

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.42607 of 2016

M.Sumathi

... Petitioner

vs.

The Executive Officer,
The Hindu Religious & Charitable
Endowments Department,
A/M Lakshmi Narasimma Swami Temple,
Tindivanam,
Villupuram District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondent to consider the ground reality and the representation dated 06.10.2016 and to enter the petitioner's name instead of Mr.Selvaraj Mudhaliyar on the relevant record in respect of the lease premises situated at No.21/3, Pazhaiya Vandi Medu, Chengi Road, Opp. Ushal Chand Park, Tindivanam Taluk, Villupuram District.

For Petitioner : Mr.P.Vijendran
For Respondent : Mr.M.Maharaja,
Special Government Pleader(HR &CE

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondent to consider her representation dated 06.10.2016 as regards entering her name in the relevant records instead of Mr.Selvaraj Mudhaliyar in respect of the lease premises situated at No.21/3, Pazhaiya Vandi Medu, Chengi Road, Opp. Ushal Chand Park, Tindivanam Taluk, Villupuram District.

2. According to the petitioner, the respondent/H.R. & C.E. Department let the premises in question to one Ramasamy Mudaliyar. After his death, his sons viz. Natarajan and Selvaraj continued the business in the same premises and one Senthil Kumar, S/o.Natarajan, transferred the possession and enjoyment right of the said premises to one Raja and also sold the superstructure to him. Pursuant thereto, the said Raja and the petitioner created a partnership firm through a deed on 17.02.2007. Since Raja left the partnership firm on 09.03.2010, the petitioner obtained the right over the superstructure from

him on 28.04.2014 and since then, the petitioner has been paying all rents, taxes, etc. to the respondent and other Revenue authorities in the name of Mr.Selvaraj Mudhaliyar.

3. It is the case of the petitioner that though she sent a representation to the respondent on 17.02.2010 and a further one on 06.10.2016 seeking change of name in the relevant records instead of Selvaraj Mudhaliyar, there is no response from the respondent. Hence, she is before this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Though the prayer sought in this Writ Petition seems to be an innocuous one, the idea is far fetching. According to the petitioner, she is a tenant of the Temple by virtue of the partnership deed dated 17.02.2007 entered into between her and one Raja, but, the fact remains that she is no way connected to the Temple as a tenant. Admittedly, the revenue records pertaining to the premises in question bear the name of Selvaraja Mudhaliar, as a tenant. The petitioner has no valid document, say tenancy deed or legal heir certificate to claim tenancy rights. In the absence of any such document, the petitioner has filed this Writ Petition with an indigenous method to cheat the Court. This Court is of the firm and considered view that what cannot be considered, cannot be directed to considered, under the guise of considering the representation.

6. In this context, this Court is inclined to follow the decision of a Division Bench of this Court reported in (M.Ingaci Vs. The Commissioner. Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, in which I am also a party, wherein the Division Bench 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 the decision of the Hon'ble Supreme Court reported in the case of A.P.SRTC Vs. G.Srinivas Reddy (2006)3 SCC 674=2006, 3 Law Weekly 170, wherein, 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 'pilable' 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."

7. In view of the aforesaid observations and in the light of the decisions cited supra, this Court finds no merit in the claim of the petitioner, since, she has not approached this Court with clean hands. Therefore, this Writ Petition stands dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

aeb

To :

The Executive Officer,
The Hindu Religious & Charitable Endowments Department,
A/M Lakshmi Narasimma Swami Temple,
Tindivanam, Villupuram District.

+1 cc to Mr.P.Vijendran Advocate sr 71753

W.P.No.42607 of 2016

pvs (co)

aa03/02/2017

सत्यमेव जयते

WEB COPY