

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

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

W.P.No.5580 of 2019
and
W.M.P.No.6352 of 2019

T.Senthil .. Petitioner
Vs.

- 1.The Assistant Director,
Town Panchayat Office,
Salem District.
- 2.The Executive Officer,
Mecheri Special Grade Town Panchayat,
Salem District.
- 3.The Assistant Engineer,
National Highways Authority of India,
Mecheri. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, forbearing the respondents 1 and 2 from conducting the public auction/tender pursuant to the tender notice dated 18.02.2019 made in Na.Ka.No.671/2018 issued by the 2nd respondent inviting tenders for collecting entry fees for vehicles coming to the Badrakalli Amman Temple situate at Mecheri without earmarking specific locations at which the vehicles shall be permitted to be parked after collecting the entry fees and further direct the respondents not to allow any vehicle to be parked on either side of the Dharmapuri-Salem Highway (NH544) near the vicinity of Badrakalli Amman Temple, Mecheri after collecting the entry fee.

For Petitioner : Mr.P.K.Harinath Babu

For R1 and R2 : Mr.E.Manoharan,
Additional Government Pleader

O R D E R

(Order of this Court was made by SUBRAMONIUM PRASAD, J.)

The instant public interest litigation has been filed for the following prayer:-

"To forbear the respondents 1 and 2 from conducting the public auction/tender pursuant to the tender notice dated 18.02.2019 made in Na.Ka.No.671/2018 issued by the 2nd respondent inviting tenders for collecting entry fees for vehicles coming to the Badrakalli Amman Temple situate at Mecheri without earmarking specific locations at which the vehicles shall be permitted to be parked after collecting the entry fees and further direct the respondents not to allow any vehicle to be parked on either side of the Dharmapuri-Salem Highway (NH544) near the vicinity of Badrakalli Amman Temple, Mecheri after collecting the entry fee."

2. The petitioner is a resident of Kolkaranur, Mecheri via Mettur Taluk, Salem District. It is stated by him that the Executive Officer, Mecheri Special Grade Town Panchayat, Salem District/second respondent has issued a notice vide Na.Ka.No.671/2018, dated 21.12.2018, calling for public auction/tender for collecting entry fees for the vehicles entering Badrakalli Amman Temple, situated at Mecheri Village without earmarking specific locations at which the vehicles shall be permitted to be parked so as to avoid traffic on the Dharmapuri-Salem Highway.

3. According to him, tender/auction once issued earlier, was postponed for various administrative reasons. He would state that the petitioner has made a representation dated 06.01.2019 to the Assistant Director, Town Panchayat Office, Salem District/first respondent, pointing out the discrepancies in the tender notice as the same does not contain specific entry points at which the fee would be collected. He would state that there is no specific location available for the vehicles to get parked on the side of the National Highways. He would state that the entire process of the tender is bad.

4. On 26.02.2019, this Court has passed the following order:-

"Main contention of the petitioner is that there is no parking lot near Badrakali Amman Temple, situate at Mecheri. Cars parked on either side of Dharmapuri - Salem Highway (NH-544), cause hardship, affect free flow of traffic and there are innumerable accidents. Executive officer, Mecheri Special Grade Town Panchayat, Salem District, second respondent, has floated a tender notice, dated 21/12/2018, fixing

22/1/2019, as the date, for opening tender.

2. Supporting the contention, Mr.Harinath Babu, learned counsel for the petitioner, invited the attention of this Court to the tender notice, dated 21/12/2018 and submitted that space for parking lot is not mentioned.

3. Material on record discloses that when the petitioner sent a letter, dated 6/1/2019, to the Director of Planning, Chennai, action on the said letter has been taken. The Executive Officer, Mechery Special Grade, Town Panchayat, Salem District, vide proceedings, in Na.Ka.No.671/2018, dated 25/1/29, has replied to the Assistant Director, Office of Town Panchayats, Salem as hereunder:-

"Auction having been let out ever since the year 2012 - 13 for entrance fees for the carts and vehicles coming to Badrakali Amman Temple, Mechery Special grade Town Panchayat, Salem District, basic amenities are being provided to the areas in and around the temple. Hence, collection is received only from such vehicles.

It is false to state that the carts and vehicles coming to Badrakali Amman Temple are parked in Salem main road, Highways, Dharmapuri main road highways. The carts and vehicles carrying the devotees to the temple are parked only near the road belonging to the Town Panchayat. Entrance fees are collected only for that. The petitioner knows very much that in this connection auction having been let out by the Town Panchayat collections are being made since the year 2012 - 13 and only with the object of causing hindrance to the administration of the Town Panchayat, the petitioner has acted by making application.

As stated by the petitioner, lease has been granted to the auction bidder for entrance fees for carts and vehicles coming to Badrakali Amman Temple, only as per the conditions of the Special Grade Town Panchayat. Therefore, the information that plyig of vehicles through the land belonging to the Highways Department is a hindrance to the general public and hence accidents also take place is a wrong information. When the general public are coming to temple, especially when they gather in large numbers at times of festivals, summoning the police force in larger number, protection is provided to the temple.

