



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.(MD)No.21419 of 2017

Athiveerapandian, H.

... Petitioner

Vs.

- 1.The Secretary,
Ministry of Home Affairs,
Government of India, New Delhi.
- 2.Director General of Police,
Border Security Force,
Secundrabad - 500 021, Andrapradesh.
- 3.The Inspector General,
FTR HQ BSF NB,
Radhabari, Jailpaiguri,
West Bengal.
- 4.The Commandant,
O/o. Commandant : HQ 65 BN BSF,
Radhabari District, New Jalpaiguri,
West Bengal.

...Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Mandamus, directing the 2nd respondent to dispose the petitioner's statutory petition dated 10.07.2017, gave under Section 117 of the BSF Act, within a time to be fixed by this Hon'ble Court.

For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.V.Kathirvelu
Assistant Solicitor General of India
Assisted by Mr.Nandagopal
Central Government Standing Counsel

O R D E R

The petitioner was served with an order bearing No.Estt/65 Bn/SSFC-APH/BSF/17/2688 dated 02.03.2017, by the fourth respondent viz., Commandant, 65 Bn BSF, Radhabari, PO - Bhutkidangapara, Jalpaiguri (WB) that he will be tried by Summary Security Force Court on 08th March, 2017 for allegedly committing offence under Section 21(1) of Border Security Force Act, 1968 and having



been released from open arrest with effect from 13.17 hours on 8th March, 2017 until further orders. He had made a representation dated 17.05.2017 from Bodinayakkanur, where he was then residing, seeking to set aside or modify the punishment of dismissal from service passed by the 4th respondent by the aforesaid proceedings to reinstate him with any other further conditions. In response thereto, the third respondent Inspector General, Head Quarters, North Bengal Frontier, Kadamtala Post, Darjeeling District, West Bengal sent a letter dated 19.06.2017 stating as follows:

"Please ref to your petition dated 17 May 2017 addressed to Inspector General, Ftr HQ BSF North Bengal received on 01 Jun 2017 and further to this HQ letter No. 5104-07 dated 06 Jun 2017.

2. As per available records, you were tried by Summary Security Force Court on 08 Mar 2017 for committing an offence under section 21(1) of BSF Act 1968 and awarded punishment to be dismissed from service on being found guilty of the charge.

3. You have submitted a statutory petition against above punishment vide your letter dated 17.05.2017. In this connection it is to inform you that, as per provisions of Rule 167 (2) of BSF Rules, 1969, a person subject to the BSF who has been tried by a Summary Force Court, shall be allowed to put in one petition only to any of the officer mentioned in section 117 of BSF Act, 1968 i.e., to the Central Government, Director General, or any prescribed officer superior in command to the one who confirmed such finding or sentence. Further, under the provision of Rule 129 of BSF Rules, 1969, you are entitled to obtain, at any time after the confirmation of the finding and sentence, when such confirmation is required, the copy of SSFC trial proceedings from Chief Law Officer, HQ DG BSF, New Delhi and may submit the petition to the prescribed authority i.e., the Central Government or DG BSF, New Delhi or IG BSF North Bengal.

4. Hence, you may submit a fresh petition after availing the above opportunity, if you so desire by 15 July 2017 positively. In case no petition is received from you by above date, your present petition will be treated as final and same will be decided."

The petitioner has now approached this Court invoking Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the second respondent, viz., the Director General of Police, Border Security Force, Secundrabad - 500 021, Andrapradesh to dispose the statutory petition dated 10.07.2017, which he has stated to have given under Section 117 of Border Security Force Act, within a time limit to be fixed by this Court.

2. It requires to be added here that a copy of the statutory petition dated 10.07.2017 has not been produced in the typed set filed in this writ petition, though an extract from the web page of the postal department, showing delivery of the article sent under RT791545993IN at Lodi Road, Head Office on 17.07.2017, had been



included in page 12 of the typed set.

3. Be that as it may, when the writ petition was taken up for admission before this Court today, the learned counsel for the petitioner was required to substantiate as to how the Writ Petition could be entertained by this Court as neither the respondents are having their 'seat of authority' nor any part of the 'cause of action' has arisen within the territorial limits of jurisdiction of the Madurai Bench of Madras High Court, having regard to the mandate of clauses (1) and (2) of Article 226 of the Constitution of India and the binding judicial decisions governing that aspect.

4. The learned counsel for the petitioner submitted that the order dated 09.06.2017 passed by the third respondent served on the petitioner at his present residence at Bodinayakanur Town in Theni District of Tamilnadu, which falls within the territorial jurisdiction of this Court would suffice for the petitioner to approach this Court.

5. After duly considering the submissions made, this Court is not in a position to accept the aforesaid contention of the learned counsel for the petitioner.

6. The question whether the mere service of a notice to the petitioner at his residence would entitle him to seek legal remedy under Article 226 of the Constitution of India before the High Court when his residence is situated arose for adjudication before the Hon'ble Supreme Court in **State of Rajasthan v. M/s. Swaika Properties [1985 AIR 1289]**, wherein it has been held as follows:-

"8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under S.52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under s. 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench.

