

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.2.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
W.A.No.139 of 2016

1. The Director General of Police,
Police Department
Mylapore Chennai- 4
 - 2 The Superintendent of Police
Kancheepuram District Kancheepuram
 - 3 The Deputy Superintendent
of Police Vandalur Police Sub Division
Vandalur Kancheepuram District
 - 4 The Inspector of Police
Guduvanchery Police Station Kancheepuram
District
 - 5 The District Collector
Kancheepuram District Kancheepuram
 - 6 The Revenue Divisional
Officer Chengalpet Revenue Division
Chengalpet Kancheepuram District appellants
- versus

1. Thirukachur K.Arumugam
Deputy General Secretary Pattali Makkal
Katchi (PMK) Thirukachur Post Chengalpet
Taluk Kancheepuram District
2. M/s.VGP Housing Pvt.Ltd.,
rep. By Director, VGP Babudas,
VGP Square, Saidapet,
Chennai 15. respondents
(impleaded suo motu as 2nd respondent)

Appeal filed against the order passed by this Court dated 29.4.2015 passed in W.P.No.13289 of 2015.

WP.No.13289 of 2015:Petition filed under Article 226 of Constitution of India, praying to issue of Writ of Certiorarified Mandamus Calling for the records relating to impugned letter of the 3rd Respondent issued in Na.Ka.No.06-1/Ka.thu.Ka/Va.Oo.Ko/2016 dated 08/01/2016 and quash the same,

Consequently direct the Respondents herein to grant permission to the Petitioner party to conduct a state level political conference, which is schedule to be held on 14.02.2016 at VGP Thidal, Kilaambakkam, Vandalur-Urapakkam GST Road, Kancheepuram District forthwith.

For appellant : Mr.A.L.Somayaji, Advocate General
assisted by Mr.S.T.S.Murthi,
Gov.Pleader & T.N.Rajagopalan SGP

For Respondents : Mr.R.Gandhi, Senior Counsel
for Mr.K.Balu, for R-1

Mr.Badrinarayanan, for R-2

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

This Intra court appeal is directed against the order dated 29 January 2016 in W.P.No.1123 of 2016, whereby and whereunder the learned Single Judge was pleased to direct the appellants to grant permission to the first respondent to conduct a conference on 14 February 2016 at V.G.P.Thidal, Kelampakkam, Vandalur - Urapakkam GST Road, Kancheepuram District, after setting aside the order dated 8 January 2016, passed by the Deputy Superintendent of Police, Vandalur Sub Division, returning the application for permission, with a request to re-present it along with the permission from the concerned authorities of Revenue Department for the use of the said land.

Brief facts:-

2. The respondent armed with the permission granted by VGP Housing Ltd., claiming to be the agreement holder of the land submitted an application before the Deputy Superintendent of Police, Vandalur, to hold a political meeting of Pattali Makkal Katchi (hereinafter referred to as PMK), on 14 February 2016. Since the ownership and possession of the land was in dispute and on account of the interim order passed by the Division Bench of this Court on 15 October 2015, in W.A.No.1519 of 2015, the Deputy Superintendent of Police, returned the application to the first respondent with a remark to resubmit it with the permission letter issued by the concerned authorities of revenue Department.

3. The first respondent, without making an attempt to obtain permission from the Revenue authorities to use the land, filed a Writ Petition before the writ Court in W.P.No.1123 of 2016, challenging the order, returning the application.

4. Before the learned Single Judge, the appellants contended that M/s.V.G.P. Housing Ltd. has no right to grant

permission to the first respondent, and in view of the order passed by the Division Bench in W.A.No.1519 of 2015 on 15 October 2015, the Deputy Superintendent of Police was correct in returning the application.

5. The learned Single Judge interpreted the interim order passed by the Division Bench and after quashing the order dated 8 January 2016, directed the appellants to grant permission.

6. Feeling aggrieved, the appellants have come up with this intra court appeal.

7. The Division Bench of this Court vide order dated 10 February 2016, restrained the first respondent from proceeding with the preparation, temporary construction or making arrangements on the site in question.

8. The writ appeal is posted before this Bench as a specially ordered matter along with W.A.No.1519 of 2015, taking into account the urgency expressed by the first respondent.

