

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.2094 of 2007

Kurudampalayam Grama Makkal Nalvazhvu
Sangam (Registered under the Societies
Registration Act 1960, Regn. No.167/2006)
5/139A, Pannimadai Road, Sadha gounder Thottam,
Palani Goundan Pudhur, Coimbatore 640 017 rep.
By its President S.Kalichami ... Petitioner

Vs.

1. The Superintendent of Police,
Coimbatore-Rural,
Coimbatore-641 018.
2. P.V.Mani alias Palanisamy
3. Mrs. Valarmathi
(impleaded as per Court order dated
24.8.2011 in M.P.No.1/11 in W.P.No.2094/07 Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to expeditiously complete the inquiry against the second respondent pursuant to the complaint letter of the District Collector, Coimbatore dated 21.2.2006 referred to in the proceedings of the District Collector, Coimbatore in RC No.1184/2006/A3 dated 20.03.2006.

For Petitioner : Mr. A.S.Vijayaragavan
For R1 : Mr. A.Zakir Hussain Govt. Advocate
For R2 : Mr. C.K.Chandrasekar

O R D E R

The prayer in this writ petition is for a writ of mandamus directing the first respondent to expeditiously complete the enquiry against the second respondent pursuant to the complaint letter of the District Collector, Coimbatore dated 21.2.2006 referred to in the proceedings of the District Collector, Coimbatore in RC No.1184/2006/A3 dated 20.03.2006.

2. The petitioner is a Sangam registered under the Societies Registration Act for the welfare of the people of Palani Gounden Pudur in Coimbatore District. During the tenure of the second respondent as President at the said village panchayat, Kurudampalayam between 2001 to 2006, some complaints seems to have been given and a proceedings under Section 205 of the Tamil Nadu Panchayats Act also seems to have been initiated by the Inspector of Panchayat, namely, the District Collector concerned. Thereafter, a writ petition was filed in W.P.No.40413 of 2005 wherein an order was passed by this Court on 20.12.2005 whereby, it was directed to pass orders on the request of the petitioner in the said writ petition regarding the issue of complaint made against the second and third respondents, who were the erstwhile president and vice president of the said Kurudampalayam village panchayat. Pursuant to the directions issued by this Court in the said writ petition, the District Collector had issued a disciplinary proceedings on 20.3.2006 wherein among various aspects, the District Collector has informed that with regard to the alleged tampering of records or missing of records which belongs to the said village panchayat, complaint has already been given to the first respondent herein on 21.02.2006 and the investigation was pending with the first respondent. Once the investigation report is received from the first respondent, further action would be taken, there on.

3. Even though such thing was stated by the District Collector in the said proceedings dated 20.3.2006, no such report had been received from the first respondent after investigation and therefore, the petitioner association, which was formed to ensure the welfare of the people of the village, has approached this Court with the present writ petition with the aforesaid prayer.

4. Heard both sides.

5. Mr. A.S.Vijayaragavan, the learned counsel for the petitioner would contend that insofar as the said issue of tampering or missing of panchayat records are concerned, it had to be investigated only by the first respondent to whom a reference has already been made by the District Collector through his proceedings dated 21.02.2006 as has been averred in the proceedings of the District Collector dated 20.3.2006. However, for several years, no progress had been shown by the first respondent in completing the investigation and to file a report before the District Collector. Because of this long delay, the members of the petitioner, who are none other than the village people, had been aggrieved, as a suitable remedial action, under law, though had been initiated against the erring persons, the same had not been taken in the right direction in the eye of law and the real culprits had not been brought into

book. Therefore, the learned counsel for the petitioner would submit that a suitable direction has to be issued to the first respondent to complete the said investigation and to file a report to the Collector.

