

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.35022 of 2016

and

W.M.P.Nos.30196 and 30197 of 2016

G.Dakshinamoorthy,
Secretary,
Thirukoilgal Paadhukappu Committee
No.333, Bharathi Street,
Puducherry 605 001,
residing at No.75, Saint Therese Street,
Puducherry - 605 001. Petitioner

Versus

1. Union of India
Rep. by Chief Secretary to Government
of Puducherry,
Chief Secretariat,
Puducherry.
2. Secretary to Government,
Hindu Religious Institutions Department,
Puducherry.
3. The Commissioner,
HRI Department,
Government of Puducherry.
4. The President,
Sri Manakula Vinayagar Arankavalar
Kuzhu, Puducherry. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the records relating to the publication dated 05.09.2016 for leasing the premises measuring 4240 sq. ft. belonging to 4th respondent Devasthanam, situated at Central Bank of India Upstair, Gingee Salai-Law-De-Louristhan Street cutting, Puducherry and quash the same and consequently direct the 4th respondent to consider the representations of the petitioner dated 29.06.2015 and 30.08.2016 and to implement the suggestions of the petitioner submitted in the above mentioned representations within a time frame.

For Petitioner :

Mr.M.Gnanasekar

For Respondents:

Mr.J.Kumaran,

Govt. Advocate (Pondy)

ORDER

The present writ petition has been filed by the petitioner challenging the publication dated 05.09.2016 issued by the fourth respondent, in and by which, the fourth respondent has invited application for leasing the premises measuring 4240 sq. ft. belonging to it, which is situated at Central Bank of India Upstair, Gingee Salai-Law-De-Louristhan Street cutting, Puducherry. The petitioner also seeks for a consequential direction to the 4th respondent to consider the representations of the petitioner dated 29.06.2015 and 30.08.2016 and to implement the suggestions of the petitioner submitted in the above mentioned representations within a time frame.

2. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents.

3. According to the petitioner, a committee has been constituted to safeguard the interest of the Temple. The petitioner also given certain suggestions to the Committee but they were not implemented by the respondents. Therefore, the petitioner has come up with this writ petition.

4. This Court fails to understand as to how the petitioner can now say that the suggestions given by them to the Committee constituted by the fourth respondent temple has not been considered and therefore a Mandamus has to be issued to the fourth respondent to implement such suggestions in letter and spirit. It is evident from the affidavit filed in support of the writ petition as well as the various representations sent by the petitioner Association that they wanted to erect a Ghoshala and also to make arrangements to implement Annadhanam Scheme within the premises of the fourth respondent temple, however, without considering such request made, the fourth respondent has issued a paper publication calling upon applications to lease out the premises owned by them for commercial purpose. Can this Court prevent the fourth respondent from using their own premises for a purpose as may be desirable for them at the instance of the petitioner. This Court, in exercise of the powers conferred under Article 226 of The Constitution of India, cannot issue such a direction preventing the fourth respondent temple from utilising their premises in a manner as may be desired by the committee constituted by them. The committee constituted by the fourth respondent wanted to augment the income of the temple by leasing out the premises owned by them for commercial purpose and it cannot be restrained by this Court at the instance of the petitioner. The petitioner, in the guise of filing the present writ petition is attempting to stall the legitimate legal process initiated by the fourth respondent temple by leasing out the properties in public auction.

5. In this context, it will be useful to refer to the <https://hcservices.ecourts.gov.in/hcservices/> decision of the Division Bench of this Court in the case of (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, in which I was also

one of the party, wherein the Division Bench of this Court held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on para Nos. 18 to 210 of the decision of the Honourable Supreme Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where

there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

6. Thus, it is evident from the decision of the Honourable Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. It is also evident that there is no straight-jacket formula to be adopted by the Court in simply issuing a direction to consider one's representation without examining the consequences if such a direction is issued. In this case also, the direction as sought for by the petitioner, if issued, will result in adverse and serious consequences whereby the respondents will be forced to discharge their statutory duty, which they are not bound to do at the instance of the petitioner.

7. For all the above reasons, the writ petition fails and therefore it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

WEB COPY

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ogy

To

1. Union of India
Rep. by Chief Secretary to Government
of Puducherry,
Chief Secretariat,
Puducherry.
2. Secretary to Government,
Hindu Religious Institutions Department,
Puducherry.
3. The Commissioner,
HRI Department,
Government of Puducherry.

+1cc to Mr.M. Gnansekar, Advocate, S.R.No.57465
+1cc to the Government Pleader, S.R.No.57431

SKV(CO)
EU 02.12.16

W.P.No.35022 of 2016



WEB COPY