

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.21263 of 2018

P.Subramanian

... Petitioner

vs.

1. The District Collector,
Collectorate,
Nagapattinam District,
Nagapattinam.

2. The Director of Planning, Rural Development
Directorate,
Collectorate,
Nagapattinam District,
Nagapattinam.

3. The Executive Engineer,
Department of State Highways and Buildings,
Nagapattinam District,
Nagapattinam.

.... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, forbearing the respondents to construct the bridge spending huge amount in the place which is situated at Mulli river connecting Bairavanathar Temple road with Thakattur Village Vaidmedu Road, at Vadearanyan Taluk, Nagapattinam Village based on the representation of the petitioner dated 05.07.2018.

For Petitioner : Mr.R.Murugabharathi

For Respondents: Mr.M.Sricharan Rangarajan
Additional Government Pleader.

ORDER

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

Petitioner, a resident of Thagattur Village, Vedaranyam Taluk, Nagapattinam District and claiming himself to be the former Chief Temple Turstiee of Bairavanathar Temple, has filed the instant writ petition for a mandamus, forbearing the respondents from constructing a bridge spending huge amount in

the place, which is situated at Mulli river connecting Bairavanathar Temple road with Thakattur Village Vaidmedu Road, at Vadearanyan Taluk, Nagapattinam Village based on the petitioner's representation dated 05.07.2018.

2. Opposing the proposed construction at the abovesaid place, petitioner seemed to have sent a representation dated 05.07.2018 to the Secretary to the Government, Public Works Department, Tamilnadu and others stating that the proposed place has high bends and turns and it would benefit only 17 families, whereas, if the bridge is constructed opposite to Samathuvapuram Vaimedu Road, it would benefit 500 families. In his representation, petitioner has also stated that there are Primary Health Centre, Sidha Hospital, Agricultural Development Centre, Sub Registrar's Office, Government Boys and Girls Hostel and Government Primary and High School near samuthuvapuram vaimedu road. Thus, petitioner has contended that the construction of the bridge at Samathuvapuram Vaimedu Road, would benefit all.

3. Further, contending that the said representation dated 05.07.2018, addressed to the Secretary to the Government, Public Works Department, Tamilnadu, has not been disposed of, instant writ petition has been filed, for the relief stated supra.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. Material on record discloses that earlier, a representation dated 22.06.2018, has been made to the Block Development Officer, and that the same has been rejected. Thereafter, petitioner seemed to have made a representation dated 07.07.2018 to the District Collector, Nagapattinam.

6. Location of the proposed construction of the bridge, has been decided by the authorities, having regard to the need of the general public. Though the petitioner has contended that the proposed construction would only benefit 17 families and not 500 families belonging to Samathuvapuram Vaimedu Road, petitioner has no constitutional or statutory right, to insist that the bridge should be constructed only at Samathuvapuram Vaimedu, and not the place, decided by the authorities and consequently, to seek for a mandamus, against the respondents, as to the place of location. Courts cannot run Government and it is left to the decision of the authorities to choose the place.

7. 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 Ors.*) in paragraph 10, the Apex Court held as 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 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 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)

8. 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.

9. In view of the above discussion and decisions, writ petition is dismissed. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Collectorate,
Nagapattinam District, Nagapattinam.

2. The Director of Planning, Rural Development
Directorate,
Collectorate,
Nagapattinam District, Nagapattinam.

3. The Executive Engineer,
Department of State Highways and Buildings,
Nagapattinam District, Nagapattinam.

+1 cc to Govt. Pleader sr 57190.

+1 cc to Mr.M. Senthil Kumar, Advocate sr 58476.

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SP(31/08/2018)