

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.07.2019

C O R A M

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

W.P.No.21599 of 2017
and

W.M.P.Nos.22582 of 2017 and 19961 of 2019

Chambers Colony Grama Munnetra Sangam
(Registered 163/1986), Represented by its President,
Mr.A.Baskar Santhiyagu @ Francis Xavier,
No.1, 1st Main Road, Chambers Colony,
Chrompet, Chennai - 600 044. ... Petitioner

Vs.

- 1.The State of Tamil Nadu Rep. by its Secretary,
Department of Municipal Administration,
Fort St. George, Chennai - 600 009.
- 2.The Collector,
Kanchipuram Collectorate,
Kanchipuram - 631501.
- 3.Thasildhar, Pallavaram,
Pallavaram Municipal Building,
3rd Main Rd, Pallavapuram,
New Colony, Chrompet,
Chennai, Tamil Nadu - 600044.
- 4.The Village Administrative Officer,
Zameen Pallavaram - II,
GST Road, Pallavaram Chennai - 43.
- 5.The Commissioner,
Pallavaram Municipality,
Pallavaram Municipal Building,
3rd Main Rd, Pallavapuram,
New Colony, Chrompet,
Chennai, Tamil Nadu 600044.

6. Telegu Baptist Church,
Represented by its Fit Person,
No.51, 8th Street, Chambers Colony,
Chrompet, Chennai - 600 044.

7. Teleguwaru Munetra Sangam,
Represented by its President,
No.22, 6th Street, Chambers Colony,
Chrompet, Chennai - 600 044.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 5 to renovate and desilt the Visiri Well situate at Survey Nos.407/22, 24, 25, 26, 27 and 499/3 at Zameen Pallavaram Village (as per Patta No.1964) commonly known as Chambers Colony within a time to be stipulated by this Court.

For petitioner : Mr.I.Jenking Villiam

For R1 to R3 : Mr.E.Manoharan
Additional Government Pleader.

For R4 : Mr.Akhil Akbar Ali
Government Advocate.

For R5 : Mr.P.Srinivas

For R6 and R7 : No Appearance

ORDER

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

Instant writ petition has been filed for a Writ of Mandamus, directing the respondents 1 to 5, to renovate and desilt Visiri Well, situated in Survey Nos.407/22, 24, 25, 26, 27 and 499/3, Zameen Pallavaram Village (as per Patta No.1964), commonly known as 'Chambers Colony', within a time to be stipulated by this Court.

2. Supporting the prayer sought for petitioner has contended that as per records and information available in the public domain, Chrome Leather Company (CLC), was established in this place in 1912, by European merchant Alexander Chambers. After his lifetime, the said Chrome Leather Company, was run by his wife Ida L. Chambers. She became the sole owner of the Chrome Leather Company and its properties, in 1965, vide an order and decree, passed by

this Court. She died in 1968. Today, the lands of Chrome Leather Company and its properties belong to late Ida L . Chambers and most of the land to the west of the railway station is owned by CLC.

3. Petitioner has further contended that, during the lifetime of Mr.Alexander Chambers to enable easy assembling of labourers and workers in the company for work purpose, and for easier administration, Chrome Leather Company has allotted, an extent of 9.50 acres of land, comprised in the present Survey Nos.407/22, 24, 25, 26, 27 & 499/3, at Zameen Pallavaram Village, all in the name of Chrompet Chrome Leather Company, as per Patta No.1964. The said entire extent of 9.50 acres of land and the workers habitation therein, named as "Chambers Colony", is in remembrance of the then owner Mr.Alexander Chambers. During the year 1954, CLC company started loosening its grip, on the management of its properties and so as to avoid confusion, disputes, transfer possession and mismanagement of the property, among them huge work force of 1000 workers, a caretaker society/Sangam was formed by the then CLC management in the year 1954 as "Chambers Colony Gramma Munetra Sangam", which was registered only in the year 1986, bearing Registration No.163/1986. From the date of its inception, the said Sangam has taken care of the property and also maintained the entire stretch of land measuring an extent of 9.50 acres in the above Chambers Colony and obtained necessary governmental services, like laying of roads, electricity connection and so on, for all the residents in the aforesaid extent of land. At present, there are 1500 families comprising of 6000 people, living in the said locality, comprised in the above Chambers Colony. Control and administration of the said Sangam, has been acknowledged by all the members of the locality which include houses, hospitals, dispensaries, churches, temples, shops, schools, etc. In fact, the individual house/families, are paying their taxes to the municipality, to obtain their necessary utilities, but for any transfer of property, they only register with the Sangam, on a nominal transfer charge. All water bodies, including wells, ponds, etc, within the above Chambers Colony, are maintained well by the Sangam administration only. Office bearers for the Sangam, are elected based on local election only, for a term of 3 years.

