

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6/6/2019

C O R A M

THE HON'BLE Mr.JUSTICE S.MANIKUMAR

A N D

THE HON'BLE Mr.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.8367 of 2019

a n d

W.M.P.No.8908 of 2019

1. P. Kaliyaperumal

2. S. Kumar

Petitioners

Vs

1. The Secretary
Government of Tamil Nadu
Department of Tamil Development and Information
Chennai.

2. The Collector
Cuddalore District.

3. The Tahsildar
Cuddalore Taluk
Cuddalore.

4. The Commissioner
Cuddalore Municipality
Cuddalore.

5. The Executive Engineer
Building (Construction and Maintenance)
Public works Department
Nellikuppam Road
Cuddalore 607 001.

Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to forbear the respondents from in any manner putting up any construction in the "Thangaraj Maidan" (Manjai Nagar Ground) situate in Cuddalore town.

For petitioners ... Mr.R.Md.Nasrullah

For respondents ... Mr.E.Manoharan
Additional Government Pleader
for R.R.1 to 3 & 5.

Mr.P.Srinivas
for R.4.

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O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Instant public interest litigation has been filed, for a writ of mandamus, restraining the respondents, from installing a statute of Sri Ramasami Padayachiar, a freedom fighter and also a champion of Vanniar Community, in "Thangaraj Maidan" (Manjai Nagar Ground) situate in Cuddalore town.

2. Petitioner states that a suit, in O.S.No.903 of 1991, on the file of District Munsif, Cuddalore -1, was filed by Cuddalore Consumers' Council and another, against Cuddalore Municipality and another, for issuance of mandatory injunction, directing the defendants, to demolish and remove the road, culvert and composite lavatories and levelling of maidan, by removing the bushes and prohibit vehicular traffic through the maidan and placing warning boards against trespass and restoring to the original position of the maidan, if any damage is caused, in the event of any exhibitions or public meetings are permitted, in the maidan, to prohibit the use of maidan, as temporary bus stand, direct the defendant, to cover the drainage channel, running near to the maidan, by cement slabs, to direct the defendants, to clean daily the drainage channel and for cost.

3. Vide, order, dated 28/4/1995, District Munsif, Cuddalore, has passed a decree and the same reads as under:-

"1. It has been declared that the first defendant Municipality is bound to maintain the maidan cleanly and plainly.

2. It has been hereby directed that a sign board shall be placed stating that except bi-cycle, no other vehicle shall be allowed in the maidhan.

3. If any permission is given by the Municipality for any exhibition or public meeting, caution deposit shall be asked for from the organisers of such an event. Such deposit shall be utilised for setting right the damage caused to the

maidan because of such events.

4. No permanent structures, except a temporary structure and the public toilet shall be permitted in the maidhan.

5. The drainage channel near the maidan shall be cleaned daily and the sewage shall be removed immediately.

6. Park situate in the maidan shall be maintained daily.

7. Warning boards shall be placed stating that no vehicle (except bi-cycle) is permitted to ply on the maidan and if any person violates suitable action will be initiated against them.

8. All buildings permanent or temporary, shall be removed from the maidan immediately."

4. It is the contention of the petitioners that construction of the memorial is contrary to the decree, passed in O.S.No.903 of 1991. It is further contended that if the statute is erected in the maidan, then the open space gets smaller and people living in the area would not be able to use maidan. It is also stated that erection of the statue is in violation of Tamil Nadu Parks, Playfields and Public Space (Preservation and Regulation) Act, 1959.

5. On notice, Cuddalore Municipality, has entered appearance and filed its response.

6. It is contended by the Commissioner, Cuddalore Municipality, fourth respondent that this public interest litigation is not bona fide. It is submitted that the second petitioner had encroached a part of the site, allotted to Tamil Nadu Development Department and the same was removed by Cuddalore Municipality. Instant writ petition is actually a counter blast to the action taken by the Municipality.

7. It is further stated that the Collector, Cuddalore, has sent a proposal, for allotting an extent of 1.7 acres out of 41 acres, for the purpose of allotting it to the Department of Tamil Development and Information, for the purpose of building a memorial, for the Late Sri Ramasamy Padayachiar, who was a freedom fighter. Accordingly, G.O.Ms.No.178, dated 24/8/2018, was issued by the Tamil Nadu Development and Information (Memorial) Department of the Government of Tamil Nadu, permitting construction of Memorial with a life sized bronze statute. Market value of the site would be remitted to the Municipality.

8. Commissioner of Municipal Administration has been addressed, for transfer of the lands, by letter, dated

23/7/2018, and the same has been forwarded to the Secretary to Government, Municipal Administration and Water Supply Department, by its letter, dated 12/9/2018, for issuance of G.O., granting permission to transfer of 1.70 acres of land to the Tamil Nadu Development Department, in order to release the lands from the designation as Park Field under the Tamil Nadu Parks & Playfields Acts.

