

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.07.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

W.P.No.8949 of 2017

G.Velumani

.. Petitioner

Vs.

The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of rejection passed in Na.Ka.No.10865/2015/A4 dated 25.10.2016 on the file of the respondent and quash the same and direct the respondent to issue community certificate to the petitioner, his wife Shanthi and two Children viz., 1.V.Sukeswar and 2.V.Mithuna that they belong to Kurumans (ST)Community based upon the community certificate already issued to the close relatives of the petitioner.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.K.Venkataramani
Additional Advocate General
Mr.M. Elumalai
Government Advocate

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides.

2. The Petitioner has preferred the instant Writ Petition seeking for issuance of an order by this Court in calling for the records of the Respondent/Revenue Divisional Officer, Dharmapuri in proceedings in Na.Ka.No.10865/2015/A4 dated 25.10.2016 and to quash the same. More over, the petitioner had preferred for passing of an order by this Court in directing the Respondent/Revenue Divisional Officer, Dharmapuri, to issue

Community Certificate to him, his wife Shanthi and two children viz., 1.V.Sukeswar and 2.V.Mithuna to the effect that they belong to Kurumans (ST) Community based on the Community Certificate already has issued his closed relatives.

3. The stand of the petitioner is that he belongs to 'Kurumans' Community. Which is a Scheduled Tribe Community. He had studied upto School Level. He and his wife had not obtained any community certificate, since it was not required for them at that time. Their occupation is agriculture. As a matter of fact, in his school records, his community is entered as "Kurumans" (ST) Community. In deed, the petitioner is in need of community certificate in respect of his children viz., (1) V.Sukeswar (now aged 15 years studying at 11th Standard) and (2) V.Mithuna (now aged 11 years). Therefore, he filed an application to the Respondent/Revenue Divisional Officer, Dharmapuri, on 08.06.2015 praying for issuance of community certificate to him and his wife Shanthi and his two children as stated supra to the effect that they belong to 'Kurumans' (ST) Community.

4.The crystalline plea of the petitioner is that in support of his application seeking issuance of community certificate, he had enclosed the following documents:

- 1) His School Transfer Certificate.
- 2) His Children's School Transfer Certificates.
- 3) Community Certificate of Narasimman, who is his father's brother's son
- 4) Community Certificate of Balaraman, who is his father's brother's son
- 5) Community Certificate of Senthilkumar, who is his father's brother's son.
- 6) The report of the State Level Scrunity committee in respect of Petitioner's father's brother's son Manirathnam.

Inasmuch as no order was passed by the Respondent/Revenue Divisional Officer, Dharmapuri, the petitioner filed a writ petition in W.P.No.34161 of 2015 seeking for issuance of a direction to dispose of his application based on the community certificate already granted to his relatives by following the judgment of the Hon'ble Supreme Court in State of Bihar and Others V. Sumit Anand reported in 2005 (12) SCC 248. On 28.10.2015, this Court has passed an order in W.P.No. 34161 of 2015 directing the Respondent/Revenue Divisional Officer, Dharmapuri, to dispose of the petitioner's application within a period of eight weeks as per the guidelines issued by the Hon'ble Supreme Court in Kumari Madhuri Patil's case reported in AIR 1995 SC 94.

5.In fact, the Respondent/Revenue Divisional Officer, Dharmapuri, issued a notice to the petitioner to attend for an enquiry on 30.11.2015. During the course of enquiry, the

petitioner produced all the aforesaid documents to support his case. Subsequently, a discreet enquiry was conducted in the village and on the basis of the said enquiry, an order was passed on 25.10.2016 stating that the petitioner had not proved that he is related to Manirathinam, whose certificate was verified by the State Level Scrutiny Committee and the other close relatives entry in the school record and birth/death registers point out that they belong to 'Kudumba' and 'Kurumbar' Community. Viewed in that background, the petitioner's application was forwarded to the State Level Scrutiny Committee to verify the petitioner's Community Certificate and only thereafter, a final order could be passed.

6. In response, it is projected on behalf of the respondent that on the basis of available records on hand, the petitioner's request for issuance of community certificate was referred to the State Level Scrutiny Committee, Chennai, by which, the Respondent/Revenue Divisional Officer, Dharmapuri, as per proceedings dated 25.10.2016 and further, the petitioner was duly informed that till the receipt of the report from the State Level Scrutiny Committee, the proceedings of the petitioner's petition were stayed and added further, soon after the receipt of the report from the State Level Scrutiny Committee, the petitioner was informed that further action would be taken on the petitioner's petition.

