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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P (MD) No.1677 of 2018

M.Devaraj,
Human Welfare Watch,
Kattayanvillai, Vettoornimadam Post,
Nagercoil, Kanyakumari District.

.. Petitioner

Vs.

1.The Secretary to Government,
Local Bodies Department,
Secretariat Office, St. George Fort,
Chennai.

2.The Municipal Administrative Commissioner,
Ezhilagam, Annexed Building 6th Floor,
Chepauk, Chennai - 5.

3.The District Collector,
Collector Officer,
Kanyakumari District.

4.Mr.Saravana Kumar,
Municipal Commissioner,
Nagercoil Municipality,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first and second respondents to take appropriate action against the fourth respondent and transfer him, based on the petitioner's representations 13.06.2017 and 01.07.2017.

For Petitioner	: Mr.M.Punitha Deva Kumar
For Respondent No.3	: Mr.A.Muthukaruppan, Additional Government Pleader.
For Respondent No.4	: Mr.P.Athimoolapandian, Standing Counsel.

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The writ petition is styled as a "Public Interest Litigation", filed by the petitioner, who is said to have running an organisation, namely, "Human Welfare Watch", for the benefit of the



people of Kanyakumari District. The petitioner would aver that when Mrs.Meena Dev, was the Chairman of Nagercoil Municipality, wonderful sanitary and civic amenities were provided and after her tenure was completed on 25.10.2016, such good and welfare activities, are not going on.

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2.The petitioner, in paragraph No.11 of the affidavit filed in support of the writ petition, would state that the fourth respondent assumed the office of Municipal Commissioner of Nagercoil and he has not taken any effective and appropriate steps for maintaining the good administration and his only motive is collecting money by resorting to extortion. The petitioner would further state that the fourth respondent is interested only in publicity and not taking any steps for maintaining the sanitary and civic conditions and also issued an advertisement for auctioning all the shops belonging to Nagercoil Municipality and by doing so, evicted the old shop keepers from the municipality shops and introduced affluent persons for locating their business and in this regard, he has submitted a representation, dated 13.06.2017 to the respondents. Since, there is no proper response forthcoming, he came forward to file this writ petition.

3.The learned counsel appearing for the petitioner advanced his arguments based on the averments made in the affidavit filed in support of the writ petition and would submit that it would be suffice to direct the respondents 1 to 3 to consider and dispose of his representation, dated 01.07.2017, in accordance with law, within a stipulated time frame.

4.A perusal of the Cause Title would indicate that there is no such officials called "Secretary to Government, Local Bodies Department", as well as "Municipal Administrative Commissioner, Chepauk, Chennai - 5".

5.Mr.A.Muthukaruppan, learned Additional Government Pleader, accepts notice on behalf of the third respondent.

6.Mr.P.Athimoolapandian, learned standing counsel for Nagercoil Municipality, accepts notice on behalf of the fourth respondent and would submit that while the local body, through the licence granted to the shops, was earned an income of Rs.45,00,000/- only, after the fourth respondent took the office as Municipal Commissioner of Nagercoil Municipality, auction was conducted in a fair and transparent manner, in respect of the shops belonging to Nagercoil Municipality and it earned an income of Rs.4,28,00,000/-. It is the further submission of the learned standing counsel appearing for Nagercoil Municipality, that the Notification in Na.Ka.No.7841/2017/A.13, dated 28.12.2017, was also put to challenge in W.P(MD)Nos.474, 1591 to 1593, 1638, 1781 to 1797 and 1846 to 1848 of 2018 and all the writ petitions were dismissed by the concerned Bench and would further add that the present writ petition is filed as a "Public Interest Litigation", only to espouse



the cause of the erstwhile occupants of the shops, who had squat over the property and deprived the Nagercoil Municipality, of the fair and decent income and therefore, prays for dismissal of the writ petition with exemplary cost.

7.This Court has considered the rival submissions and also perused the materials placed before it.

8.This writ petition was listed for hearing on 30.01.2018 and on that day, the learned counsel appearing for the petitioner was directed to produce the Trust Deed of the Human Welfare Watch and the welfare measures taken by him in Kanyakumari District and when the matter is listed today, after advancing arguments on the merits of the writ petition, the learned counsel appearing for the petitioner prayed for time to produce the said documents, as required by this Court. However, this Court is not inclined to accede to the said request.

9.A perusal of the affidavit filed in support of the writ petition would disclose that the petitioner has not specifically stated as to what is his source of income and that apart, he is only espousing the cause of the erstwhile occupants of the shops in question. A perusal of the affidavit would also disclose that he is solely interested in protecting their interest under the garb of this Public Interest Litigation. It is also pertinent to point out, at this juncture, that the petitioner seeks transfer of the fourth respondent - Commissioner of Nagercoil Municipality, who has been arrayed in his personal capacity and the averments, as to the reasons for transfer, are also bereft of any material particulars. It is also brought to the knowledge of this Court that on 26.01.2018, the Collector of Kanyakumari District has given "Certificate of Merit" recognising the meritorious service rendered by the fourth respondent.

10.It is a settled position of law that transfer is an incident of service and Public Interest Litigation in respect of a service matter, is not at all maintainable. This Court after having considered the rival submissions and also perused the materials, is of the considered view that the writ petitioner has approached this Court with a mala fide and oblique motive and he is merely espousing and rather supporting the cause of erstwhile occupants of the shops. The petitioner is also guilty of abusing the process of this Court and he has no public interest to maintain this writ petition and accordingly, the same deserves dismissal with exemplary costs.

11.In the result, the writ petition is dismissed, at the admission stage itself, with exemplary cost of Rs.25,000/- [Rupees twenty five thousand only] payable to the Tamil Nadu Mediation and Conciliation Centre, attached to this Bench. The petitioner has to pay the cost to the said Centre on or before 19.02.2018 and produce the proof of the same.



12.Call on 21.02.2018.

Sd/-
Assistant Registrar (CS-II)

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/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Collector Office ,
Kanyakumari District.

COPY TO:

The Co-ordinator,
Tamil Nadu Mediation and Conciliation Centre,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.M.Punitha Deva Kumar, Advocate SR.No. 45336

ORDER MADE IN
W.P (MD) No.1677 of 2018
31.01.2018

SMN

JM/SV MMS/SAR 4/12.02.2018/4P/4C