction, till date, nothing untoward had happened and no other persons, including neighbours, are objecting for such construction.

6. Learned Counsel appearing for respondents 4 to 7 submitted that even before the petitioner filing the writ petition before this Court, the 3rd respondent has already initiated action against respondents 4 to 7, by way of issuing notices as well as prosecuting them before Judicial Magistrate, Tirunelveli. He further submitted that the Hon"ble Supreme Court as well as this High Court has repeatedly cautioned filing of frivolous and vexatious litigations and in support of his submission, the learned Counsel relied on the following case laws.

(i) Kushum Lata Vs. Union of India (UOI) and Others, , wherein the Hon"ble Apex Court has observed as under:

14. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.

15. The Court has to be satisfied about (a)the credentials of the applicant; (b)the prima facie correctness or nature of information given by him; (c)the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting

interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. they pretend to act in the name of Pro-Bono Publico, though they have no interest of the public or even of their own to protect.

* * * 18. In *S.P. Gupta Vs. President of India and Others*, , it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution: {SCC p.219. para 24}

But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.

(ii) *Dr. B. Singh Vs. Union of India (UOI) and Others*, . In this case, it has been held as follows:

17. In *S.P. Gupta Vs. President of India and Others*, it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the court under the guise of a public interest litigant. the following note of caution was given: (SCC p.219. para 24)

24. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.

18. In *State of H.P. v. A Parent of a Student of Medical College* (1995) 3 SCC 169 it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

19. *Khalid, J.* in his separate supplementing judgment in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, said:

Today public-spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public.

They must be above suspicion. (SCC p.331.para 46)

* * * Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p.334, para 59)

* * * I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants.(SCC p.335, para 61)

(iii) Alagapuram R. Mohan Raj v. The Secretary to Government of Tamil Nadu and Ors. 2005 W L.R. 26. In this case, a Division Bench of this Court has observed as follows:

4. In a very recent decision of the Supreme Court in Dattaraj Nathuji Thaware v. State of Maharashtra SLP (Civil) No. 26269 of 2004 dated 14.12.2004, the Court has come down very heavily on public interest litigation which is filed with ulterior motive eg. black mailing. The supreme Court in that decision observed:

...The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs....

Therefore, the learned Counsel for respondents 4 to 7 submitted that the writ petition is liable to be dismissed by imposing exemplary costs.

7. We heard the submissions of the counsels on either side and perused the materials available on record.

8. The prayer in the writ petition is to take appropriate action, in accordance with law, in respect of the unauthorised construction put up by respondents 4 to 7 in their property. In the counter filed by the 3rd respondent, in paragraph 7, it has been specifically mentioned that appropriate action, by way of issuing notices as well as criminal prosecution, has been taken. Under such circumstances, without even going into the merits or otherwise of the writ petition, the object of the petitioner in filing this writ petition has been achieved. In fact, this information about initiating action against respondents 4 to 7 and prosecuting them was informed to the petitioner even before filing of the writ petition. Therefore, we could safely conclude that the writ petition has been filed not for the cause which

has been stated in the affidavit but, with an ulterior motive.

9. In the affidavit filed in support of the writ petition, it is stated that the petitioner belongs to a particular political party and he also functioned as a Councilor of local Municipal Corporation. In such circumstances, knowing fully well that the 3rd respondent has already initiated action against respondents 4 to 7, the present writ petition has been filed on certain frivolous and vexatious reasons. Therefore, it appears that the petitioner does not have any locus standi to prefer the writ petition before this Court. It has been repeatedly held by the Hon"ble Supreme Court as well as by this Court that filing of such vexatious applications in the guise of public interest litigations by persons like petitioner cannot be entertained. Therefore, we are of the considered view that the writ petition is devoid of any merit and the same is liable to be set aside.

10. Accordingly, the writ petition is dismissed. There will be no order as to costs.