As entrance fees are collected for the carts and vehicles of the devotees coming to Badrakali Amman

Temple, without any hindrance to the general public and traffic, no entrance fee whatsoever is collected for buses going through Salem Dharmapuri Highways and pick up general public. The petitioner has given false information wantonly.

The auction ought to have been conducted on 10/1/2019 for the carts and vehicles thronging to Badrakali Amman Temple has been postponed to 14/1/2019 for administrative reasons, through the Administration of the Town Panchayat. Further, as the Hon'ble Chief Minister of Tamil Nadu had announced 14/1/2019, the day prior to Pongal festival as holiday in the Legislative Assembly, the auction was postponed to 22/1/2019.

Further as Dharshan of the Almighty has been arranged to the general public, without any hardship, since the vehicles had been parked and entrance fees collected in the land near the road belonging to the Special Grade Town Panchayat, Mechery, I hereby humbly inform that the petitioner has given false information about the Administration."

4. Petition of the writ petitioner has been found to be false. Going through the said letter, it could be deduced that whenever there is a festival,

vehicles are parked on the roads, due to heavy rush. But that does not mean tender is floated, without ear-making a space for car park.

5. Though the learned counsel for the petitioner reiterated the grounds for notice being sent to the respondents, we indicated to him that after ascertaining from the official respondents as to the place specifically ear marked for car park, appropriate orders would be passed in the writ petition even by imposing costs.

6. Courts have consistently held that if any false information is given in the affidavits, then, the writ petitions filed deserves to be dismissed with costs. Not only for furnishing such false information and also for filing frivolous writ petitions by abusing the process of law.

7. Material on record further discloses that auction for collection of entrance fees for cars and vehicles coming to Badrakali Amman Temple, Mecheri, is being conducted regularly from 2012 - 13 onwards.

8. Mr.E.Manoharan, learned Additional Government Pleader is directed to produce the decision of Mecheri Special Grade Town Panchayat, second respondent, to float tender, for collection of entrance fees, for the cars and vehicles, coming to Badrakali Amman Temple, from 2012 - 13. Tender documents from 2012 - 18, finalisation of the contracts, in particular the area ear marked, for car parks, for the vehicles coming to Badrakali Amman Temple.

9. Post on 1/3/2019, immediately after motion."

5. The respondents have filed the detailed counter affidavit, stating as under:-

4. It is most respectfully submitted that with reference to Para 3 of the petitioner's affidavit, it is submitted that the tenders were called upon for the period 01.04.2019 to 31.03.2020. All participants were required to initially submit a security deposit of Rs.1,00,000/-. The above mentioned tender was conducted as per the G.O.No.181 dated 19.09.2008 of the Municipal Administration and Water Supplies Department.

5. It is further submitted that the said tender process is being carried out from the year 2008 as per G.O.No.181 dated 19.09.2008 of the Municipal Administration and Water Supplies Department, by the BDO and thereafter the Executive Officer Town Panchayat Mecheri is conducting the said Tender from the year 2012-2013 to 2019-2020 by giving Tender Notice, for the lease period of one year. It is submitted that on expiration of the said lease period the successful bidder may be given an option to extend the period of lease for a further period of 2 years with an increase of 5% (every year) in the rate of actual Tender amount.

6. It is most respectfully submitted that, the Temple is situated in Survey Number 238 (1A1A), measuring a total extent of 2.63 acres, with an parking area of about 2400 sq.ft situated behind the Temple. Thereafter there is also a temple property (THEPPA KULLAM) which is situated in survey number 238 (1A2), along side the temple, on an extent of 0.33 acres, and right next to the same there lies a parking space of about 1800 sq.ft. The averments made by the petitioner that there is no parking space available for parking the vehicles which are coming to the temple is false. It is submitted that during certain days such as festival days, there is huge inflow of devotees and when the parking is full, such devotees tend to park their cars a little further away from the

Temple. Sometimes cars are also parked along the Highway. It is only during such special days such parking occurs. Unlike as stated, and exaggerated, by the petitioner, there are no such accidents that have occurred due to the parking of such vehicles.

7. It is further submitted that for the auction that was carried out recently a total of 47 members/participants had participated in the auction that was held on 26.02.2019 and in the same one Mr.Jagannathan emerged as the successful bidder for a bid amount of Rs.2,70,000 and for the lease period of 01.04.2019 to 31.03.2020. It is submitted there is no merit to the submissions of the Petitioner and the Tender has been conducted in accordance with due procedure. G.O.No.181 dated 19.09.2008 of the Municipal Administration and Water Supplies Department."

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

7. The learned counsel for the petitioner reiterated the contentions, made in the writ petition.

8. The learned counsel for the respondents would state that entire case of the writ petitioner that there is no proper place earmarked for parking of vehicles in the temple for which entry fees, is sought to be collected by floating a tender, is completely erroneous. According to him, there is sufficient parking area, near the temple itself and the tenders have been floated for collecting fees, for the parking of the vehicles in the designated area.