9. Since the conduct of M/s.VGP Housing Ltd. is called in question, we have impleaded them suo motu as second respondent and heard the counsel representing the company. The affidavit dated 11 February 2016, filed by M/s.VGP Housing Ltd., through its Chairman in W.A.No.1519 of 2015, is taken on record.

Submissions:-

10. The learned Advocate General, appearing on behalf of the appellants contended that the learned Single Judge was not correct in interpreting the order passed by a Division Bench and arriving at a particular conclusion. According to the learned Advocate General, the learned Single Judge ought to have referred the matter to the Division Bench in view of the interim order passed in W.A.No.1519 of 2015. The learned Advocate General contended that after the interim order, the appellant has not granted permission to any of the parties to use the disputed land and as such, the plea of discrimination has no basis. It was his further contention that Writ Petition is not maintainable against a proceeding returning the application for compliance. The learned Advocate General contended that the learned Single Judge was not correct in granting permission to hold meeting by indicating that the license granted by VGP is valid, without perusing the counter affidavit filed by the Revenue Divisional Officer, explaining the factual situation.

11. The learned Advocate General by placing reliance on Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, submitted that on account of the conclusion of proceedings initiated by the Government under the

Act, there is a statutory vesting of the land in the Government, free from all encumbrances. According to the learned Advocate General, the order passed by the Competent Authority under Section 18(1) of the Act has not been stayed by any court and as such, the Government is in possession of the land. The learned Advocate General further contended that the property being owned by the Government, M/s.VGP Housing Private Ltd., stated to be an agreement holder, has no right to grant permission to the first respondent.

12. The learned Senior Counsel for the 1st respondent submitted that the appellants have been giving permission to other political parties and organizations for using the subject land. The respondent has made all preparations to hold the meeting on 14 February 2016. It was only during the last minute, permission was rejected by giving a flimsy reason. According to the learned Senior counsel, no prejudice would be caused to the appellants and VGP, by giving permission to the first respondent for conducting one day meeting. The learned senior counsel further submitted that the 1st respondent took permission from M/s.VGP Housing Ltd., to use the entire extent of 95.74 acres of land. The first respondent has spent many lakhs of rupees and 60% of the work is now over. The learned counsel submitted that the first respondent is prepared to deposit any amount as a condition precedent for permitting them to conduct the meeting on 14 February 2016.

13. The learned Senior Counsel further submitted that permission was given to many other organizations to conduct meetings. In fact, the very same land was given to conduct a meeting attended by the Hon'ble Prime Minister of India in 2015. The learned senior counsel made a fervent appeal to permit the respondent to hold the meeting on 14 February 2016, in view of the ensuing assembly election.

14. The learned counsel for M/s.VGP Housing Ltd., by placing reliance on the affidavit dated 11 February 2016, filed by the Chairman of VGP Ltd., submitted that they have already withdrawn the consent given on 26 December 2015, for conducting the meeting and it is not their intention to disobey the order passed by this Court in W.A.No.1519 of 2015.

Discussion :-

15. This intra court appeal is connected to the appeal in W.A.No.1519/2015, filed by the Land Commissioner, Chennai, challenging the order dated 8 July 2015, in W.P.No.10532 of 2008, quashing the proceedings initiated and finalized under the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961.

16. The Land Commissioner in the intra court appeal in W.A.No.1519 of 2015, contended that declaration made by the Competent Authority was unsuccessfully challenged by M/s.Kasturi Estate. Subsequently, once again, the proceedings were challenged up to the Supreme Court by M/s.VGP Housing (P) Ltd. in the capacity as agreement holder, under M/s.Kasturi Estate. The Special Leave Petition was dismissed vide order dated 26 October 1993. The land Commissioner contended that notwithstanding the conclusion of statutory proceedings, M/s.VGP Housing (P) Ltd. filed another Writ Petition in W.P.No.10532/2008, challenging the ceiling proceedings. The Writ Petition was allowed by the learned Single Judge without considering the earlier proceedings and the same made the Land Commissioner to file the intra court appeal. The possession of land by the Government by virtue of Section 18(1) of the Act was also highlighted by the Land Commissioner.

