

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.24347 of 2014 and  
M.P.No.1 of 2014

1.M.Prasanna  
2. M.Ramachandraprabhu

(1 and 2 Minors rep. By their  
father and natural guardian  
A.Mani, S/o B.Amirthalingam  
residing at No.41, Kamaraj  
Nagar main Road, Avadi,  
Chennai.

... Petitioners

Vs.

The Revenue Divisional officer,  
District Collector's Office,  
Coimbatore.

... Respondent

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India praying for issuance of Writ of  
Certiorarified Mandamus in calling for the records of the  
respondent in its Proceedings Na.Ka.No.1843/2012/A4 dated  
06.01.2014 and quash the order passed therein and consequently  
direct the respondent herein to issue community certificates in  
favour of the petitioners as they belong to Hindu Mudugar  
Community.

For Petitioners : Mr.M.Sivabharathi  
For M.Suresh Kumar

For Respondents : Mr.K.Venkataramani  
Additional Advocate General  
for 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 Petitioners have filed the present Writ Petition praying for passing of an order by this Court in calling for the records of the Proceedings bearing No. Na.Ka.No.1843/2012/A4 dated 06.01.2014 on the file of the Respondent / Revenue Divisional Officer, Coimbatore and to quash the same. Further, the Petitioners had sought for issuance of direction to the Respondent by this Court to issue Community Certificate in their favour, since they belong to 'Hindu Mudugar Community'.

3. The Petitioners are represented by their Father, A.Mani. He had sworn to an affidavit in the present Writ Petition to the effect that he belongs to 'Hindu Mudugar Community', listed as 'Scheduled Tribe'.

4. It transpires that on 01.03.1989, a Community Certificate was issued in favour of two minor Petitioners' father's younger brother, Gajendran. Further, it comes to be known that the Revenue Divisional Officer, Thiruvallur had informed the Petitioners' father through communication dated 18.02.2010 mentioning that he should approach only his forefather's native place, viz., Coimbatore District to obtain the Community Certificate. Subsequently, Petitioners' father had approached the Respondent / Revenue Divisional Officer, Coimbatore requesting him to issue a Community Certificate to his children (Petitioners).

5. By virtue of the Impugned Order dated 28.03.2011 passed by the Respondent, the Minor Petitioners' father was informed that he should have approached Revenue Divisional Officer, Thiruvallur to obtain a Community Certificate, in as much as all the documents produced by him belong to Chennai and Kancheepuram Districts. Therefore, the Petitioners' father had once again approached the Office of the Revenue Divisional Officer, Thiruvallur making a request for issuance of Community Certificate to his children. In spite of numerous endeavours made by the Petitioners' father, Revenue Divisional Officer, Thiruvallur had not responded favourably.

6. Therefore, the Petitioners' had approached this Court by means of W.P.No.54164 of 2012 to quash the proceedings of the Respondent dated 28.03.2011 etc., and this Court by means of an order dated 06.08.2013 had directed the Petitioners to produce the relevant documents before the Respondent and it was further ordered that the Respondent shall consider and pass orders thereafter, within a time limit prescribed therein. Pursuant to the aforesaid direction issued in the Writ Petition, the Petitioners' father had appeared before the Office of the Respondent on various occasions and produced the documents in his possession.

7. The crystalline stand of the Petitioners is that the documents mentioned in Sl.Nos.1 to 14 (as stated in Paragraph no.6 of Affidavit in Writ Petition) were produced in support of the proof of the community status of the Petitioners by their father. But, inspite of the same, the Respondent had passed an Order of rejection on 06.01.2014 and the said order is assailed by the Minor Petitioners' father in the present Writ Petition.

8. At this juncture, it is pertinent for this Court to make a significant 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      |

| S1 . | Community        | Issuing Authority          | Appellate Authority | Redressal of Grievances                                          |
|------|------------------|----------------------------|---------------------|------------------------------------------------------------------|
| 3    | Scheduled Tribes | Revenue Divisional Officer | District Collector  | District Collector & Chairman District Level Vigilance Committee |

9. It also comes to light 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 an 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:

| S1 . | Community        | Issuing Authority           | Appellate Authority | Redressal of Grievances         |
|------|------------------|-----------------------------|---------------------|---------------------------------|
| "3   | Scheduled Tribes | Revenue Divisional Officer. | District Collector  | State Level Scrutiny Committee" |

10. It is to be noted that the object of Article 226 of the Constitution of India is to 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.

11. It is to be borne in mind 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 SCC 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 High 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.

12. Coming to the aspect of an '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.

13. That apart, 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.

14. In short, 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. Although the State Legislature has the power to make a 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.

15. At this juncture, this Court aptly recalls and recollects the decision of 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...."

16. 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.

17. Indeed, the remedy of preferring an appeal enjoined in the amendment G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated

17.03.2016 was brought 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.,

18. In short, 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.

19. Be that as it may, in view of the fact that the present Writ Petition viz., W.P.No.24347 of 2014 is filed by the Minor Petitioners' (Represented by their Father A.Mani), assailing the Impugned Order of the Respondent / The Revenue Divisional Officer, Coimbatore dated 06.01.2014 rejecting the request of Petitioners' father for issuance of Community Certificate to his wards and also this Court taking note of the tenor and spirit of the G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 and also looking into the contents of G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016, is of the considered view 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 Petitioners' to prefer an Appeal before the District Collector, Coimbatore as against the impugned order of the Respondent dated 06.01.2014 within a period of two weeks from the date of receipt of a copy of this Order. Liberty is granted to the Petitioners' to raise all factual and legal pleas by enclosing necessary documents to support their case before the Appellate Authority / District Collector, Coimbatore.

20. In such event of the Petitioners preferring an Appeal, (of course, well within the time adumbrated by this Court) it cannot be gainsaid that the Appellate Authority, viz., District

Collector, Coimbatore is to provide an adequate opportunity of hearing to the Petitioners by adhering to the 'Principles of Natural Justice' in true letter and spirit.

21. That apart, in case, the Petitioners seek time for filing of additional documents or to lead oral / documentary evidence, then, in that event, the Appellate Authority, viz., District Collector, Coimbatore shall provide enough opportunity to the Petitioners by keeping in mind the 'Principles of Natural Justice'. The District Collector, Coimbatore / 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.

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

23. 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.

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

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Revenue Divisional officer,  
District Collector's Office,Coimbatore.
2. The District Collector,  
Coimbatore.
3. The Registrar Judicial  
(for favour of information and  
necessary follow up action) High Court, Madras

+1cc to M/s.M.SureshKumar, Advocate, S.R.No.52118

+1cc to the Government Pleader, S.R.No.52770



सत्यमेव जयते

W.P.No.24347 of 2014 and  
M.P.No.1 of 2014

VG II(CO)  
CU(23/08/2017)

WEB COPY