

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

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

W.P.No.25699 of 2019  
and WMP No.25178 of 2019

Govi.Sethuraman

... Petitioner

Vs

1. The State of Tamil Nadu,  
Represented by the Chief Secretary,  
Secretariat, Fort St. George,  
Chennai - 600 009.

2. The Commissioner of Revenue Administration,  
Ezhilagam, Chempauk,  
Chennai - 600 005.

3. The District Collector,  
District Collectorate,  
Nagapattinam - 611 001

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of mandamus, directing the respondent Nos.1 and 2 to form a new District of Mayiladuthurai with its head quarters in Mayiladuthurai, by taking conclusive action on proceedings of the 2nd respondent in Na.Ka.Pani 6 (4) 40074/2010 dated 09.06.2010, within a time frame as fixed by this Court.

For Petitioner : Mr.A.Thiyagarajan, Senior Counsel  
for Mr.B.S.Krishnaswamy

For Respondents: Mr.E.Manoharan  
Government Advocate.

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Based on proceedings of the Principal Secretary / Commissioner of Revenue Administration, Chennai, addressed to the District Collector, Nagapattinam in RC No.Pani.6(4)

40074/2010 dated 09.06.2010, resident of Malliyam Village, Mayiladuthurai Taluk, has filed the instant writ petition for a mandamus, directing the Chief Secretary, State of Tamilnadu, Chennai and the Commissioner of Revenue Administration, Chepauk, Chennai, respondent Nos.1 and 2 respectively, to form a new District of Mayiladuthurai with its head quarters in Mayiladuthurai, by taking conclusive action on proceedings of the 2nd respondent in Na.Ka.Pani 6 (4) 40074/2010 dated 09.06.2010, within a time frame.

2. Supporting the prayer sought for petitioner has contended that in 2019, State Government have formed five new Districts viz., 1. Kallakurichi, 2. Tenkasi, 3. Chengalpet, 4. Ranipet and 5. Thirupattur. The later 2 Districts were announced on 15.08.2019. Population of Ariyalur District is 7,54,894 and population of Perambalur District is 5,65,223. When areas having 7.54 lakh population and 5.65 lakh population were formed as District of Ariyalur and District of Perambalur, not forming Mayiladuthurai area as a New District, which is having 8.65 lakh population as per 2001 census, is a clear discrimination and violative of Article 14 of the Constitution of India.

3. Petitioner has further contended that the people residing in the northern region of District of Nagapattinam comprising of Mayiladuthurai and 4 other Talukas are treated indifferently by the 1st respondent inspite of knowing the factual geographical disadvantage they have been facing for several years. Petitioner has also stated that when the 1st respondent could create new Districts of Perambalur, Ariyalur, Tiruvarur and Tirupur, Kallakurichi, Tenkasi, Chengalpet, Ranipet and Thirupattur though those people never faced any Geographical disadvantages as faced by the people of Mayiladuthurai, the 1st respondent should have given preferential treatment to this people by creating a new District of Mayiladuthurai as they are affected to the larger extent due to geographical situation. Failure of the 1st respondent to create new district of Mayiladuthurai and give equal treatment to them on par with the people of perambalur, Ariyalur and Tirupur and recently of Ranipet and Tirupathur is a clear discrimination and is a gross violation of Articles 14 and 21 of the Constitution of India.

4. It is also contended that there were several demonstrations and representations made to the respondents to form Mayiladuthurai District. Petitioner has also submitted a letter dated 16.08.2019, which remains unanswered. Hence, the present writ petition for the prayer stated supra.

5. Heard the learned senior counsel for the petitioner and perused the materials available on record.

6. Though the petitioner has contended that Government have constituted several districts and in the case of bifurcation of Nagapattinam District and creation of Mayilathudurai, Government have not taken any action, and thus the same amounts to violation of Article 14 of the Constitution of India, we are not inclined to accept the said submission.

7. Creation of a District, is purely a policy decision of the Government. Courts cannot issue writs in the nature of a mandamus directing the Government to frame a policy for creation of Districts. Such writ petition is misconceived. On the aspect as to when mandamus can be issued, we deem it fit to consider few decisions.

(i). In State of Kerala v. A.Lakshmi Kutty reported in 1986 (4) SCC 632, the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In Raisa Begum v. State of U.P., reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iii) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the

applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of

justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

(iv). When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be

exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

8. A writ of Mandamus, can be issued by the Court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority and for the failure of performance of a legal or statutory duty, by the authority, against whom, the relief is sought for.

9. In view of the above discussion and decisions, Writ Petition is dismissed, No Costs. Consequently, the connected Writ Miscellaneous Petition, is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Chief Secretary,  
State of Tamil Nadu,  
Secretariat, Fort St. George,  
Chennai - 600 009.

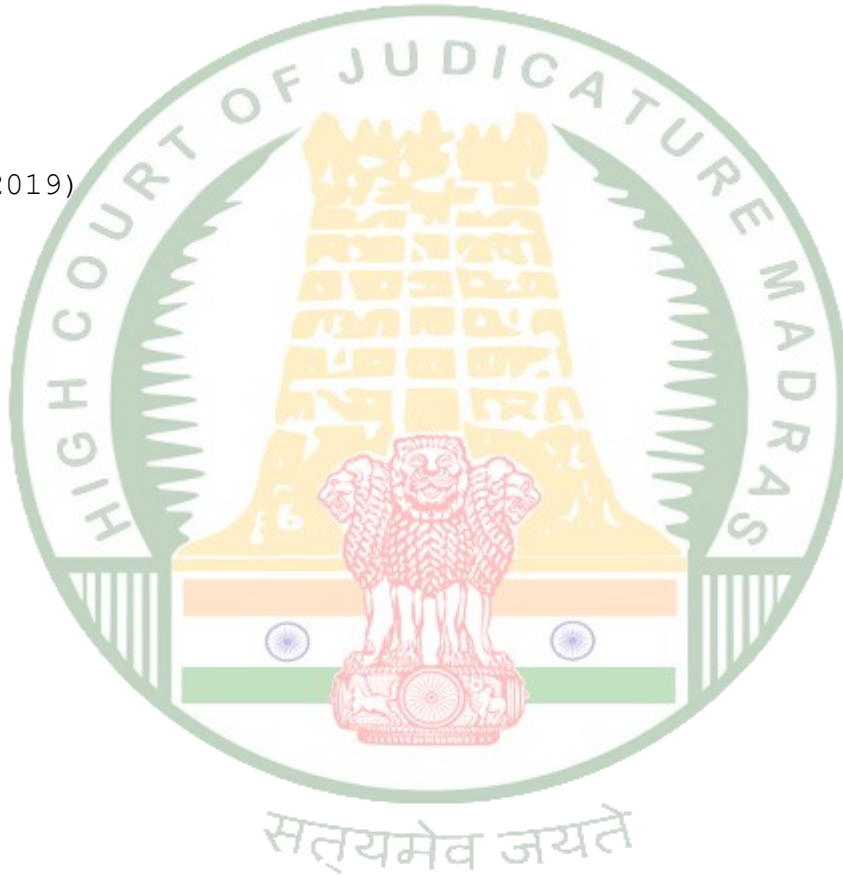
2. The Commissioner of Revenue Administration,  
Ezhilagam, Chepauk,  
Chennai - 600 005.

3. The District Collector,  
District Collectorate,  
Nagapattinam - 611 001

+2 CCS to Mr.K. Arunagiri, advocate sr 76565  
+1 CC to Govt. Pleader sr 76249.

W.P.No.25699 of 2019

SV(CO)  
SP(03/10/2019)



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