17. The Division Bench of which one of us, (K.K.SASIDHARAN, J.) passed an interim order on 15 October 2015 in W.A.No.1519 of 2015.

The order reads thus:-

"All the parties are restrained from alienating, transferring and creating any encumbrance on the property in question".

18. The above referred interim order was passed after hearing the learned counsel for M/s.VGP Housing (P) Ltd. and M/s.Kasthuri Estate, respondents in W.A.No.1519 of 2015.

19. The first respondent approached M/s.VGP Housing (P) Ltd. and obtained consent for conducting a public meeting on 14 February 2016, by erecting stage and marquee on the disputed land. M/s.VGP Housing Ltd., without any reference to this Court, granted permission.

20. The primary reason for passing an interim order is to preserve the status quo. Neither the State nor the respondents in W.A.No.1519 of 2015 are entitled to make use of the land during the currency of the interim order. Grant of license would enable the grantee to use the land. In fact, it is the case of the first respondent that they have taken possession of the land temporarily to erect the stage and other structures and Bhoomi pooja was performed on 29 January 2016. The permission was granted by M/s.VGP Housing (P) Ltd. on 25 January 2016. It is therefore clear that the first respondent is in possession of the land at least from 29 January 2016 and this position would continue till the clearance of site after the meeting is over on 14 February 2016. Even such temporary occupation on the strength of a license would come within the meaning of "Encumbrance" created on the property. It is not material whether it is temporary or perpetual. Unfortunately, one of the parties to the

writ appeal interpreted the order to its convenience and granted permission to the first respondent to use the land. We make it clear that it is not within the province of the parties to a litigation to interpret the order passed by the Court and violate it with impunity and thereafter tender apology. The best course in case of ambiguity in the order is to approach the very same Court for clarification. By giving permission to hold a meeting, M/s.VGP Housing (P) Ltd., virtually flouted the order passed by the Division Bench on 15 October 2015.

21. The application submitted by the first respondent was not rejected by the Deputy Superintendent of Police, Vandalur. It was returned for compliance. The first respondent was expected to re-submit the application along with the permission taken from the concerned Revenue Authority. In case the revenue authorities failed to respond, the first respondent could have approached this Court. The first respondent adopted a novel practice of challenging the order passed by the Deputy Superintendent of Police which is akin to that of a return memo, before the writ Court. Since there was a dispute with regard to the ownership and possession of the property, and the erection of Board by the revenue Department, indicating that the matter is pending in Court, the Deputy Superintendent of Police was perfectly correct in returning the application for want of permission from the revenue authorities. The fundamental right of the first respondent under Article 19 of the Constitution was not violated by returning the application, so as to give a cause of action to file a Writ Petition.

22. The Writ Petition filed by the first respondent challenging the order returning the application is not maintainable in law. It is always open to the authorities to point out the defects in the application and call upon the applicant to rectify the defects and re-present it after such compliance. It is only when the application is rejected without a valid reason, a cause of action would arise to challenge the order. In fact, no attempt was made by the first respondent to re-present the application at least with an explanation that permission from the Revenue Department is not necessary.

23. The first respondent has taken up a contention that permission was granted earlier to use the very same land for holding meetings. The Revenue Divisional Officer and Deputy Superintendent of Police in their respective counter affidavits explained that after the interim order in W.A.No.1519 of 2015, permission was not granted to any body to use the land. There is nothing on record before us to accept the contention regarding discrimination. Not even a scrap of paper is produced to show that permission was given to others to use the land after passing the interim order in W.A.No.1519 of 2015. We therefore reject the contention that the appellants have adopted a policy

of discrimination and that the first respondent was singled out.

24 The learned Advocate General has taken up a legal contention that the Government is in possession of the property in view of Section 18(1) of the Act. We are not dealing with the said issue at this point of time, in view of the fact that any observation made in this appeal would prejudice the case of the respondents in W.A.No.1519 of 2015.

25. For the reasons set out above, we are of the view that the order passed by the learned Single Judge setting aside the proceeding dated 8 January 2016 is liable to be set aside and the same is accordingly set aside.

26. The further question is as to whether the first respondent should be permitted to conduct the meeting on 14 February 2016 in view of the massive arrangements made for the conference.