4. Under such circumstances, Mr.Stephen has purchased landed property, measuring an extent of 2400 Sq. Ft., for constructing a house, after obtaining the approval from Sangam. Till this date, EB Connection and Taxes, are paid

in the name of Mr.Stephen. But due to certain reasons, Mr.Stephen was sacked from the said premises and the 6th respondent church (Registration No.442/2006), which is said to have been illegally established in the year 2006 and under the control of the Sangam. The illegal construction is so massive that the 6th respondent Church has been constructed to an extent of 8000 Sq. Ft. built-up area comprising of ground floor + 3 floors. The entire structure is illegal. In order to avoid communal disturbance, the Sangam did not interfere. But in front of the Church there is a road and beyond that road, some vacant land measuring to an extent of 6000 Sq.Ft. exists. There is a very famous well, on the said vacant land, named as "VISIRI well". It was a pucca constructed Well with strong walls built with lime-mortar and stone on the side of the Well. It was initially dug up during the inception of the CLC Company, in 1912, only for the benefit of workers and labourers, residing in Chambers Colony. But since it was not renovated, the entire Well came to be used as a dumping yard. Thereafter, the Well did not contain potable drinking water due to dirt and sedimentation. It all belonged to CLC and is therefore under the control of the said Sangam. Without any rhyme or reason and without any information to the Sangam, Pallavaram Municipality/the 5th respondent, started constructing a concrete overhead Water Tank, 25 feet away from Visiri Well. In their process they had dug out foundation trenches for construction of pillar for the concrete overhead Water Tank and dumped mud from the pillar's trenches into Visiri Well with mud and constructed their water tank and went off, without answering any questions raised by the Sangam. The well was fully filled with mud as dumped by the 5th respondent, which was sufficient enough to close and dry up the well. The local people also in the interest to get water from concrete overhead Water Tank, did not protest much to the activities of the 5th respondent. Thereafter, Telegu Baptist Church, Chrompet, Chennai/the 6th respondent, with an intention to initially use the land as a parking space for the church, started to fill up the well with mud upto land level without the knowledge of the unsuspecting locals. Now, even the respondents 1 to 5, are not providing water through the concrete overhead water tank, to the locality and Visiri Well is also closed. Since, walls of the Well, have been constructed strongly and lime mortar, traces of the Well can be seen even now, it can be renovated, desilted and can be brought back to its prime glory, to quench the thirst and needs of the people.

5. Petitioner has further contended that during the year 2015, the Telugu Baptist Church, represented by its Fit Person, Chambers Colony, Chrompet, Chennai, the 6th respondent herein, sent a communication, dated 23.06.2015, demanding the Sangam, to provide vacant area near the water tank and Well for the use of church's newly proposed construction. The said Sangam refused to provide the area for extension of church, as the existing church building itself, is illegal and creating a problem for the local people.