7. It is brought to the notice of this Court on the side of the Respondent that an application for verification of the caste certificate by the State Level Scrutiny Committee shall be referred by the Revenue Divisional Officers/Sub Collectors in case of doubts and therefore in the instant case, the Respondent had referred Petitioner's community to the State Level Scrutiny Level for verification, of course by applying the principles laid down in the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil's reported in AIR 1995 SC 94.

8. On behalf of the Respondent, it is brought to the notice of this Court that the petitioner has not preferred an appeal before the District Collector, Dharmapuri in respect of the proceedings dated 25.10.2016 of the Respondent/Revenue Divisional Officer, Dharmapuri, as envisaged under G.O.No.147 Revenue (RA 3(3) Department) dated 17.03.2016, but straight-away approach this Court by way of filing the present Writ Petition which is not maintainable in limine.

9. In this connection, it is not out of place for this Court to make a pertinent mention that in G.O.(Ms).No.235 Revenue [RA3 (2)] Department dated 26.06.2015, the Government of Tamilnadu based on the orders passed by the Madurai Division Bench of this court in W.P.(MD) No.1355 of 2015 dated 05.02.2015 between D.Thirupathi V. The District Collector, Tirunelveli District,

Tirunelveli and another, had constituted an Appellate Authority for an 'Appeal' remedy in regard to the issuance of Community Certificate, which runs as under:

Sl .	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
1	Backward Classes / Most Backward Classes/ Denotified Communities	Zonal Deputy Tahsildar	Tahsildar	District Collector
2	Scheduled Castes	Tahsildar	Revenue Divisional Officer	District Collector
3	Scheduled Tribes	Revenue Divisional Officer	District Collector	District Collector & Chairman District Level Vigilance Committee

10. It comes to be known that the Government of Tamilnadu had passed G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 (As regards redressal of grievances of Scheduled Tribes) whereby and whereunder after careful consideration and examining the subject matter in issue had issued Amendment to G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 to the Paragraph No.4 in the Tabular Column for Sl.No.3 and the entries relating thereto by substituting the same as under:

Sl .	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
"3	Scheduled Tribes	Revenue Divisional Officer.	District Collector	State Level Scrutiny Committee"

11. It is to be noted that the object of Article 226 of the Constitution of India is provide a quick and an inexpensive remedy to the aggrieved parties. Therefore, it would be incorrect to incorporate all the proceedings of a suit into a proceeding under Article 226 of the Constitution of India as per decision of the Hon'ble Supreme Court in Babubhai V. Nandal AIR 1974 SC 2105.

12.It is to be noted that as 'Writ Proceeding' is summary in nature, 'Disputed questions' of fact cannot be decided in Writ Jurisdiction as per decision of the Hon'ble Supreme Court in Sumedha Nagpal V. State of Delhi (2000) 9 SC 745. Undoubtedly, the power conferred upon the Hon'ble Supreme Court and the High Court under Articles 32 and 226 of the Constitution of India is 'plenary power' and such power is not at all an incomplete power, nor fettered by any legal restraint. Although the power of Judicial Review is at the hands of Hough Court under Article 226 of the Constitution, notwithstanding the fact that the Constitution of India does not impose any limitation upon the aforesaid power, the Courts themselves have evolved certain self imposed limitations or restraints in regard to the exercise of this extraordinary and unlimited discretionary power, as a matter of prudence and policy. In short, in Law, the whole field of Article 226 of the Constitution is purely a discretionary one.

13.Insofar as the Executive Power of the State, it is to be pointed out that the same is coextensive with that of the State Legislature. The power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise is not covered by the existing Rules, as per decision Union of India V. Central Electrical & Mechanical Engineering Service (CE & MES) Group A (Direct Recruits) Association reported in CPWD 2008 1 SCC at Page 354. It cannot be forgotten that the executive instructions which are given by the State exercising its power under Article 162 of the Constitution of India cannot circumvent a statutory provision. In fact, Article 162 of the Constitution does not enjoin the State Government to pass executive Orders which are contrary to Law, which was already made on the subject, by the State, in as much as it would amount to rewriting Art. 162 of the Constitution of India.

