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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2016

CORAM:

THE HONOURABLE **MR.JUSTICE S.MANIKUMAR**

and

THE HONOURABLE **MR.JUSTICE C.T.SELVAM**

Writ Petition (MD).No.5444 of 2016

K.K.Ramesh

... Petitioner

Vs.

1. The District Collector,
Madurai District,
Madurai.

2. The Secretary,
Madurai Gandhi Museum,
Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent to instruct the second respondent to restart and continue the free yoga classes as it was done earlier in order to provide the enthusiastic yoga participants to restart their abruptly snapped yoga practice by considering the petitioner's representation dated 07.03.2016.

For Petitioner : Mr.K.K.Ramesh
(Party-in-Person)

For Respondents : Mr.M.Alagadevan
Special Govt. Pleader

O R D E R

(Order of the Court was made by **S.MANIKUMAR, J.**)

Contending *inter alia* that the petitioner is a public interest litigant expousing public cause, Mr.K.K.Ramesh, Party-in-Person has sought for Writ of Mandamus, directing the District Collector, Madurai District, Madurai, respondent No.1, to instruct the Secretary, Madurai Gandhi Museum, Madurai, respondent No.2, to start and continue free yoga classes, as done earlier, by considering his representation, dated 07.03.2016.

2. During the course of hearing, Mr.K.K.Ramesh, Party-in-Person, submitted that he has been practicing yoga at Madurai Gandhi Museum for the past 10 years. He also submitted that Madurai Gandhi Museum demanded Rs.5 as parking charges for the vehicles, on compulsory basis. When objection was, respondent No.2 has abruptly stopped free yoga classes from 07.03.2016. Being



aggrieved, the petitioner has sent a representation to the respondents requesting to continue yoga. As the same is not responded, he has filed the present Writ petition for a Mandamus as stated supra.

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3. Heard Mr.K.K.Ramesh party-in-person.

4. Considering the limited prayer, we put Mr.M.Alagadevan, learned Special Government Pleader on notice. He submitted that Gandhi Museum, Madurai is a Public Trust and the decision to conduct yoga classes is the discretion of the Secretary, Madurai Gandhi Museum, Madurai. The petitioner does not have any statutory right. He prayed to dismiss the writ petition.

5. Writ of Mandamus cannot be issued for mere asking. One must establish the right first, and then, seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for mandamus. The said position is well settled by a series of decisions.

(a) In the decision reported in **(1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.)** in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in **(2004) 2 SCC 150 (Union of India v. S.B. Vohra)** the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in **(2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain)** in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which



appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.- ... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.



Society Ltd. v. Sipahi Singh after referring to the earlier decisions in **Lekhraj Sathramdas Lalvani v. N.M. Shah, Rai Shivendra Bahadur (Dr.) v. Nalanda College and Umakant Saran (Dr.) v. State of Bihar** this Court observed as follows in para 15 of the Reports (SCC): (**Sipahi Singh case, SCC pp. 152-53**)

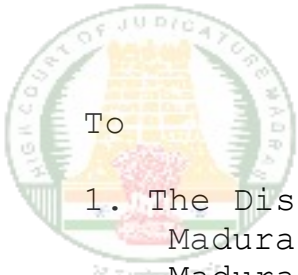
15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.... In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 the Constitution and the High Court was not competent to issue the same.

5. In the absence of any subsisting legal or constitutional or any right recognised under law, Mandamus cannot be directed against the respondents to exercise their discretion, in the manner as prayed for by the petitioner. Mandamus cannot be issued. Accordingly, the Writ Petition is dismissed. No costs.

Sd/
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar



To

1. The District Collector,
Madurai District,
Madurai.

2. The Secretary,
Madurai Gandhi Museum,
Madurai.

+1cc to Special Government Pleader in Sr.No.15752

+1cc to K.K.Ramesh, party in person in Sr.No.15647

CN/SKS-SK/31.03.2016/5P-5C

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