

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.5918 of 2013

and

M.P.No.1 of 2013

A.Thamimul Ansari ... Petitioner

Versus

1. The District Collector
Nagapattinam District,
Nagapattinam.
2. The Superintendent of Police,
Nagapattinam District
Nagapattinam.
3. The Deputy Superintendent of Police,
Mayiladuthurai,
Nagapattinam District.
4. The Sub-Collector,
Mayiladuturai,
Nagapattinam District.
5. The Tahsildar,
Tarangabadi,
Nagapattinam District.

6. J.Mohamed Basheer
7. O.M.Hidayathullah
8. M.S.Ziyauddin
9. M.Muhammed Iliyaz
10. P.Muhammed Zackariya
11. S.Habib Rahman
12. A.Salaudeen
13. S.Shaik Alauddin
14. A.Abdul Azeez
15. A.Muhammed Kamil

16. Haladu
17. Abdul Hameed
18. Tahir
19. M.Abul Hasan
20. A.V.Inayathullah

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the Respondents 1 to 5 to take suitable action on the Complaints of the Petitioner dated 27.01.2009 and 16.12.2009 against the Respondents 6 to 20 so as to enable the Petitioner and his family members to have all kinds of social relationship and social rights at their native Village, namely, Kiliyanur Village, Tarangambadi Taluk, Nagapattinam District.

For Petitioner : Mr.K.Selvaraj
For RR1 to 5 : Mr.R.Govindasamy
Special Government Pleader
For RR6 to 20 : Mr.A.Muthukumar

O R D E R

The petitioner has sought for a direction to the respondents 1 to 5 to take suitable action on his complaints dated 27.01.2009 and 16.12.2009 made against the respondents 6 to 20 so as to enable him and his family members to have a social relationship with the respondents of their native Village namely Kiliyanur Village, Tarangambadi Taluk, Nagapattinam District.

2.Heard Mr.K.Selvaraj, learned counsel appearing for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader appearing on behalf of the respondents 1 to 5 and Mr.A.Muthukumar, learned counsel on behalf of the respondents 6 to 20.

3.The learned counsel for the petitioner would submit that they are the permanent respondents of Kiliyanur Village, Tarangambadi Taluk, Nagapattinam District. On 06.08.2006, there was a wordy quarrel between the petitioner and one Mr.M.S.Ziyavuden at the Kiliyanur Pallivasal and based on the quarrel, the respondents 11 to 15 had conducted a Katta Panchayat and imposed a fine of Rs.20,000/- on the petitioner which was consequently reduced to Rs.10,000/-. The petitioner had paid the fine in order to have an amicable social relationship with the the Kiliyanur Jamaath and the Villagers. Subsequently, the petitioner had filed a Civil Suit in O.S.No.6 of 2009 to declare the verdict dated 07.08.2006 made by the Kiliyanur Village Jamaath as null and void and for consequential damage of Rs.1,00,000/- including the fine amount paid by him.

4. According to the learned counsel for the petitioner, the respondents 6 to 10 had conducted the Katta Panchayat on 17.10.2008 and declared the entire Muslim Community of Kiliyanur Jamaath should not have any kind of social relationship (Ex-communication) with the petitioner and his family. Aggrieved against the same, the petitioner has made complaints to the respondents 1 to 5 to take action against respondents 6 to 20. Since no action has been taken, the petitioner has filed this present Writ Petition seeking for similar prayer as made in his representation.

5. When the learned counsel for the petitioner made his submissions, I had suggested to the petitioner that, this Court exercising its powers under Article 226 of the Constitution of India cannot go into all these factual aspects and therefore offered to pass a direction to the respondents 1 to 5 to consider the petitioner's representation on its own merits and pass orders on the same. However, the learned counsel for the petitioner insisted for a positive direction to the respondents 1 to 5 to take action against the respondents 6 to 20. Hence, it necessitated this Court to hear the petitioner as well as the respondents at length.

6. At this juncture, the learned Special Government Pleader appearing for the respondents 1 to 5 would submit that in consequence of the wordy quarrel between the petitioner and M.S.Ziyavuden at the Kiliyanur Pallivasal, which took place in the year 2006, many consequential incidents have taken place between the petitioner and the Muslim Jamaath up to the year 2008. Admittedly, there is no complaint made by the petitioner to the police between the year 2006 to 2008. In October 2008, when the petitioner had filed a complaint before the Revenue Divisional Officer, Myladuthurai requesting action against the Muslim Jaamath of Kiliyanur Village with an allegation that the petitioner and his family members were ex-communicated by the Muslim Jamaath, the Revenue Divisional Officer had conducted an enquiry. Pursuant to that, the matter was referred to Tahsildar, Tarangambadi by the Perambur Police Station to settle the issue. The learned Special Government Pleader would further submit that as on date, there is no ex-communication by the Muslim Jaamaths with the petitioner or his family members as per the written instructions of the Muslim Jamaath of Kiliyanur Village.

