



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2017

C O R A M

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THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No.21647 of 2017

and W.M.P. (MD) Nos.17922 and 17923 of 2017

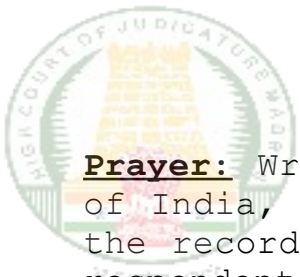
R.Gandhi

... Petitioner

Vs.

- 1.The Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
Block No.10, 5th Floor,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
- 2.The Director General,
Border Security Force (BSF),
Block No.10, Ground Floor,
Room No.10, CGO Complex,
Lodhi Road,
New Delhi - 110 003.
- 3.The Inspector General,
Border Security Force (BSF),
FTR HQ, BSF Jammu,
PO - Paloura Camp,
Jammu District - 181 124.
State of Jammu & Kashmir.
- 4.The Deputy Inspector General,
Border Security Force (BSF),
Sector HG, BSF Jammu,
PO - Paloura Camp,
Jammu District - 181 124.
State of Jammu & Kashmir.
- 5.The Commandant,
HQR, 78, Battalior BSF,
Indreshwarnagar,
PO - Miran Sahib,
Jammu District - 181 101.
State of Jammu & Kashmir.
- 6.The Deputy Commandant/Adjutant,
HQR, 78, Battalior BSF,
Indreshwarnagar,
PO - Miran Sahib,
Jammu District - 181 101.
State of Jammu & Kashmir.

... Respondents



Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 6th respondent Deputy Commandant vide No.Estt/C-A/Resettlement/78BN/17/9004-06 dated 24.08.2017, quash the same, and further direct the respondents to sanction Compassionate Allowance to the petitioner under Rule 41 of the Central Civil Services (Pension) Rules, 1972 on par with the similarly placed person.

For Petitioner : Mr.S.Xavier Rajini

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

O R D E R

The petitioner, who had joined as a Constable in 78 Battalion of Border Security Force (BSF) in Jammu on 01.04.1988 had been dismissed from service by the fifth respondent, viz., the Commandant, Hqr, 78, Battalior BSF, Indreshwarnagar, PO - Miran Sahib, Jammu District, State of Jammu & Kashmir with effect from 24.11.2003 as he has overstayed and had not joined duty within time. Thereafter, the petitioner had made a representation dated 07.01.2017, to the second respondent, viz., the Director General, Border Security Force (BSF), Block No.10, Ground Floor, Room No.10, CGO Complex, Lodhi Road, New Delhi, requesting to sanction Compassionate Allowance, which was forwarded to the 5th respondent and the same was rejected by the 6th respondent, viz., the Deputy Commandant/Adjutant, Hqr, 78, Battalir BSF, Indreshwarnagar, PO - Miran Sahib, Jammu District, State of Jammu & Kashmir, by proceedings No.Estt/C-A/Resettlement/78BN/17/9004-06 dated 24.08.2017. The present writ petition has been filed challenging the aforesaid order dated 24.08.2017, rejecting the representation dated 07.01.2017 made by the petitioner for compassionate allowance and for consequential directions to those respondents to grant him the same on par with the similarly placed persons.

2.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 Articles (1) and (2) of Article 226 of the Constitution of India and the binding judicial decisions governing that aspect.



3.The learned counsel for the petitioner submitted that the order dated 24.08.2017 passed by the sixth respondent was served on the petitioner at his present address at Parayam Village, Monday Market, Neyoor Post, Kanyakumari District of Tamilnadu, which falls within the territorial jurisdiction of this Court and that would suffice for the petitioner to approach this Court.

4.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.

5.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, or to approach this Court for order under Art. 226 of the Constitution for quashing the notification issued by the State Government

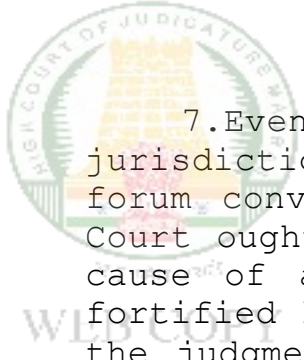


under S. 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under S. 52(1) of the Act by a petition under Art. 226 of the Constitution, the remedy 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."

6. This leads to the next issue as to whether the order dated 24.08.2017 sent by the sixth respondent to the petitioner at his residence at Neyoor Post, Kanyakumar District 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 its actual delivery to the addressee is immaterial and hence, that cannot form any part of the cause of action.



7. 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 hypothetic and academic exercises."

8. 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. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Ministry of Home Affairs,
Union of India,
Block No.10, 5th Floor,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
2. The Director General,
Border Security Force (BSF),
Block No.10, Ground Floor,
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State of Jammu & Kashmir.

+ 1 cc TO Mr.S.Xavier Rajini , Advocate in SR No. 90131
+ 2 ccs TO Mr.J.Jeyakumaran , Advocate in SR No. 89827

sj
AE/JC/SAR4/27.12.2017/7P/10C

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