6. In the year 2017, water scarcity reached its peak. Visiri Well was dry and covered with mud and the respondents 1 to 5, did not provide water through the Water Tank. Hence, the Sangam called for a meeting on 02.07.2017, with all its members. After the meeting, it was unanimously agreed by all the members and a resolution was passed by the Sangam, to renovate and desilt Visiri Well, for the larger interest of the local people.

7. Petitioner has further contended that, after a resolution has been passed, on 08.07.2017, a group of members from the Sangam, went to Visiri Well site, to renovate and desilt the Well. But a group of people namely Mr.P.Babu, Mr.M.Manohar, Mr. Ashok Kumar, Mr.Amos, Mr.Chinna, Mr.James, Mr.Yovan, and Mr.Moses, members of the 6th respondent church, forcibly prevented the Sangm people, from carrying the work of renovation and desilting and further threatened the members of the Sangam with dire consequences for life and limb. Being informed about the commotion, the Inspector of Police, Chrompet Police Station, arrived and called them to meet at the police station. There, in the Police station, they received the Complaint of President of the Sangam, dated 08.07.2017, but no action has been taken on the same.

8. Petitioner has further contended that, the said Sangam member's attempts to approach and meet any of the respondents 1 to 5, are not fruitful in any manner. All of them are even refusing an audience to hear the case of Sangam. On a pressure from the 7th respondent Telugu Association, no action is being taken by the authorities against the 6th respondent also. Here in the locality, the residents are made to suffer from water scarcity.

9. Petitioner has further contended that it is a fair case, where the respondents 1 to 5, ought to have taken action, to restore the water body namely, Visiri Well and

to take action against all those who prevent the renovation and desilting of the Well, as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The source of water to the Visiri Well, is from nearby Eri, bunds and Kuttai and hence the Visiri Well, is a part of a large network of Water bodies, and never became dry as long it was unwittingly closed with dug-out Water Tank, 25 feet away from the Well. This was done by the Commissioner, Pallavaram Municipality, Chennai, the 5th respondent, in an irresponsible manner, as the concrete overhead water tank, is far away from the Visiri Well, and do not affect the strength of the overhead Tank. But, the authorities, are lying aloof without any care or concern to do their duty in providing relief for the people, even after receiving property tax, for the entire Chambers Colony resident's individually.

10. In such circumstances, petitioner has sent a representation dated 08.07.2017 to the District Collector, Kancheepuram District, for renovation and desilting of VISIRI WELL situate in S.No. 407/22, 24, 25, 26, 27 & 499/3, Zameen Pallavaram Village, which reads thus:-

"Our Association begs to bring to your kind notice and for immediate action to renovate and desilt VISIRI WELL situated within the property of our sangam and we would also state and submit that the cost and expenses will be borne out by our sangam itself. At this juncture, we are constrained to state that certain third parties more particularly the so called fit person of Telugu Baptist Church and the President, Teleguwaru Munnetta Sangam have started performing unnecessary illegalities and irregularities by resorting to constructions without any planning permission and also even without obtaining any consent from our sangam which is the original body and has no power of granting any absolute right in favour of any individual; whereas the above said two persons have started violating law and have also preventing us from desilting the well. When this was objected to and opposed, the members were physically prevented and used bad words and caste divisive language. This was brought to the notice of the Inspector of Police today i.e., 8/7/2017 for appropriate action, no effective steps have been taken so far. Simultaneously our members

have asked us to address you, the competent authority seeking permission to resort to renovate and desilt the VISIRI WELL as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

We humbly pray that the benign honorable collector may be pleased to issue suitable directions to the competent authority for restoration of the water body and permit us to renovate and desilt the VISIRI WELL at the earliest so as to enable us to utilize the water and get over the drought situation.

Thanking you.

President

Copy to:

1) The Secretary,
Municipal Administration
& Water Supply Department,
Secretariat, Chennai-9.

2) The Tahsildar,
Pallavaram."