14.Besides the above, in order that the Executive instructions have the force of statutory Rules, it is to be exhibited that they were issued either under the authority showered under the State Government by some statute or under some provision of the Constitution, as per decision of Hon'ble Supreme Court G.J.Fernandez V. State of Mysore reported in AIR 1967 SC Page 1753.

15.In brief, Article 162 of the Constitution requires that where the State has power to make Laws, it can issue executive instruction as per decision Kamala Godera V. State of Rajasthan reported in AIR 2000 Rajasthan 130. Al though the State Legislature has the power to make Law relating to a subject, the executive action by the appropriate Government is not rendered invalid just because there is no Legislation to support such

action, as per decision of Hon'ble Supreme Court Naraindas V.State of Madhya Pradesh in AIR 1974 SC Page 1232.

16.It is worthwhile for this Court to worth recall and recollect the decision of the Hon'ble Supreme Court in Madhukar Sadbha Shivarkar V. State of Maharashtra and Others (2015) 6 Supreme Court Cases 557 at Special page Nos.559 and 560 wherein it is held as follows:

"In the backdrop of the Judgment passed in the criminal cases which have attained finality before the Supreme Court, the State Government, after examining the representations given by the landowners in these cases with reference to the relevant land records of the landholders of the villages, has rightly exercised its statutory power by appointing the Sub-Divisional Officer as an enquiry officer at the first instance and later on Deputy Commissioner of Pune was appointed to enquire into the matter which is in the large public interest.

(Para 26)

The order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by paying fraud upon the Tahsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid sub-leases are made and they are accepted by them in the proceedings under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees under Section 6 of the Act. The allegation of fraud in relation to getting the landholdings of the villages by the declarants on the alleged ground of destroying original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of the law through such orders have attained finality, it if is found in the enquiry by the enquiry officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. Fraud unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. The land owners are also

aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and acceptable to justify the impugned judgment and order of the High Court. (Para 27)

The legal submissions made on behalf of the appellants that the State Government has no power either under Section 45(2) or under Section 14(4) of the 1961 to appoint an enquiry officer to enquire into the landholdings of the villages referred to therein are untenable contentions of the appellants which have been rightly rebutted by urging an alternative legal plea that the power exercised by the State Government to pass the orders impugned in the writ petitions is traceable to its executive power under Article 162 of the Constitution of India. This is the most tenable submission, having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by the Supreme Court in these proceedings at this stage.

(Paras 28 and 32)

Also in the aforesaid decision at Paragraph No.32 at Page No.572 among other things, it is observed as follows:

".....In our considered view, the orders impugned in the writ petitions which are affirmed by the High Court, are perfectly legal and valid and therefore, the same do not warrant interference by this Court in exercise of power of this Court under Article 136 of the Constitution, but on the other hand, the aforesaid orders of the State Government can also be traceable to executive power of the State Government under Article 162 of the Constitution of India having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by this Court in these proceedings at this stage...."

17. In reality, When a Government Order or a Statute provides for an adequate, effective viable and efficacious alternative remedy and if such an alternative remedy is not cumbersome, then, in that event, it is open to the Petitioner to avail such remedy / machinery constituted under the said Government Order

or under the Act, so that, the purport and intent of the Government in providing a certain forum is not whittled down in any manner.

18.The remedy of preferring an appeal, as specified in the amendment G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 was issued by the Government of Tamilnadu based on the observations of the Hon'ble Division Bench of this Court in W.P.(MD).No.1355 of 2015 dated 05.02.2015 to the effect that for all the caste certificate cases which naturally require a factual adjudication, at least one appeal remedy, for 'Scheduled Caste', 'Scheduled Tribes', and 'Backward Class', should be provided, which may be in the form of scrutiny by the District Level Vigilance Committee etc.,

19.Suffice it for this Court to point out that the action of the Government of Tamilnadu in introducing an 'Appeal' remedy before the District Collector as per G.O.(Ms).No.147, Revenue (RA-3(2)] Department dated 17.03.2016 (by way of amendment to G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015) does not suffer from any vice or material irregularities and patent illegalities in the eye of Law. Moreover, two Orders of the State Government are in the 'Interest of Public at Large', in the considered opinion of this Court.

