



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition (MD)No.1673 of 2015

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M.Radhakrishnan

...Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Superintendent of Police,
Sivagangai District,
Sivagangai.

3.The Deputy Superintendent of Police,
Thirupathur,
Sivagangai District.

4.The Tahsildar,
Thirupathur,
Sivagangai District.

5.The Inspector of Police,
Town Police Station,
Thirupathur,
Sivagangai District.

6.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.

7.Ganesan Ambalam,
Tiruvidaiyarpatti Village,
Thirupathur Taluk,
Sivagangai.
(suo motu impleaded as 7th respondent
by order dated 11.02.2015)

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to provide adequate police protection for conduct of Annadhaanam Kavadi Carrying offerings and playing of devotional music from 6 AM to 6 PM on 20.02.2015 by the Villagers in connection with Mahasivarathiri at Thiruvudayarpathi Sengamadai Karuppar Temple as conducted last year.

For Petitioner

: Mr.Ragateesh for

M/s.AR.Jeyaruthran

<https://hcservices.ecourts.gov.in/hcservices/> For Respondents 2,3&5: Mr.R.Karthikeyan,
Additional Government Pleader.



For Respondents 1,4&6 : Mr.Aayiram K.Selvakumar,
Government Advocate.
For 7th Respondent : Mr.M.Mahaboob Athiff

O R D E R

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The present writ petition has been filed by the petitioner seeking for Mandamus directing the respondents to provide adequate police protection for conducting Annadhaanam Kavadi Carrying offerings and playing of devotional music from 6.00 a.m to 6.00 p.m. on 20.02.2015 by the villagers in connection with Mahasivarathiri at Thiruvudayarpathi Sengamadai Karuppar Temple as conducted by them in the last year.

2.The petitioner alleges that there is a dispute between respective parties and one group of villagers recognising one Ganesan as Ambalam will conduct festival on 19.02.2015 and another group including himself recognising one Madhavan wants to conduct festival separately that is on 20.02.2015 as he did last year. According to him, the sixth respondent has passed an order dated 31.10.2010 recognising Ganesan as Ambalam. Against which one Ramanathan filed an appeal in A.P.No.28 of 2013 before the Commissioner, of Department of Hindu Religious and Charitable Endowments along with a delay condonation petition. The said petition was allowed. Challenging the same, the said Ganesan filed W.P.No.13804 of 2013 which was dismissed on 22.08.2014 and against which W.A(MD)No.1094 of 2014 was filed and the same is pending.

3.According to him, the order in favour of the said Ganesan has not yet been set aside. Therefore, he would only contend that the petitioner and his group decided to conduct the festival on 20.02.2015 as did in the last year. Therefore, the petitioner submitted a representation on 27.01.2015 to the respondents seeking police protection to conduct the festival in a peaceful manner. Since no order has been passed, he has come forward with the present writ petition for the aforementioned relief.

4.When the matter came up for admission, Mr.M.Mahaboob Athiff, learned counsel representing one Ganesan Ambalam whose name has been referred in the affidavit but has not been impleaded as party in the writ petition would bring to the notice of this Court that the petitioner has come forward with the present writ petition suppressing the earlier proceedings before this Court which has been deprecated by the Hon'ble Supreme Court in *Kishore Samrite Vs.State of Uttar Pradesh* and others reported in (2013) 2 SCC 398.

5.He would further contend that first of all, the writ petitioner filed W.P.(MD)No.14382 of 2011 to quash the proceedings of the second respondent therein dated 31.12.2010 in O.A.No.7 of 2008 which has been referred to in the present writ petition and when he moved the stay petition, notice was ordered and there was no stay.

6.In that writ petition, R.M.Madhavan was figured as 8th respondent. Pending that writ petition, the very same counsel filed another writ petition in W.P.(MD)No.185 of 2012 in which R.M.Madhavan was the petitioner who was figured as 8th respondent in W.P(MD)No.14382 of 2011 filed by the petitioner herein.



