



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

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CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.6166 of 2018
and
WMP No.7603 of 2018

Kanimozhi Mathi ... Petitioner

vs.

1. The Principal Secretary,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai - 600 009.

2. The Commissioner,
Corporation of Chennai,
Ribbon Building,
Chennai - 600 003.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the 1st and 2nd respondents to shift the abode of the gypsy people from "Marina Beach" and provide better and sufficient place to reside and not to permit anyone to set up their abode in future and implement further.

For Petitioner : Ms.Kanmimozhi Mathi
Party-in-Person

For Respondents : Mr.T.N.Rajagopalan (for R1)
Government Pleader
Mr.V.C.Selvasekaran (for R2)
standing counselORDER

(Order of the Court was made by S.MANIKUMAR, J)

Claiming herself to be a public interest litigant, a practicing lawyer of this Court has sought for a mandamus, directing the Principal Secretary, Adi Dravidar and Tribal Welfare Department, Chennai and the Commissioner, Corporation of Chennai, the respondents 1 and 2, to shift the abode of the gypsy people from "Marina Beach" and provide better and sufficient place to reside and not to permit anyone to set up their abode in future and implement further.



2. When the writ petition was filed, Registry has made a note that a representation is required. Responding to the above on 14.03.2018, party-in-person has made the following endorsement.

"As Marina Beach is a public place, representation cannot be sent as matter of right. For public Interest Litigation petitioners sending representation is not a mandatory requirement to be complied with. Prayer is in order. Complied with and represented on 14.02.2018."

Thereafter, writ petition appears to have been numbered.

3. On the aspect as to when mandamus can be issued, we deem it fit to consider few decisions.

(i). In State of Kerala v. A.Lakshmi Kutty reported in 1986 (4) SCC 632, the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In Raisa Begum v. State of U.P., reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iii) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and

<https://hcservices.ecourts.gov.in/hcservices/> in paragraph 10, the Apex Court held as



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follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy



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and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

(iv). When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the



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matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

4. A writ of Mandamus, can be issued by the court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority and for the failure of performance of a legal or statutory duty, by the authority, against whom, the relief is sought for.

5. In the case on hand, though, as a public interest litigant, the petitioner has a right to enforce the same against the respondents, not even a representation has been made, to the respondents that there are gypsies in Marina Beach and that they should be provided better and sufficient place to reside. Though, respondents have a duty to maintain, marina beach clean, unless and until failure on the part of the respondents, to perform a duty, is brought to their notice, mandamus cannot be issued for mere asking. At this juncture, we deem it fit to refer to a judgment of the Hon'ble Supreme Court, wherein, explaining the distinction between the pleadings and proof, required in a writ petition filed under Article 226 of the Constitution of India and the pleadings in the Civil Court, the Hon'ble Supreme Court at paragraph No.13, in Bharat Singh and Others Vs. State of Haryana and Others, reported in 1988 (4) SCC 534, held as follows:

<https://hcservices.ecourts.gov.in/hcservices/> In our opinion, when a point which is



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ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evident which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

6. Though, Ms.Kanimozhi Mathi, party-in-person has sought for permission to withdraw the writ petition, in the light of the decisions and discussion, we are not inclined to grant permission. Accordingly, writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai - 600 009.

2. The Commissioner,
Corporation of Chennai,
Ribbon Building,
Chennai - 600 003.

+1cc to the Government Pleader, S.R.No.22388

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ks (CO)