27. The jurisdiction under Article 226 of the Constitution of India is extraordinary in nature. It is otherwise called as equity jurisdiction. The Court is not bound to exercise the discretion in favour of a party, merely because law is in its favour. In appropriate cases, it is open to the Court to refuse grant of relief after declaring the law on the subject. The Court can also mould the relief to do substantial justice.

28. The Supreme Court in G.M.,O.N.G.C.Ltd., v. Sendhabhai Vastram Patel JT 2005(7) SC 465 observed that it is not always necessary to strike down a wrong decision only because it would be lawful to do so. The Supreme Court said:

"23. It is now well-settled that the High Courts and the Supreme Court while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India even may not strike down a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the Appellant in a given case although the Court may find the same to be justified in law."

29. The Supreme Court in Eastern Coalfields Ltd., vs. Bajrangi Rabidas, 2013(12) Scale 69, observed that court can issue directions to balance the justice.

The observation reads thus:-

"17. The powers are purely discretional and though no limits can be placed upon that discretion, it must be exercised along recognized lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity."

30. The documents, including photographs produced by the first respondent shows that major portion of the erection of stage and marquee has already been completed. The meeting is on 14 February 2016. It would not be possible for the first respondent to shift the conference to another location at this belated point of time. We are therefore of the view that equity jurisdiction is required to be extended in this matter, to balance the justice. We therefore issue the following directions:-

(a) We permit the first respondent to conduct a conference on 14 February 2016 by using the land which is the subject matter in W.A.No.1519 of 2015;

(b) The first respondent is directed to pay a sum of Rs.25,00,000/- (Rupees Twenty five Lakhs only) as license fee, for using the land in question having an extent of 95.74 acres on 14 February 2016. The demand draft for the amount shall be deposited with the Registrar General of this Court by 12 noon on 13 February 2016.

(c) The amount shall be deposited by the Registrar General in Indian Bank, High Court Branch, in an income bearing account, on the credit of W.A.No.1519 of 2015;

(d) In case of any difficulty, to deposit the amount before the Registrar General by 12 noon on 13 February 2016, option is given to the first respondent to take a demand draft for Rs.25 lakhs, in the name of The Registrar General, High Court of Judicature at Madras, and produce the same before the Deputy Superintendent of Police, Vandalur, by 1 p.m. on 13 February 2016, who in turn shall forward the demand draft to this Court

on 15 February 2016;

(e) The Deputy Superintendent of Police, Vandalur, is directed to issue a formal order of permission on production of receipt for payment of Rs.25 Lakhs issued by the Registrar General of this Court or production of the Demand Draft for a sum of Rs.25,00,000/-, as indicated in clause (d) of this order. Permission shall be granted by 5 p.m. on 13 February 2016.

(f) The first respondent is directed to remove the stage and marquee and other constructions by 5 p.m. on 15 February 2016, and restore the land to its original position;

(g) It is open to the Deputy Superintendent of Police to impose reasonable conditions to ensure law and order;

(h) Since this litigation is the creation of M/s.VGP Housing (P) Ltd. and taking into account their conduct in misinterpreting the interim order passed by the Division Bench in W.A.No.1519 of 2015, we direct the company to pay a sum of Rs.1,00,000/- (Rupees One lakh only), as cost to the Deputy Superintendent of Police, Vandalur, third appellant in the appeal, within three days, failing which it will be recovered as arrears of land revenue.

31. The intra court appeal is disposed of as indicated above. Consequently, connected M.P.s, are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Director General of Police,
Police Department
Mylapore Chennai- 4
- 2 The Superintendent of Police
Kancheepuram District Kancheepuram

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- 3 The Deputy Superintendent
of Police Vandalur Police Sub Division
Vandalur Kancheepuram District
- 4 The Inspector of Police
Guduvanchery Police Station Kancheepuram
District
- 5 The District Collector
Kancheepuram District Kancheepuram
- 6 The Revenue Divisional
Officer Chengalpet Revenue Division
Chengalpet Kancheepuram District

+1 cc to Mr.K.Balu, Advocate sr.9263
+1 cc to Government Pleader sr.9298
+1 cc to Mr.V.Vasista Advocate sr.9271
+1cc to Mr.K.Balu, Advocate sr.9443 [21/06/2016]

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