9. He would also state that on certain days there are too inflow of devotees and when parking is full, such devotees tend to park their cars a little further away from the temple and that some cars are also parked on the highway.

10. Learned counsel for the respondents, has also produced the entire records, pertaining to the tender.

11. The materials placed before us, shows that the averments made by the respondents in the counter affidavit, are substantiated.

12. It is surprising that the petitioner who claims to be a person of the same area, could file such a petition, knowing fully well that there are designated parking spots near the temple. This actually demonstrates that the present petition is not a petition filed for the public interest, on the other hand, it has been filed by persons who were interested in stalling the entire process of tender.

13. The Hon'ble Supreme Court has now started observing that the public interest litigation which was a tool to voice the cause of the voiceless poor and poor, who cannot approach the Court is now been completely misused by a few. The present case, cannot be said to be a public interest litigation.

14. Recently, the Hon'ble Supreme Court in Tehseen Poonawalla vs. Union of India and another, reported in 2018 (6) SCC 72, has observed as under:-

"Public interest litigation

96. Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389]. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and undertrials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.

97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political

rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this Court in State of Uttaranchal v. Balwant Singh Chaufal [State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807] . Underlining these concerns, this Court held thus: (SCC p. 453, para 143)

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts."

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive

market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

15. In view of the fact that the petitioner has wasted the time of the Court, by not presenting the facts properly and by concealing the fact that there are places reserved for parking and that this process of tender has been going on from the year 2011, we dismiss the instant writ petition with a cost of Rs.10,000/-, to be paid by the petitioner, to the account of Juvenile Justice Fund, Director of Social Defence, Ministry of Social Welfare, Government of Tamilnadu, Kellys, Kilpauk, Chennai-600 010, within a period of ten days from the date of receipt of a copy of this order, failing which, the District Collector, Salem District, is directed to take proceedings, under the Revenue Recovery Act and petitioner is warned not to indulge in filing such frivolous writ petitions. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Dm

To

- 1.The Assistant Director,
Town Panchayat Office,
Salem District.
- 2.The Executive Officer,
Mecheri Special Grade Town Panchayat,
Salem District.
- 3.The Assistant Engineer,
National Highways Authority of India,
Mecheri.

Copy To

1.The District Collector,
Salem District.

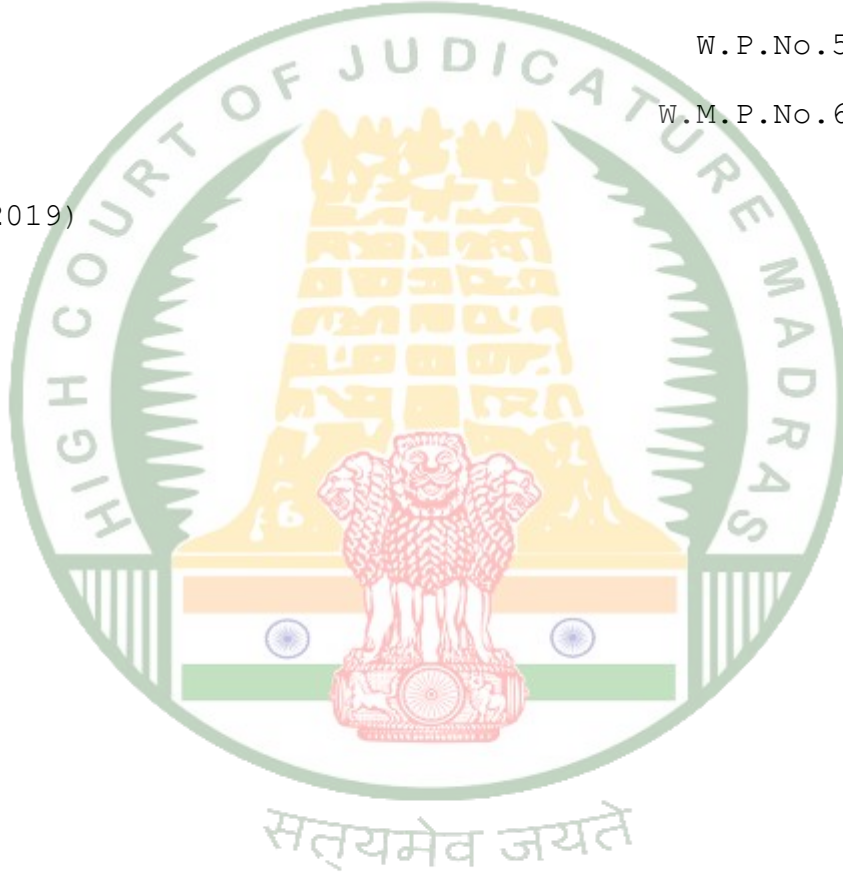
2.The Director of Social Defence Ministry of Social Welfare
Government of Tamilnadu, Kilpauk, Chennai 10.

+lcc to Mr. T.Shanmugam, Advocate, S.R.No. 20762

+lcc to the Government Pleader, S.R.No. 21785

W.P.No.5580 of 2019
and
W.M.P.No.6352 of 2019

EV(CO)
GN(09/05/2019)



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