

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.15144 of 2018

Silambarasan

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Chief Secretary,
Secretariat, Chennai - 600009.

2.The Secretary,
Department of Urban Development,
Secretariat, Chennai - 600009.

3.The District Collector,
Office of the District Collector,
Krishnagiri District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to dispose of the petitioner's representation dated 10.08.2017.

For Petitioner : Mr.K.Sathyaraj

For Respondents: Mr.E.Manoharan
Addl. Government Pleader

ORDER

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

Contending inter alia that the petitioner, is a reporter of Malai Thamilaagam, widely circulated newspaper in Krishnagiri District, as a public interest litigant, instant writ petition has been for a Mandamus, directing the Chief Secretary, State of Tamil Nadu, Secretariat, Fort St. George, Chennai, to upgrade the status of Hosur Special Municipality, to that of Corporation and officially declare the same.

2. Supporting the prayer sought for, averments have been

made that as per 2011 census, the total population of Hosur Town was 5,39,663. The Urban population of Hosur Taluk is more than 2,29,528, compare to other Taluks in Krishnagiri District. Though, Krishnagiri is the Headquarters of the Krishnagiri District, urban population is lesser than Hosur.

3. Petitioner has further contended that the Rural population growth is considerably less. The highest population growth of Hosur Taluk is 35.6 per cent. The Urban decadal variation percentage in Hosur Taluk is 130.3. Due to industrial development in this Taluk, urban area has more growth in population.

4. Petitioner has further contended that, the Krishnagiri District Hosur is the largest town and it has vast industrial development. The Government had formed SIPCOT industrial estates in an around 2000 acres. After the massive revenue flow from the SIPCOT. The Government have separated it as SIPCOT-I and SIPCOT-II. Thus, the Government is making Rs.3,500 Crores revenue, from SIPCOT and that 1,25,000 workers are relying on the industrial estates in Hosur.

5. Petitioner has further contended that, it satisfies all the requirements to become a Municipal Corporation, but Government of Tamil Nadu, keeps it as a Municipality. Hence, fund given to the Municipality, is very less to manage the town. Municipal Council has passed a resolution and sought for upgradation of Hosur Town, as a Municipal Corporation. According to the petitioner, other places in Tamil Nadu, have lesser population and revenue, but upgraded as Municipal Corporation that includes Thanjavur (2,91,000), Dindigul (2,07,000), but still, Hosur is kept as a Special Municipality. Other Municipal Corporations which have comparable equal population is Thoothukudi (4,11,000), Tirunelveli (4,74,000), Vellore (4,85,000). For the abovesaid reasons, the petitioner has sought for the relief, stated supra.

6. Referring to a decision of this Court, in W.P.No.1790 of 2018, dated 02.02.2018, Mr.E.Manoharan, learned Additional Government Pleader, submitted that the petitioner has no constitutional or statutory right to seek for a Mandamus. He prayed for dismissal of the writ petition.

7. Heard the learned counsel for the petitioner and materials available on record.

8. Though the petitioner has contended that Municipal Council of Hosur has passed a resolution, and sought for upgradation, we do not find any supporting document.

9. 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.

10. 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)

11. A prerogative writ, like, a Mandamus cannot be demanded ex debito justitiae, but it 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, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

12. In W.P.No.1790 of 2018, petitioner therein has sought for a Mandamus, directing the respondents therein to set up or create a separate Village Panchayat for S.Earipalayam Village, Panruti Taluk, Cuddalore District. Observing that there is no whisper in the affidavit, as to any provision of law under which the Villagers can claim as a matter of right, a Hon'ble Division Bench has dismissed the above writ petition.

13. Going through the material on record, we are of the view that the petitioner has not made out a case for issuance of Mandamus, on the basis of either Constitutional or Statutory rights.

14. In the light of the above discussion and decision stated supra, instant writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The State of Tamil Nadu,
Represented by the Chief Secretary,
Secretary, Chennai - 600009.

2.The Secretary,
Department of Urban Development,
Secretariat, Chennai - 600009.

3.The District Collector,
Office of the District Collector,
Krishnagiri District.

+1cc to Mr. K.Sathya Raj, Advocate, S.R.No.56037

+1cc to the Government Pleader, S.R.No. 56049

W.P.No.15144 of 2018

GN(07/09/2018)

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