9. It is also stated that necessary orders are in process, for payment of money, for use of land. Cost fixed is about Rs.5,46,26,440/-, for the extent of 74120 sq.ft (1.7 acres), in which the statute is actually to be erected. It is stated that the construction has started and is in the last stage. When the memorial is about to be inaugurated, the petitioners have filed the instant writ petition.

10. It is also stated that an extent of 1.7 acres is separated from the rest of the ground which has total extent of 41 acres and it does not in any way interfere with the usage of the ground. The site is situated in the southern corner adjoining beach road and is also adjoining the Roman Catholic Church in T.S.No.451/1.

11. Heard Mr.Md.Nasurullah, learned counsel for the petitioner, Mr.E.Manoharan, learned Additional Government Pleader for the respondents 1 to 3 and 5 and Mr.P.Srinivas, learned counsel for the fourth respondent, who have reiterated the contentions made in the writ petition and the counter.

12. Plaintiffs in O.S.No.903 of 1991, in whose favour the decree was passed has not come forward with the case that the respondents herein are violating the decree. Erection of the statute of Sri Ramasamy Padayachiar, who was a freedom fighter about which there is no dispute is also of public interest. The total area in which the statute is going to be erected is in 1.7 acres, out of a total extent of 41 acres, which is less than 5% of the total area. The character of the park will not be altered, if the statute of the freedom fighter is erected in a very small area. Facts as narrated by the Municipality would show that the second petitioner has an axe to grind against the Municipality.

13. Of late, we can notice a growing trend in the abuse of public interest litigation. Public Interest Litigation is intended to secure the justice for poor and the weaker section of the community, who were not in a position to protect their own interests.

14. The Hon'ble Supreme Court, has time and again, observed that there is, in recent years, a feeling which is not without

any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. {Refer BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

15. The present writ petition cannot be said to be in public interest. It does not advance any cause of the poor and down trodden. In fact, the Hon'ble Supreme Court, has held that by filing vexatious and frivolous petitions, the queue standing outside the doors of the Court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly, they lose faith in the administration of judicial system.

16. In view of the fact that Government orders have already been issued, substantial work has already been done for the erection of the statue, we find no reason to restrain the respondents from erection of a statute of Sri Ramasamy Padayachiar, a freedom fighter.

17. Accordingly, instant writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Secretary
Government of Tamil Nadu
Department of Tamil Development and Information
Chennai.
2. The Collector
Cuddalore District.

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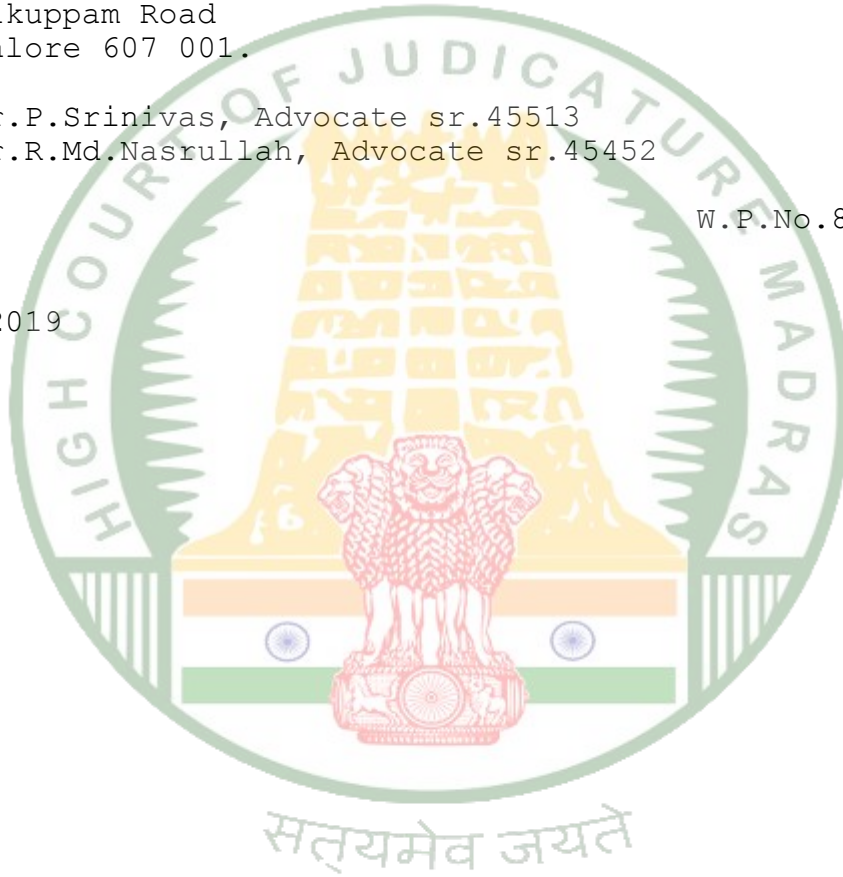
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Cuddalore 607 001.

+1cc to Mr.P.Srinivas, Advocate sr.45513

+1cc to Mr.R.Md.Nasrullah, Advocate sr.45452

W.P.No.8367 of 2019

nmi(co)
nr 24/09/2019



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