

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

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

WP.No.7653 of 2019

P.Rajagopal

... Petitioner

VS.

1. The Director of Municipal Administration,
Directorate of Administrative Municipal Corporation,
Chennai - 600 005.

2. The District Collector,
Salem District,
Salem.

3. The Commissioner,
Corporation of Salem,
Salem.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the 1st respondent to consider the petitioner's representation dated 21.01.2019.

For Petitioner : Mr.J.Sudhakaran

For Respondents : Mr.Akhil Akbarali (for R1 & R2)
Government Advocate
Mr.S.Sathish (for R3)
Standing Counsel for
Corporation of Salem

ORDER

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

Claiming himself to be a public interest litigant, an Ex-Municipal Councilor for Ward No.12, Salem Corporation Zone, has filed the instant writ petition in public interest, for the following relief.

"Writ petition for a direction to the Director of Municipal Administration, Directorate of Administrative Municipal Corporation, Chennai, the 1st respondent herein, to consider the petitioner's representation dated 21.01.2019."

2. The petitioner states that Government of Tamil Nadu, had issued an order dated 31.07.2015, in G.O.Ms.No.112, Municipal Administration and Water Supply (MA2) Department, for the development of the Salem City. The purpose of issuing G.O.Ms.No.112, Municipal Administration and Water Supply (MA2) Department dated 31.07.2015, is as under

"In the letter read above, the Chairperson and Managing Director, Tamil Nadu Urban Finance and Infrastructure Development Corporation has stated that, the Ministry of Urban Development, Government of India, has recently launched the Smart Cities Mission, with the objective to promote cities that provide core infrastructure and give a decent quality of life to its citizens, a clean and sustainable environment and application of 'Smart' solutions. The Mission will cover 100 cities and its duration will be five years (Financial Year 2015-16 to Financial Year 2019-20).

2. The core infrastructure elements in a Smart City would

include adequate water supply; sanitation, including solid waste management; efficient urban mobility and public transport; affordable housing, especially for the poor; and robust IT connectivity and digitalization.

3. The strategic components of Area-based development in the Smart Cities Mission are; City Improvement - Retrofitting; City Redevelopment; Greenfield development alongwith Pan-city development. A Smart City is expected to encapsulate either of these, or a mix thereof and a Pan-city feature with Smart Solution(s), which include, e-Governance and Citizen Services; Waste Management; Water Management; Energy Management and Urban Mobility, etc."

3. The petitioner would state that one Kamaraj, Executive Engineer, has been entrusted with implementation of the above mentioned scheme. Said Kamaraj, in the previous projects has committed certain irregularities and he has been transferred from Salem to some other District. After making this allegation against Kamaraj, the petitioner in the writ petition goes further to state that no effective steps have been taken for implementation of this project.

4. The petitioner states that he has given a representation dated 21.11.2018, which has been acknowledged by the respondents on 23.01.2019 and since, there was no response, filed this writ petition.

5. A perusal of the writ petition and the representation makes it clear that the petition is only against the said Mr.Kamaraj. It is nothing a private interest litigation and a complete abuse of process of law. In a latest decision, the Hon'ble Supreme Court in ***Tehseen Poonawalla Vs. Union of India and Another***, reported in 2018 (6) SCC 72, at paragraph Nos. 96, 97 & 98, has encapsulated the abuse of process of law by filing frivolous writ petitions.

"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* [1984) 3 SCC 161]. 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 under trials (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 mis-utilised 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*[(2010) 3 SCC 402]. Underlining these concerns, this court held thus:

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 litigation 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."

6. Petitioner has also not impleaded Mr.Kamaraj. Even though Code of Civil Procedure is not strictly applicable to writ petitions, but the principles underlying Code of Civil Procedure, which is based on principles

of natural justice, are applicable to the writ petition. Order I Rule 9 of Code of Civil Procedure reads as under:

9. Misjoinder and nonjoinder— No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:
[Provided that nothing in this rule shall apply to nonjoinder of a necessary party.]

7. Proviso clearly states that non-joinder of necessary parties, would entail in dismissal of the suit. The entire allegation is against Mr.Kamaraj and this writ petition is against him, who is not made a party.

8. A perusal of the above mentioned judgment would show that this writ petition is nothing but a camouflage, styled as a public interest litigation and it is also directly directed against Kamaraj

9. Apart from making a bald statement, petitioner does not state as to how the project has not been implemented. There are no basis for the allegations. In view of the above, action of the petitioner is deprecated and the writ petition is liable to be dismissed with costs. Accordingly, instant writ petition is dismissed with costs, which we quantify at Rs.25,000/-[Rupees Twenty Five Thousand Only], 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 action for recovery, under the Tamil Nadu Revenue Recovery Act, 1864.