6. Per contra, Mr. C.K.Chandrasekar appearing for the second respondent would submit that the very proceedings initiated by the District Collector as against the erstwhile village president and vice president of the village concerned under Section 205 of the Tamil Nadu Panchayat Act is for removal of the President. The very term of the second respondent as a president of the panchayat was over in October 2006 itself, as thereafter, by fresh local body election, new incumbent had been selected. Therefore, the learned counsel for the second respondent would submit that, the very proceedings under Section 205 as initiated against the second respondent and others since become infructuous, nothing would be surviving in the said complaint made against the second respondent or other persons especially, the complaint on tampering of records or missing of records of the village panchayat. Therefore, the said investigation as mooted by the District Collector regarding the complaint of missing of records is only a formal and academic exercise for record purposes as no useful purpose would be served, even if the said investigation is done and the report to that effect is filed.

7. The learned counsel for the second respondent would also submit that in order to target the second respondent, this writ petition had been filed only to tarnish the image of the second respondent to achieve any ulterior motive on the part of the petitioner association, who are none other than the members of the very same village panchayat. Therefore, the learned counsel for the second respondent would submit that since absolutely no useful purpose would be served in complying with the said directive issued by the Collector through his communication dated 21.2.2006, the petitioner may not be entitled to get any mandamus as has been sought for in this writ petition.

8. The learned Government Advocate appearing for the first respondent would submit that, though a directive was issued by the District Collector on 21.2.2006 seeking report from the first respondent after investigation of the issue regarding the tampering of or missing of records of the village panchayat, the same has become since irreverent, in view of the term of the second respondent was over as early as in the year 2006, no useful finding would come even if the investigation is done and completed.

9. The submissions made by the learned respective counsel have been considered by this Court.

10. In fact, the learned Judge of this Court by order dated 23.10.2007 has passed the following order in M.P.No.1 of 2007 in W.P.No.2094 of 2007:

"2. The grievance of the petitioner is that till date the first respondent has not filed its report. In fact, the relief in the writ petition itself is only for that. However, to ensure compliance, the Government Pleader is directed to ascertain from the first respondent whether the report is ready, if it is not ready, why it is not ready, or if it has already been submitted to the District Collector, the date on which, it has been submitted. The learned counsel for the petitioner submitted that the first respondent has not filed the report and is delaying the matter which would give room for speculation as to whether there is collusion or laxity on the part of the first respondent which will not be condoned. It appears there is a connected writ petition also."

11. On seeing the said order, this Court feels that exactly what was the position prevailing in the year 2007 is still prevailing as no concrete materials has been produced by the official respondents to say whether the investigation, as has been directed by the District Collector, has been done and is completed on the part of the first respondent and if so whether any report to that effect has been sent to the District Collector for further action.

12. Insofar as the apprehension raised by the learned counsel appearing for the second respondent that if at all any investigation is done as directed by the District Collector, then it will target unnecessarily, the second respondent only is concerned, as the very 205 proceedings of the Tamil Nadu Panchayat Act since had been concluded, in view of the term of the second respondent as Village President was over, such apprehension on the part of the second respondent, even though appears to be an acceptable one, in the fact of the present case, it may not be appreciable because the investigation of tampering of records or missing of records of the village panchayat has not been specifically targeted as against the second respondent. Whoever may be the reasoning for such tampering or missing of records have to be brought into book and for the said purpose, the exercise of an investigation by the first respondent is inevitable. Unless such investigation is made by the first respondent, the real culprit cannot be brought into book and if the said issue has not been resolved after proper investigation, the records which are said to be missing, cannot be retrieved.

13. Though it is a village panchayat record, it might have been the records of some important aspect of the village people and therefore, it cannot be said that making an investigation by the first respondent as directed by the Collector would not serve any useful purpose or would not reveal any new aspect to proceed further in this matter.

14. Moreover, as has been recorded by this Court in the earlier order of the learned Judge as referred to above, even in the year 2007 itself, it was directed to ascertain whether the report was made ready, if so whether the same has been sent to the District Collector for further action. However, no response has come from the first respondent till date. Therefore, this Court has no other option except to presume that the investigation, so far, either has not been completed, or even if it is completed, no report has been sent to District Collector, as he directed.