7.The prayer made in the second writ petition namely, W.P(MD) No.185 of 2012, was to forbear the respondents 1 to 3 from issuing orders recognising the sixth respondent one G.Rukmani, wife of Ganesan or her husband Ganesan as Ambalam to receive Ambalam respects during Pongal festivals from 14.01.2012 to 17.01.2012 in Thiruvudaiyarpatti village, Thirupathur Taluk, Sivagangai District. The said Ganesan was shown as 7th respondent in W.P(MD)No.14382 of 2011. It is further stated in the order that apparently for the reason that the petitioner in W.P(MD)No.14382 of 2011 could not get any interim orders, W.P(MD)No.185 of 2012 has been filed through the very same counsel who had filed W.P(MD)No.14382 of 2011 wherein the 8th respondent Madhavan figures in as the petitioner W.P(MD) No.185 of 2012. Both the writ petitions are filed by the self same counsel. Ultimately, both the writ petitions were dismissed by order dated 10.01.2012 condemning the conduct of the petitioner.

8.He would further contend that the petitioner herein without the permission of the competent authorities, conducted another Sivarathiri festival that culminated in trouble between the parties and therefore, the matter went to the Revenue Divisional Officer and a peace committee meeting was held and ultimately, the matter was settled.

9.He would further submit that the conduct of the petitioner in the present writ petition conveniently he has suppressed all these prior proceedings in which the petitioner's role has been clearly deprecated by this Court. He would further submit that without impleading Ganesan as a proper and necessary party, he is attempting to get an order behind his back which will clearly indicate the notion of the petitioner and with false and frivolous affidavit and unclean hands, the petitioner has approached this Court and therefore, the writ petition is liable to be dismissed.

10.Learned Government Advocate for the HR &CE submitted that the temple to which the function is scheduled to be conducted and permission sought for is not at all the temple governed by the HR & CE Department which is a private temple. He would further submit that already necessary orders have been passed and the parties have come to this Court only for thwarting their individual rights and therefore, the writ petition is liable to be dismissed.

11.Heard the learned counsel appearing for the respective parties and perused the materials available on record.

12.At the outset, the writ petition has to be dismissed in *limine* with heavy cost following the decisions of the Hon'ble Supreme Court reported in (1977) 4 SCC 467 (*T.Arivandandam Vs.T.V.Satyapal and another*) and 2013 (2) SCC 398 (*Kishore Samrite Vs. State of Uttar Pradesh and others*).

13.Admittedly, the petitioner is a person who come to this Court with unclean hands as condemned by the Division Bench of this Court filed a writ petition by adding one R.M.Madhavan as 8th respondent in W.P. (MD) No. 14382 of 2011, and the said R.M.Madhavan, filed another writ petition in W.P(MD)No.185 of 2012 by engaging the very same counsel who appears for the writ petitioner. Ultimately, both the writ petitions have been



dismissed directing the writ petitioner to pursue the appeal which was already filed by him on 12.05.2011 before the Commissioner.

14. But the present writ petition has been filed for the very same relief which was rejected earlier by the Division Bench suppressing the vital facts and without impleading the said Ganesan as a necessary party to the writ petition. Therefore, this Court suo motu impleaded the said Ganesan Ambalam, Tiruvidaiyarpatti Village, Thirupathur Taluk, Sivagangai District as 7th respondent in the present writ petition.

15. In *T. Arivandandam Vs. T. V. Satyapal* and another reported in (1977) 4 SCC 467, the Hon'ble Supreme Court has held that if on a meaningful - not formal - reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power - under the said provision. And, if clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party.

16. In yet another decision in *Kishore Samrite Vs. State of Uttar Pradesh* reported in 2013 (2) SCC 398, the Hon'ble Supreme Court has held as follows:

"32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.



(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the law well-justifies it.

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36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make full and true disclosure of facts?. (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]].

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful



exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38.No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].

39.Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).

17.Following the above said principles laid down by the Hon'ble Supreme Court in the above said decisions, the writ petition is not maintainable since the petitioner has approached this Court with unclean hands, without impleading necessary and proper party and with false and frivolous affidavit without stating anything about the prior proceedings of this Court, the petitioner has come to this Court. Accordingly, the writ petition is dismissed with a cost of Rs.10,000/- (Rupees Ten Thousand only) within 15 days, failing which the said amount will be recovered by the District Collector as arrears under land revenue. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The District Collector, Sivagangai District,
Sivagangai.

2.The Superintendent of Police, Sivagangai District,
Sivagangai.

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5.The Inspector of Police, Town Police Station,
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6.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.

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+1cc to M/s.Ajmal Associates, Advocate in SR.6370

+1cc to Mr.A.R.Jeyaruthran, Advocate in SR.6220

+1cc to the Special Government Pleader in SR.6768

Writ Petition (MD)No.1673 of 2015

11.02.2015

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