

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 23.05.2019]

[PRONOUNCED ON : .05.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.14894 of 2019
and
W.M.P.No.14878 of 2019

C.Periyaswami @ Thangavelu

... Petitioner

.. Vs ..

1. The Election Commission of India,
Rep. by the Chief Election Commissioner,
Niravachan Sadan, New Delhi.
2. The Chief Electoral Officer of Tamil Nadu,
Secretary to Government,
Public (Election) Department,
Fort St. George, Chennai.
3. The District Collector - cum-
District Returning Officer,
Namakkal District.
4. Arularasu
5. The Inspector of Police,
Pallipalayam Police Station,
Salem District.

6. The Sub-Inspector of Police,
Pallipalayam Police Station,
Thiruchengodu.

7. R.Sathiyamurthy

8. R.Vijayakumar

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, to consider the representation dated 16.05.2019 and to direct the first and second respondents to take necessary action against the fourth to sixth respondents for breach of Model Code of Conduct issued by the first respondent.

For Petitioner : Mr.P.Vijendran

For RR-1, 2 & 3 : Mr.L.P.Maurya
for G.R.Associates

For RR-4, 5 & 6 : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

For RR-7 & 8 : Mr.K.Doraisami
Senior Advocate
for Mr.Kandhan Doraisami

ORDER

This writ petition has been filed by the petitioner praying for the issuance of a writ of Mandamus, to consider the representation of

the petitioner dated 16.05.2019 and to direct the first and second respondents to take necessary action against the fourth to sixth respondents for breach of Model Code of Conduct issued by the first respondent.

2. Learned counsel appearing for the petitioner would contend that there is a civil dispute between the petitioner and the private respondents viz., respondents 7 and 8 in respect of the land in Survey No.136/2 in S.Eraiyamangalam Village, Thiruchengodu Taluk in Namakkal District. The petitioner has disputed the title and also taken legal proceedings and the same has been dismissed and he has filed Review Application and the same is pending and during the pendency of the said review application, the fifth and sixth respondents viz., Inspector of Police and Sub-Inspector of Police, Pallipalayam police station have extended the police protection for dispossessing the petitioner and taking possession and handing over to the private respondents 7 and 8, after issuance of notification for the Lok Sabha [General 2019] and hence, the act of the fifth and sixth respondents amounts to violation of the Model Code of Conduct by a Government official and hence, he seeks a direction to the first and

second respondents viz., the Election Commission of India and the State Election Commissioner to take necessary action under the representation of the People Act against the District Collector cum District Returning viz., the Superintendent of Police, Namakkal in the personal capacity and Inspector of Police, Sub-Inspector of Police, Pallipalayam in their official capacity.

3. Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for respondents 4 to 6 would submit that the private respondent Nos.7 and 8 have filed a suit in respect of the subject matter of the petition mentioned property and obtained a decree and they have moved the Government for execution of the decree and the Government has also passed necessary Government Order granting patta to the respondents 7 and 8. Learned Special Government Pleader further submitted that the petitioner has filed a writ petition in W.P.No.27043 of 2009 challenging the said Government Order granting of patta to the private respondents herein and against some others and the same has been dismissed by this Court by an order dated 18.01.2018 and aggrieved against the said order in the said writ petition, they have preferred W.A.Nos.712 and 713 of 2018.

However, after hearing of the parties, the Division Bench of this Court, wherein I am one of the party, dismissed the claim of the petitioner, who is one of the petitioner in W.A.Nos.713 of 2018 on 26.04.2018 and pursuant to the orders passed by this Court in confirming the Government Order, they have executed the decree of the Civil Court as confirmed by the Division Bench and for which the official respondents viz., police official respondents have given police protection in execution of the decree and therefore that does not fall under the violation of the Model Code of Conduct.

4. Mr.L.P.Maurya, learned counsel, who took notice on behalf of the Election Commission / respondents 1 and 2, has stated that for execution of the Court order which is the official duty of the respondents and also to give protection so as to avoid law and order problem arises out of situation in implementing the Court order does not fall under the category of Model Code of Conduct and A1) for the Lok Sabha General Election 2019, the first and second respondent- Election Commission declared the coming into the force of India's Model Code of Conduct with effect from 10.03.2019 and the same is in forced upto 27.05.2019.

5. After hearing the rival submissions and after going through the factual position as submitted by the learned counsel and also as per the documents available on record, it is seen that the private respondents have filed a suit in O.S.No.397 of 1977 and the same was decreed and in execution of the civil decree, it appears that the Government of Tamil Nadu viz., the District Collector has passed G.O.Ms.No.338 dated 10.09.2009 whereby patta has been granted in favour of the petitioner and some others petitions as mentioned therein. As against the said grant of patta under the said Government Order, the petitioner along with few others have also challenged the said G.O. by way of writ petition in W.P.No.270 of 2003 and the same was dismissed and confirmed in W.A.No.712 of 2018 and no further appeal has been taken and consequently, the order passed in W.A.Nos.712 and 713 of 2018 has attained finality.

6. Learned counsel appearing for the petitioner would contend that he has filed review application which seems to be in un-numbered stage since October 2008. It appears that based upon the civil decree and the virus of the Government Order passed by the

District Collector as also confirmed by the Division Bench of this Court as early as on 26.04.2018. In pursuance of civil decree and the orders passed by this Court in above referred Writ Appeal, the private respondents have executed the court order and sought for police protection in taking possession of the land and in such a manner, it appears that the official respondents 2 to 6 have extended the police protection in order to avoid law and order problem and to give piece to the society for execution of the court order and the police protection given by the respondents 3 to 6 is only to implement the order of the Court and for which, the Law Enforcement Authority is well within the powers described in the Rules and the same cannot be termed as violation of Model Code of Conduct and as well as it appears that the petitioner has failed with all these attempts having grudge to grind against the private respondents has filed this writ petition and threatened the revenue and the police authorities under the guise as if they have committed violation of Model Code of Conduct.

A2) It is to be stated that the Election Commission of India's Model Code of Conduct is a set of guidelines issued by the Election Commission of India for conduct of political parties and candidates during elections mainly with respect to speeches, polling day, polling

booths, portfolios, election manifestos, processions and general conduct. These set of norms has been evolved with the consensus of political parties who have consented to abide by the principles embodied in the said code in its letter and spirit. The Model Code of Conduct comes into force immediately on announcement of the election schedule by the Commission for the need of ensuring free and fair elections. Its main purpose is to ensure that ruling parties, at the centre and in the States, do not misuse their position of advantage to gain an unfair edge. It is designed to avert practice which are deemed corrupt under model code of conduct.

7. It remains to be stated that the revenue and the police authorities have executed the orders of the civil Court and in the instant case, the orders of the civil Court which has resulted in Government Order also has been confirmed by the Division Bench a year ago and in execution of the order of the Court, the police has given protection and the same cannot be termed as violation of the Model Code of Conduct and hence, in this view of the matter, I am not inclined to grant the relief to the petitioner and accordingly, this writ petition is liable to be dismissed.

8. In the result, this writ petition is dismissed. As I have observed that the petitioner is set with animosity with the police official in extent of the police protection for the execution of the civil decree, I am of the view that costs of Rs.5,000/- [Rupees five thousand only] to be imposed on the petitioner. The connected miscellaneous petition is closed.

.05.2019

Index : Yes/No
Internet : Yes
Jrl

To

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RMT.TEEKAA RAMAN, J.

Jrl



Pre-Delivery order in

W.P.No.14894 of 2019

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