15. Therefore in the circumstances, this Court is of the view that, the prayer sought for herein is very innocuous in nature, and also without conducting a proper investigation by the police authorities, the said charge of missing or tampering of village records cannot be resolved. Hence, a suitable direction can be issued to the first respondent.

16. In the result, the following directions are issued in this writ petition:

The first respondent is directed to investigate the matter especially, in the context of the missing / tampering of the records of the village panchayat of Kurudampalayam village, Coimbatore District as per the earlier proceedings issued by the District Collector dated 21.2.2006, within a period of three months from the date of receipt of a copy of this order and on completion of the said investigation, the final report to that effect shall immediately be sent to the District Collector. The District Collector concerned on receipt of such report from the first respondent shall act upon in accordance with law.

17. It is made clear that this investigation, directed to be completed by the first respondent, is not targeting any individual, much less the second or third respondent and it is in the general interest of the public, especially, the village people of the said village as whose village panchayat records are said to have been tampered or missed.

18. It is also made clear that the disposal of this writ petition with this directions and the observations made herein above shall not stand in the way of any other litigation between the parties, who are parties herein in this writ petition.

19. With these observations and directions, the writ petition is disposed of. No costs.

Sd/-
Asst.Registrar (J)

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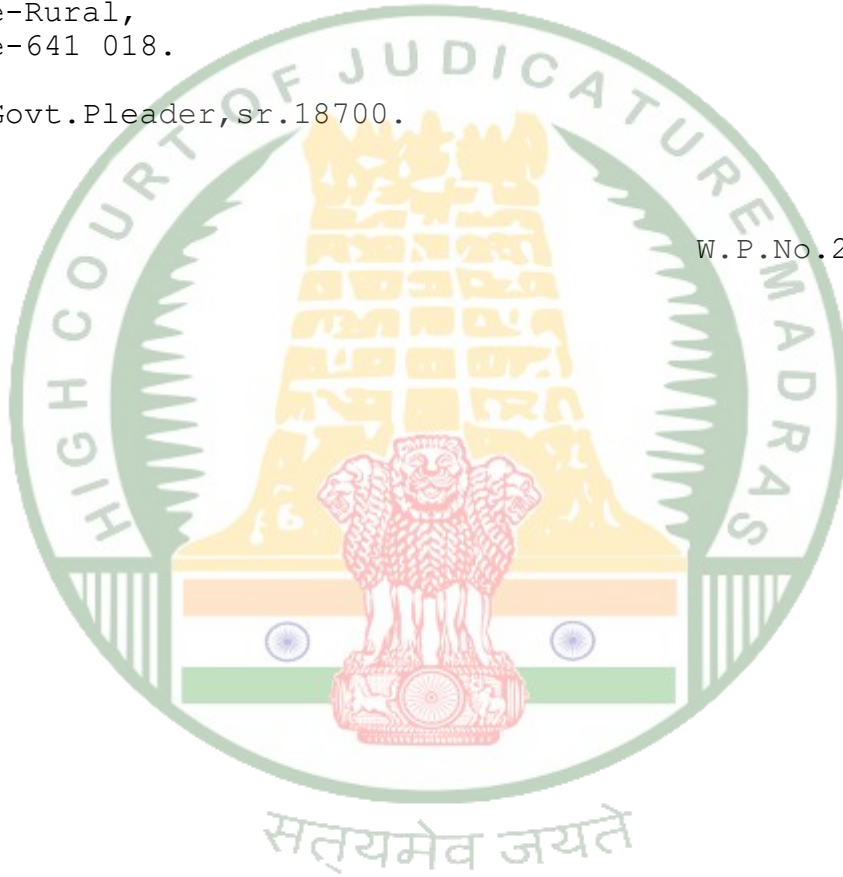
Sub Asst. Registrar

To
The Superintendent of Police,
Coimbatore-Rural,
Coimbatore-641 018.

+1 cc to Govt.Pleader,sr.18700.

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