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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition (MD) No.10832 of 2014

S.Mohan Dhanraj Babu

... Petitioner

Vs.

1.The District Collector/Thirunelveli

Local Planning Officer,
District Collector Office,
Thirunelveli 627 001.

2.The Commissioner,

Thirunelveli Corporation,
Thirunelveli 627 001.

3.The Assistant Commissioner,

Palayamkottai Corporation Office,
Palayamkottai, Thirunelveli 627 002.

4.The Superintendent Engineer,

Distribution, TNEB Board,
Main Office Maharaja Nagar,
Tirunelveli 627 011.

5.The Assistant Commissioner of Police,

Law and Order,
Perumalpuram, Palayamkottai 627 007.

6.C.Narayanamuthu

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to maintain Survey No. 735 Ward No.3 Block No.22 comprising an extent of 60 cents situated in Rahmath Nagar Palayamkottai Tirunelveli District as Children s Park and consequently prevent the 6th respondent from carrying out illegal construction in the aforesaid said number and take necessary action by considering the Petitioner s representations dated 18.12.2013.

For Petitioner

: No appearance

For Respondents 1&5

: Mr.C.Selvaraj

Special Government Pleader.

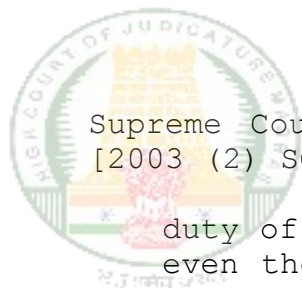
For Respondents 2to 4 & 6

: No appearance

ORDER

(Order of the Court was made by R.SUDHAKAR,J.)

None appears for the petitioner on account of boycott. This shows that the learned counsel for the petitioner is not interested in conducting the case. It is a clear breach of the decision of the Hon'ble



Supreme Court in Ex.Capt. Harish Uppal Vs. Union of India and another [2003 (2) SCC 45], wherein the Hon'ble Apex Court has held as follows:-

"20. Thus the law is already well settled. It is the duty of every Advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend Court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend Court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that Courts are under an obligation to hear and decide cases brought before it and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of Courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers it would amount to scandalising the Courts to undermine its authority and thereby the Advocates will have committed contempt of Court. Lawyers have known, at least since Mahabir Singh's case (supra) that if they participate in a boycott or a strike, their action is ex-facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of Court/s. Lawyers have also known, at least since Roman Services' case, that the Advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an Advocate is an officer of the Court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the Court. They owe a duty to their client. Strikes interfere with administration of justice. They cannot thus disrupt Court proceedings and put interest of their clients in jeopardy. In the words of Mr. H. M. Seervai, a distinguished jurist:-

"Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts. "In my submission", he said that "it is high time that the Supreme Court and the High Court make it clear beyond doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Court maintain the high position and exercise the great powers conferred by the Constitution and the law to do



justice without fear or favour, affection or ill-will."

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33.The only exception to the general rule set out above appears to be item (III). We accept that in such cases a strong protest must be lodged. We remain of the view that strikes are illegal and that Courts must now take a very serious view of strikes and calls for boycott. However, as stated above, lawyers are part and parcel of the system of administration of justice. A protest on an issue involving dignity, integrity and independence of the Bar and judiciary, provided it does not exceed one day, may be overlooked by Courts, who may turn a blind eye for that one day.

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35.In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protect marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot not attend Courts in pursuance to a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott.". (emphasis supplied)

2.In view of the law laid down by the Hon'ble Apex Court, we are inclined to dismiss the writ petition. Accordingly, it is dismissed. No costs. Consequently, M.P(MD)No.1 and 2 of 2014 are closed.

Sd/-

Assistant Registrar(CS II)

/True copy/

Sub AssistantRegistrar

To

1.The District Collector/Thirunelveli
Local Planning Officer,
District Collector Office,
Thirunelveli 627 001.

2.The Commissioner,
Thirunelveli Corporation,
Thirunelveli 627 001.

3.The Assistant Commissioner,
Palayamkottai Corporation Office,
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4.The Superintendent Engineer,
Distribution, TNEB Board,
Main Office Maharaja Nagar,
Tirunelveli 627 011.

5.The Assistant Commissioner of Police,
Law and Order,
Perumalpuram, Palayamkottai 627 007.

+1cc to Mr.G.Kasinadha Durai, Advocate SR.No.57022
+1cc to M/s.Siva Ayyappan, Advocate Sr.No.57177
+1cc to special Government Pleader Sr.No.57138

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