

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM:

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

W.P.No.13167 of 2018
and
W.M.P.No.15482 of 2018

P.Govindaraj ... Petitioner

Vs.

1.The District Collector,
Vellore District,
Sathuvachari,
Vellore.

2.The Municipal Commissioner,
Pernambut Municipal Office,
Pernambut.

3.The Thasildhar,
Pernambut Taluk Office,
Pernambut,
Vellore District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, forbearing the respondents 1 to 3, or any other person not to construct a new bus stand in pernambut Town in Pernambut Taluk, Vellore District.

For Petitioner : Mr.M.Parthiban
for Mr.S.Prasadbabu

For Respondents: Mr.Akhil Akbarali,
Government Advocate.

ORDER

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

The petitioner is a resident of Peranampattu, Gudiyatham Taluk, Vellore District, has filed the instant public interest litigation, for a Writ of Mandamus, forbearing the respondents 1

to 3, not to go ahead with a proposal to construct a new bus stand in S.Nos.691/1 and 691/2A, which is 2 kilo meters away from the city.

2. The petitioner submits that the respondents are proposing to shift the bus stand, from its present location, to a place which is about 2 kilo meters from away from city in S.Nos.691/1 and 691/2A.

3. According to the petitioner, the proposed bus stand would be constructed on a land, which was given by a person with political background to develop his real estate business. He states that the present place is an remote area. He would further submit that there is a Temple, Mosque, School, Government Offices and Hospital, were located nearby the existing bus stand. The petitioner states that if the bus stand is shifted, to a new place, it would cause lot of inconvenience to the people. He would state that within 1000 meters of the proposed new bus stand, there are no houses and that there are no people residing and that it is a remote place. He would submit that the people would not able to use the proposed bus stand. The petitioner submits that the people in the town, have been protested against the shifting of bus stand and the Government has not taken into account the protest by the local residence.

4. Heard the learned counsel for the parties.

5. The present writ petition is completely abuse of public interest litigation. Public interest litigation which was meant to espouse the cause of poor and downtrodden, would not have the capacity, to approach the Court and that it will not become a tool in the hands of few, who wants to publicity or wants to own private schools.

6. It is well established that Court cannot run Government. At this Juncture, we deem it fit to consider few cases:-

"i) In Narmada Bachao Andolan Vs. Union of India and Others, reported in {2000 (10) SCC - 664}, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The

Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

ii) The above mentioned observations have been quoted with approval by the Hon'ble Supreme Court in BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

iii) In DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER {2008 (1) SCC - 683}, in paragraphs Nos.17, 19, 20 and 22, the Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the other and must not encroach into each other's domains.

22. In *Tata Cellular Vs. Union of India* (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the words of Neely VJ (Scc p.681, para 82).

"82..... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation."

It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

iv). In COMMON CAUSE (A REGD. SOCIETY) VS. UNION OF INDIA AND OTHERS, {2008 (5) SCC - 511}, wherein at paragraph No.40, the Hon'ble Supreme Court, held thus:-

"The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegations is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."

7. It is for the State to take a decision, as to where, a bus stand has to be situated. The Courts cannot set at naught a decision, unless the decision is completely arbitrary, whimsical, fanciful. This writ petition seems to be one which has been set up, only to stall the new project.

8. The writ petition as stated earlier, is completely devoid of merits, and should be dismissed with exemplary cost.

9. The Hon'ble Supreme Court has also in number of judgments, has noted that frivolous public interest litigations, only result in wastage of precious judicial time and must be dealt with very severely. 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."

10. Writ petition is dismissed 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, Vellore District, is directed to take proceedings, under the Revenue

Recovery Act. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dm

To

- 1.The District Collector,
Vellore District,
Sathuvachari,
Vellore.
- 2.The Municipal Commissioner,
Pernambut Municipal Office,
Pernambut.
- 3.The Thasildhar,
Pernambut Taluk Office,
Pernambut,
Vellore District.

Copy To:

1. The Director of Social Defence
(Juvenile Justice Fund)
Govt. of Tamil Nadu, Kellys,
Kilpauk, Chennai -10.
2. The District Collector,
Vellore.

+1cc to Mr.S.Prasad Babu, Advocate, S.R.No.22847
+1cc to the Government Pleader, S.R.No.22304

PPA (CO)

RRS (30/05/2019)

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and
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