



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A(MD)No.1354 of 2016

Dr.Adul Kalam Ilaignar Munnetra Peravai,
Rajapalayam Rep. By its President,
K.Kathiresan, No.262/154,
North Street, Indira Colony,
R.Reddiapatti Village,
Rajapalayam Taluk,
Virudhunagar District 626 136. ... Appellant/Petitioner

Vs.

1. The Secretary to Government,
Revenue (ஊ.நி 1(1)) Department ,
Fort St.George, Chennai 600 009.

2.Fort Additional Chief Secretary Cum
Commissioner for Revenue Administration,
Chepauk, Chennai - 5.

3.The Collector,
Virudhunagar District.

4.The Tahsildar,
Vembakkottai Taluk,
Virudhunagar District.

5.The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.

... Respondents/Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 09.09.2016 made in W.P.(MD) No/11009 of 2016

Prayer in WP(MD). 11009/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 1st and 3rd respondent to consider the petitioner s representation dated 03.06.2016 with regard to



restoration of R.Reddiyapatti and Mettur alias Sundararajapuram Village in the 5th Respondent Taluk.

For Appellant :Mr.D.Selvanayagam
For Respondents :Mr.A.K.Baskara Pandian
Special Government Pleader

WEB COPY

J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

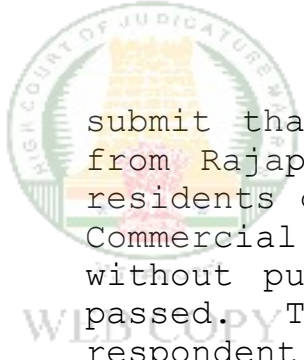
By consent, this Writ Appeal is taken up for final disposal. The writ petitioner is the appellant. It is a registered Association under the Tamilnadu Societies Act, bearing Registration No.30/16. The President of the appellant Association filed an affidavit in support of the writ petition and it has been stated that the members are residing at R.Reddiapatti Village and Mettur @ Sundarajapuram Village and both villagers are under the control of R.Reddiapatti Village Panchayat for several years, which is situated under Rajapalayam Taluk and the said village is only 11 kms away from Rajapalayam Taluk and there is frequent transport facility from R.Reddiapatti Village for having access to Government Hospitals, Schools, Colleges and other Commercial Institutions etc.

2. The petitioner would further state that one of the residents of the village submitted an application to the fifth respondent prayed for issuing new Family Card and further the said member was informed that as per G.O. Ms.No.321 Revenue (t.ep 1 (1)) Department dated 31.08.2015, they have to approach Tahsildar, for redressal of grievance or request. Then only, they came to know about shifting of jurisdiction in this regard.

3. The writ petition was entertained and notice was ordered. The fourth and fifth respondents have filed a counter affidavit stating, among other things, that fourth respondent's Taluk Office is situated 10 kms away from the Village in question and the petitioner Trust is not having any legal right to call upon the Government to restore two villages in question under jurisdiction of the fifth respondent and taking into consideration the aforesaid facts and circumstances, the said order came to be passed and prays for dismissal of this Writ Appeal.

4. The learned Judge, after taking note of the rival submission, has held that if at all the petitioner has any grievance, they can challenge the said notification and writ of mandamus would not lie and therefore, dismissed the writ petition on 09.09.2016 against which, this Writ Appeal has been filed.

The learned counsel for the appellant has drawn attention of this Court to the typed set of papers and would



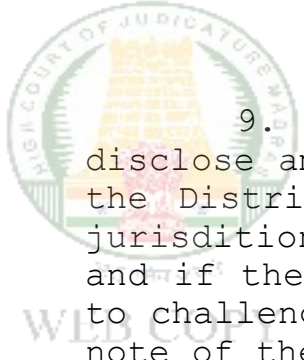
submit that since villages in question are located within 2 kms from Rajapalayam Taluk and on account of proximity in location, residents of the said village are having difficulties to access to Commercial Institutions and Government Offices and all of a sudden without putting them on notice, the Government Order came to be passed. Therefore, jurisdiction is vested with the fourth respondent and therefore, prays for interference.

6. Per contra, the learned Additional Government Pleader, who accepts notice, would submit that a policy decision was taken by G.O.Ms.No.321, dated 31.08.2015 and notification was also passed and it is open to the petitioner to challenge the legality of the said notification and therefore, writ of mandamus would not lie and prays for dismissal of this writ appeal.

7. This Court has given anxious consideration to the rival submissions and perused the materials placed before the court.

8. In **(2015) 2 SCC 796 in Census Commissioner and Others Vs. R.Krishnamurthy**, jurisdiction in respect of policy decision came up for consideration. It is relevant to extract paragraph No.26.

26. Interference with the policy decision and issue a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for renumbering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.



9. A perusal of G.O.Ms.No.321, dated 31.08.2015 would disclose among other things that on the basis of proposal given by the District Collector, policy decision was taken and therefore, jurisdiction of the two villages vested with the fourth respondent and if the petitioner is really aggrieved, remedy is open to them to challenge the notification. The learned Judge has rightly taken note of the said fact and dismissed the writ petition.

20. This Court, after going through the entire materials, is of the view, that there is no error in the reasons assigned in the order for dismissing the writ petition.

21. In the result, this Writ Appeal is dismissed in the admission stage itself. If the petitioner is so advised, they are always at liberty to challenge either G.O.Ms.No.321 dated 31.08.2015 or portion of the G.O, which operates against them. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

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Rajapalayam Taluk,
Virudhunagar District.

+1 cc to Special Government Pleader SR.No.62504
+1 cc to MR.D.SELVANAYAGAM, Advocate SR.No.62028

W.A. (MD) No. 1354 of 2016
20.10.2016