7. The learned counsel for the respondents 6 to 20 would submit that the Writ Petition is an abuse of process of Court of Law. The petitioner had earlier instituted O.S.No.6 of 2009 on the file of the Additional Sub Judge, Myladuthurai against this respondent and respondents 11 and 13 to 15 with same set of facts. The suit was dismissed as against the petitioner and the

petitioner had filed A.S.No.37 of 2011 before the District Judge, Nagapattinam which was also dismissed. Both the Trial Court and the First Appellate Court had held that the alleged resolution passed against the petitioner on 07.08.2006 and imposing a fine of Rs.10,000/- are not proved. Aggrieved against the judgment, the petitioner has filed a Second Appeal S.A.No.663 of 2012 and the same is pending. Since the petitioner could not wreak his vengeance before the Civil Courts, he has filed the present Writ Petition.

8.The learned counsel for the respondents 6 to 20 further submitted that the allegation that the petitioner was imposed with a fine of Rs.10,000/- was the subject matter in the Civil Suit also and as such, the petitioner is not entitled to agitate the same before this Court. The learned counsel would further submit that the petitioner had actually wanted to become a Naattamai of the Village which consisted about 3000 Muslims and 1200 members in the Jamaath. All his attempts to become Nattaamai as well as Muthavalli failed. The petitioner had been heading a splinter group under a separate Jamaath by name "JOWHID" in Kiliyanur Village, where they have separate Marriage Register Book, Mosque and Burial Ground. The Writ Petition is only to wreak vengeance and harass the respondents and hence the same is liable to be dismissed.

9.I have given careful consideration to the submissions made by the respective counsels.

10.At the out set, it would be appropriate to point out that the petitioner has suppressed vital facts and had filed an affidavit with an attempt to mislead the Court as if the petitioner and his family has been ex-communicated and that the Civil Suit filed by him is pending. Though the petitioner has stated about filing of the Civil Suit in O.S.No.6 of 2009, he had not mentioned about the dismissal of the Suit or the First Appeal in A.S.No.37 of 2001 or the pendency of the Second Appeal in S.A.No.663 of 2012 before this Court.

11.The only conclusion that this Court can arrive from the suppression of the facts with regard to the dismissal of the Civil Suit and the First Appeal as well as the pendency of the Second Appeal is that the petitioner has attempted to mislead this Court and obtain favorable orders. With regard to the allegations made by the petitioner about his excommunication and the consequential prayer for taking action against the respondents concerned, it is to be pointed out that the root cause of action arose in the year 2006 onwards and the imposing a fine amount of Rs.10,000/- had led him to initiate the Civil Proceedings against the respondents 11,13 to 15. These cause of actions have already been pleaded in the Civil Suit which was

dismissed and which is now pending in S.A.No.663 of 2012. The petitioner cannot now parallelly agitate the same cause of action in this Writ Petition. As pointed out by the learned counsel for the petitioner, it would amount to abuse of the Process of Law.

12.The averments that the petitioner and his family members have been excommunicated has been denied by all the respondents. As a matter of fact, the learned Special Government Pleader would submit that there is a peaceful atmosphere in the Village as on date and that the petitioner has been socially mingling with all the Villagers and attending all functions. As stated in the counter affidavit by the third respondent, due action has been initiated by the Police as well as the Revenue Divisional Officer on the complaint made by the petitioner.

13.As rightly pointed out by the learned Special Government Pleader, that there has been misunderstandings between the petitioner and the Muslim Jamaath from the year 2006 onwards. He has not choosen to file any complaint till the year 2008. The learned Special Government Pleader would also reiterate that the petitioner has personal grievance against the Muslim Jamaaths and all the blames made in the Written Affidavit is not correct but only to obtain order and thereby by wreck vengeance against the respondents 6 to 20, he had filed a suit before the Civil Court. Furthermore, the petitioner's earlier attempts to become the 'Naatamai' or 'Muthavalli' proved futile.

14.I am of the view that the petitioner has not approached the Court with clean hands. The suppression of material facts about the dismissal of the petitioner's suit and the consequent appeals as well as the action taken by the respondents 1 to 5 on his complaints is only to mislead this Court. Nevertheless, taking into account the submission made by the learned Special Government Pleader that the petitioner and his family members are living peacefully in the said village and there is no excommunication of any kind, no further orders is required in this Writ Petition. Accordingly, the Writ Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rm

To

1.The District Collector
Nagapattinam District,
Nagapattinam.

2.The Superintendent of Police,
Nagapattinam District
Nagapattinam.

3.The Deputy Superintendent of Police,
Mayiladuthurai,
Nagapattinam District.

4.The Sub-Collector,
Mayiladuturai,
Nagapattinam District.

5.The Tahsildar,
Tarangabadi,
Nagapattinam District.

+lcc to Mr.K. Selvaraj, Advocate, S.R.No.70899

+lcc to Mr.A. Muthukumar, Advocate, S.R.No.71165

pk(CO)

md(28/12/2016)

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