11. Denying the abovesaid averments, Commissioner, Pallavaram Municipality, Chrompet, Chennai, has filed a counter affidavit dated 13.07.2019, and the same is read thus:-

"1. Fifth Respondent submitted that the well in question is situated in the lands that are owned by the Chrome Leather Company even as on date. This respondent has no power or right over the Well in question. As per the available details, there were two Wells in the area that is referred to as the Chambers Colony by the Petitioner. The said Wells seem to have been used for drawing water for the use of the residents in the locality.

2. Till date, the said well is not vested with Pallavapuram Municipality. It remains a private property of the Chrome Leather Company. Further during the year 2005, the project of constructing an Overhead Tank for supply of water to the locality was taken up and the OHT was completed in the year 2005. The water supply is done from the main water works of the Municipality and it is filled in the Overhead

Tank and in turn supplied via the Overhead Tank to the locality.

3. The Well had become dry and disused and had become defunct. Over the time, the well was closed by the surrounding residents as there were few deaths in well either due to accidents or intentional reasons. This respondent is in no way responsible for the filling up of the well. It is also a fact that the residents used to dump their wastes in the well as there was no water available in the same.

4. As the Well in question is not vested with the Municipality, and the said lands are standing in the name of Chrome Leather Company in the Revenue records, this respondent is in no way responsible for the maintenance of the Visiri Well.

5. Registration of petitioner, claiming to be an Association of residents of the locality has also become defunct and it has to revive itself in order to maintain the present writ petition.

6. Fifth respondent has further submitted that the entire locality is still an unapproved layout as on date. Various averments of the petitioner in the affidavit are all denied. Further the petitioner itself has admitted that the Well is in the private property and that it is under the care of the Sangam.

7. The private disputes between the petitioner and the 6th respondent, are not within the purview of this respondent. Only, if the Well is vested with the Municipality, the work of maintaining the same can be taken up by this respondent."

12. Heard the learned counsel for the parties.

13. Contention of the Commissioner, Pallavaram Municipality, Chennai, the 5th respondent herein, that the petitioner's association has become defunct and not been revived to maintain the writ petition has not been disputed. Even taking it for granted that the writ petition can be entertained, contention of the 5th respondent/Municipality that the Well is not vested with the Municipality, is not only denied, but the petitioner has not produced any revenue records to the contrary. As per the revenue records, lands stand in the name of Chrome Leather Company, and it is a private property.

14. Even, as per the version of the petitioner, all the water bodies, wells, ponds etc., within the chambers colony are maintained only by the administration of Sangam. Petitioner has further averred that the well belong to Chrome Leather Company and is therefore under the control of Sangam.

15. It is also the case of the petitioner that though there was a resolution dated 02.07.2017, and that there was an internal dispute. Admittedly, the Well is not vested with the Municipality. Petitioner has no right to seek for a mandamus, against the Municipality. At this Juncture, we also deem it fit to consider few decisions, when a writ of mandamus can be issued.

(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)

16. There is no merit in the instant writ petition, filed as a public interest writ petition.

17. For the abovesaid reasons, writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petitions, are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dm
To

1.The Secretary,
State of Tamil Nadu,
Department of Municipal Administration,
Fort St. George, Chennai - 600 009.

2.The Collector,
Kanchipuram Collectorate, Kanchipuram - 631501.

3.Thasildhar, Pallavaram
Pallavaram Municipal Building,
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5.The Commissioner,
Pallavaram Municipality,
Pallavaram Municipal Building,
3rd Main Rd, Pallavapuram,
New Colony, Chrompet,
Chennai, Tamil Nadu 600044.

+2ccs to Mr.I.Jenking Villiam , Advocate SR.No. 64641

+1cc to Mr.P.Srinivas , Advocate SR.No. 65069

+1 cc to Government Pleader Sr.No. 65487

+1cc to Mr.I.Anand , Advocate SR.No. 64914 (08/08/2019)

W.P.No.21599 of 2017

and

W.M.P.Nos.22582 of 2017 and 19961 of 2019

A.SK(06/08/2019)