The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Art. 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State

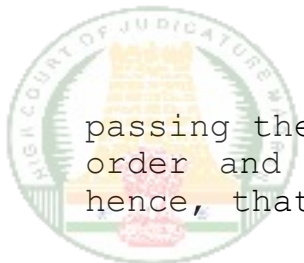


Government under S. 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under S. 52 (2) for the grant of an appropriate writ, direction or order under Art. 226 of the Constitution for quashing the notification issued by the State Government under S. 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under S. 52(1) of the Act by a petition under Art. 226 of the Constitution, the remedy of the respondents of the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

7. This leads to the next issue as to whether the order dated 19.06.2017 sent by the third respondent to the petitioner at his residence at Bodinayakkanur forms part of the cause of action to file this Writ Petition. In this context, reference could be made to the decision of the Hon'ble Supreme Court in **State of Punjab v. Khemi Ram [AIR 1970 SC 214]**, in which it has been held as follows:

"It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus may go away from the address given by him for service of such orders, or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides."

This would mean that the despatch of the order by the authority



passing the order would suffice for the purpose of communicating the order and its actual delivery to the addressee is immaterial and hence, that cannot form any part of the cause of action.

8. Even if it is assumed that this Court would have territorial jurisdiction in addition to the other Courts, the principle of forum conveniense would clearly operate to the effect that this Court ought not to entertain a writ petition when the part of the cause of action, was trivial or negligible as in this case as fortified by the decision of the Division Bench of this Court in the judgment **dated 06.06.2013 in W.P. (MD) No.8790 of 2013** in the matter of **C.Ramesh v. The Director General of Police** wherein it has been held as follows:-

"7. Exercise of jurisdiction is based on arising of the cause of action, either in whole or in part in any one of the said Revenue Districts. [See RAJASTHAN HIGH COURT ADVOCATES' ASSOCIATION Vs. UNION OF INDIA AND OTHERS (2001 (2) SCC 294) and B.STALIN Vs. THE REGISTRAR, SUPREME COURT OF INDIA AND OTHERS (2012 (3) LW 489 (FB))].

8. It should be remembered that the part of cause of action must be substantial in nature. The territorial jurisdiction of the Court is linked with the place of accrual of cause of action. [See U.P. RASHTRIYA CHINI MILL ADHIKARI PARISHAD, LUCKNOW Vs. STATE OF U.P. AND OTHERS (1995 (4) SCC 738)].

9. Referring to KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA (2004 (3) CTC 365), a Full Bench of this Court in SANJOS JEWELLERS Vs. SYNDICATE BANK, BANGALORE AND OTHERS (2007 (5) CTC 305), held as under:-

"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the Doctrine of forum conveniens. [See BHAGAT SINGH BUGGA Vs. DEWAN JAGBIR SAWHNEY, AIR 1941 CAL 670 : ILR (1941) 1 CAL 490; MADANLAL JALAN Vs. MADANLAL, 1945 (49) CWN 357: AIR 1949 CAL 495; BHARAT COKING COAL LTD. Vs. JHARIA TALKIES & COLD STORAGE (P) LTD., 1997 CWN 122; S.S.JAIN & CO. Vs. UNION OF INDIA, 1994 (1) CHN 445, and NEW HORIZONS LTD. Vs. UNION OF INDIA, AIR 1994 DEL 126]."

10. Question of entertaining a lis disclosing a cause of action or part of cause of action is based on the averments contained in the affidavit etc. At that stage, the truth or otherwise of the averments need not be gone into. But, there must be necessary averments disclosing a cause of action, so that the Court can take cognizance of/entertaining the lis exposed in the petition for taking further action. [See OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND OTHERS (1994 (4) SCC 711)].

11. A Court cannot arrogate/assume/confer upon itself a



jurisdiction-territorial jurisdiction, when it has no such jurisdiction. Lack of jurisdiction to entertain a matter goes to the root of the matter, otherwise whatever action taken or orders passed by the Court becomes a nullity, it is non est and of no consequence at all resulting in wasting of precious public time. Courts are barred from indulging in hypothetical and academic exercises."

9. In the aforesaid circumstances, this Court does not find any justification to entertain the writ petition and accordingly, this writ petition is dismissed. It is made clear that no views on the merits of the factual controversies between the parties have been expressed by this Court and the rejection of this Writ Petition for the aforesaid reason would not stand in the way for the petitioner to work out his remedies for the eligible relief before the proper forum in the manner recognized by law. No costs.

Sd/-

Assistant Registrar(A.S)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Ministry of Home Affairs,
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2. Director General of Police,
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O/o. Commandant : HQ 65 BN BSF,
Radhabari District,
New Jalpaiguri,
West Bengal.

+1cc to Mr.C.NANDAGOPAL Advocate in SR. No. 89158

SJ

JS/SKN.RSK/SAR.1/20.12.2017/6P-6C