(S.M.K., J.) (S.P., J.)
18.03.2019

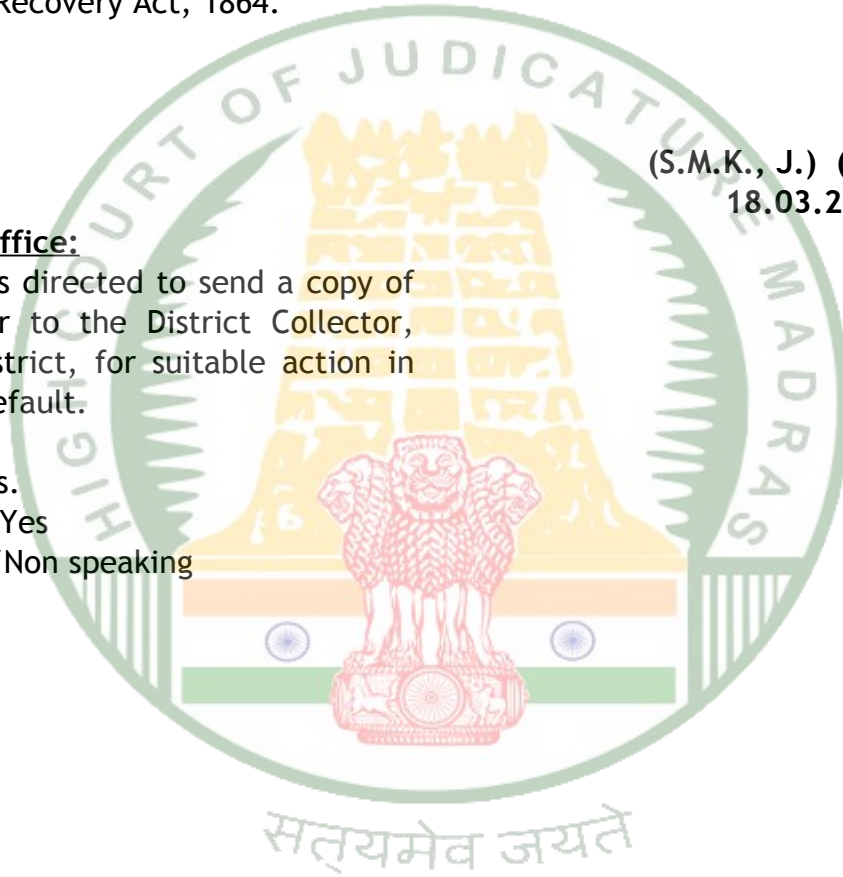
Note to office:

Registry is directed to send a copy of this order to the District Collector, Salem District, for suitable action in case of default.

Index: Yes.

Internet: Yes

Speaking/Non speaking
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To

1. The Director of Municipal Administration,
Directorate of Administrative Municipal Corporation,
Chennai - 600 005.

2. The District Collector,
Salem District,
Salem.

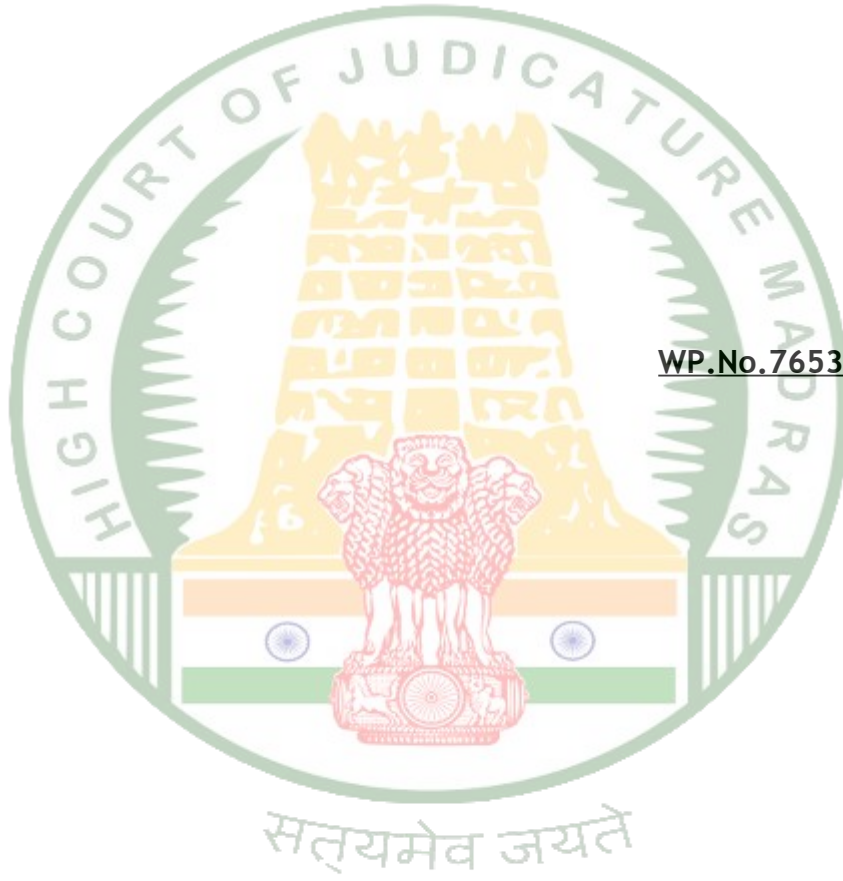
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SUBRAMONIUM PRASAD, J.

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