20.In view of the foregoings and also this Court taking note of the fact that the present Writ Petition viz., W.P.No.8949 of 2017 is filed by the Petitioner challenging the correctness of the Impugned Order of the Respondent/ Revenue Divisional Officer, Dharmapuri, dated 25.10.2016 in forwarding his application for verification of his community status to the State Level Scrutiny Committee and till the receipt of the report after due enquiry being made thereto, the further proceedings on his petition are stayed on his application dated 12.11.2015 and also this Court keeping in mind, the ingredients of G.O.Ms.No.235 Revenue [RA3(2)] Department dated 26.06.2015 and also perusing the contents of G.O.(Ms). No.147 Revenue [RA-3 (2)] Department dated 17.03.2016, is of the considered opinion that the amended G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 issued by the Secretary to Government of Tamilnadu provides for an 'Appeal' remedy to the District Collector (as an Appellate Authority) and thereafter, to the State Level Scrutiny Committee (For Redressal of Grievances) and therefore, in all Fairness, Equity and Fair play, this Court directs the Petitioner to prefer an Appeal before the District Collector, Dharmapuri as against the impugned order of the Respondent/ Revenue Divisional Officer, Dharmapuri, dated 25.10.2016 within a period of two weeks from the date of receipt of a copy of this Order. Liberty is granted to the Petitioner to raise all factual and legal pleas by annexing necessary

documents to support his case before the Appellate Authority / District Collector, Dharmapuri.

21. In such event of the Petitioner filing an Appeal, (of course, well within the time adumbrated by this Court), it cannot be gainsaid that the Appellate Authority, viz., District Collector, Dharmapuri, is to provide an adequate opportunity of hearing to the Petitioner by adhering to the 'Principles of Natural Justice' in true letter and spirit.

22. That apart, in case, the Petitioner seeks time or filing additional documents or to lead oral / documentary evidence, then, the Appellate Authority, viz., District Collector, Dharmapuri, shall provide enough opportunity to the Petitioner by keeping in mind the 'Principles of Natural Justice'. The District Collector, Dharmapuri / Appellate Authority, is directed to pass necessary orders on the 'Appeal', as expeditiously as possible, in an Unbiased, Free, Just, Fair, impartial and dispassionate manner of course, in the manner known to Law and in accordance with Law, in any event, not later than six weeks thereafter.

23. Soon after disposing of the Appeal within the time specified by this Court, the District Collector, Dharmapuri (Appellate Authority) is also directed to send a compliance report to the Registrar Judicial of this Court in regard to the orders so passed.

24. Before parting with this Case, this Court makes a relevant mention that it is high time for the Government of Tamilnadu to give an anxious consideration in respect of enacting a complete and comprehensive Law in regard to issuance and verification of Community Certificates of Scheduled Caste and Scheduled Tribe and other Backward Classes quite in tune with the guidelines / direction issued in the Hon'ble Supreme Court decision Kumari Madhuri Patil & Another V. Additional Commissioner Tribal Development, Thane & Others reported in AIR 1995 SC 94 and the modifications made in the later Judgments of the Hon'ble Supreme Court of India on the subject, which governs the field. To put it succinctly, the neighbouring states like Kerala, Andhrapradesh and Maharashtra had already enacted necessary legislations for issuance and verifications of the Community Certificates of Scheduled Caste and Scheduled Tribe and other Backward Classes and the same are in live force. This Court fervently opines that if the Government of Tamilnadu enacts a codified Law pertaining to the procedure for issuance and verification of Community Certificate of Scheduled Caste and Scheduled Tribe and Other Backward Classes in the State, then, there is ample scope for wiping out / erasing out 'Bogus / Fictitious Community Certificates' obtained by the concerned persons, to secure the benefits in an unlawful manner.

25. With the aforesaid observations the present Writ Petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.
2. The District Collector, Dharmapuri (Appellate Authority)
3. The Registrar Judicial
(For Favour of information and
necessary follow up action), High Court, Madras.

+1cc to mr.S.Doraisamy, Advocate Sr. 52421
+1cc to the Government Pleader, Sr. 52782

SKS (CO)
VR(11/8/2017)

W.P.No.8949 of 2017

सत्यमेव जयते

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