

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.07.2014

Coram

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

W.P.No.18871 of 2014

1.Murugesan (Died)
2.M.Ravi
3.M.Madhu
4.M.Veerapathiran
5.M.Nirmala
6.M.Jayalaxshmi

[P2 to P6 are substituted as LRs
of the deceased P1-Murugesan
as per order dated 07.04.2017
by KKSJ & MVMJ in WMP.No.8844
of 2017 in W.P.No.18871/2014

... Petitioner

Vs.

The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus in calling for the entire records relating to the impugned order dated 21.02.2014 bearing Na.Ka.No.6886/2013/A4 and quash the same as illegal, arbitrary, in operative in law and further direct the respondent to issuance of Kurumans (S.T.) Community Certificate to the petitioner and his sons and daughters.

For Petitioner : Mr.M.Ravi

For Respondent : 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 Petitioner [at the time of filing the writ petition was alive and later had died] had filed present writ petition praying for passing of an order by this Court directing the Respondent to call for the entire records relating to the impugned order dated 21.02.2014 bearing No.6886/2013/A4 and to quash the same. Further, the Petitioner had sought for passing of an Order by this Court in directing the Respondent to issue Community Certificate to the Petitioner and his sons and daughters.

3.After the demise of the Writ Petitioner, his legal representatives viz., P2 to P6 were substituted as Petitioners by virtue of order passed by this Court in W.M.P.No.8844 of 2017 in W.P.No.18871 of 2014.

4.It appears that the First Petitioner [since deceased] belonged to 'Kurumans' Community which came under 'Scheduled Tribes' based on the Constitution Scheduled Caste and Scheduled Tribes Order, 1950, as amended by Scheduled Caste and Scheduled Tribe Orders (Amendment) Act, 1976. The First Petitioner has three sons and two daughters. Except one, all were married. The elder son and daughter and younger son, had not gone to 6th Standard. Younger daughter had gone upto +2 Standard only. One of the sons, Ravi, a practising Advocate before this Court.

5.The Petitioner proceeds to state that before he (practising Advocate Mr.Ravi) has entered legal profession, he had completed M.A. M.Phil., (Public Administration) and also he cleared SLET and UGE NET Exam for lectureship with aid of Charitable Trust. Except one son, all are doing coolie work and they were suffering even without getting three times of food in daily life.

6.The main grievance as seen from the petition is that the First Petitioner (during his life time) had given a representation to the Respondent on 19.09.2013, which was taken on file and this Court in W.P.No.7195 of 2009 dated 21.09.2009 had passed necessary orders thereto and after the said judgment, the Respondent, viz., the Revenue Divisional Officer, Dharmapuri, had prepared the official proceedings in Na.Ka.No.A5/123/2008 being issuance of "Kurumans" Scheduled Tribe Community Certificate mentioning anthropological and cultural traits of their Community. After that, the First Petitioner had sent community Proof Affidavit to the Respondent

on 07.10.2013 stating that Anthropological and Cultural aspects. However, there was no action taken thereafter. Hence, the First Petitioner [during his life time] filed the writ petition in W.P.No.29945 of 2013 before this Court praying the community certificate being issued to him on basis of the social and cultural aspects as laid down by the Hon'ble Supreme Court in Judgement in Kumari Madhuri Patil & Another V. Additional Commissioner Tribal Development, Thane & Others reported in AIR 1995 SC 94. Subsequently, the Respondent has passed an order by rejecting the representation of the First Petitioner for not submitting the necessary documentary evidence.

7.The grievance of the Petitioners in the present writ petition is that the impugned order dated 21.02.2014, passed by the Respondent/Revenue Division Officer, Dharmapuri, is against law and completely there was non-application of mind on the part of the Respondent. Further more, the Respondent had not appreciated the evidence in a proper and real perspective and as such, the impugned order dated 21.02.2014 passed by the Respondent is liable to be set aside in the eye of Law.

8.At this stage, the Second Petitioner [who appears in person] for himself and also on behalf of the other Petitioners, viz., P3 to P6 strenuously contends that the impugned order of the Respondent dated 21.02.2014, is contrary to Anthropological Survey of India on Schedule Tribes written by K.S.Singh. Also that, the Respondent had not followed the Constitution Scheduled Tribes Order 1950 [as amended in the year 1976], whereby and whereunder Kurumans Community [listed 18 in Serial Number] was mentioned as Schedule Tribes in the State of Tamil Nadu. That Apart, the impugned order of the Respondent had not followed the proof affidavit produced by the First Petitioner [since deceased] on 07.10.2016 and in this regard, this appears to be non-application of mind on the part of the Respondent. Yet another plea raised on behalf of the Petitioners by the Second Petitioner [appeared-in-person] is that the Respondent/Revenue Divisional Officer, Dharmapuri, had not adhered the State Level Scrutiny Committee proceedings bearing No.9698/CVIII/2013 dated 28.04.2008. Further, the Respondent had not followed the Census of India of 'Kurumans' ST population. Besides the above, the Respondent had not taken into in consideration the petitioner's Social and Cultural Traits as laid down in the Hon'ble Supreme Court Judgment in Kumari Mathuri Patil case.

9.At this stage, 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:

S1 .	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 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"

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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...."

17. 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 Petitioners 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. 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.,

19. 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.

20. Be that as it may, in view of the fact that the present Writ Petition viz., W.P.No.18871 of 2014 is filed by the Petitioner(s) assailing the Impugned Order of the Respondent / Revenue Divisional Officer, Dharmapuri, dated 21.02.2014, rejecting his request 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, Dharmapuri, as against the impugned order of the Respondent dated 21.02.2014, 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, Dharmapuri.

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

22. 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, Dharmapuri, shall provide enough opportunity to the Petitioners 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. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer, 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 the Government Pleader, S.R.No.52786

W.P.No.18871 of 2014

SVI (CO)
CU(16/08/2017)

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