

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2019

DELIVERED ON : 06.09.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.31249 of 2018

S.Kumarvelu .. Petitioner
Vs.

1.The Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi-110 001.

2.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai-9.

3.The District Collector,
O/o. The Collectorate,
Rajaji Salai, Chennai-600 001.

4.M/s.Nawab Mohammed Abdul Ali .. Respondents
(R4 impleaded vide order dated 05.02.2019
made in WMP.No.294/2019)

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Mandamus directing the 1st respondent to consider and act
upon the petitioner's representation dated 27.07.2018
within the time frame fixed by this Court.

For Petitioner : Mr.V.Rajesh

For Respondents : Mr.G.Karthikeyan,
Assistant Solicitor General for R1

Mr.A.N.Thambidurai,
Special Govt. Pleader for R2 and R3

Mr.P.Satish Parasaran, Sr. Counsel
assisted by
Mr.Vishnu Mohan for R4

O R D E R

M.SATHYANARAYANAN, J.

The petitioner claims to be a Social Worker involved in social activities on several times and came forward to file this Writ Petition styled as a Public Interest Litigation alleging among other things that the "Prince of Arcot" claims himself to be a descendant of second Caliph Umar Ibn Al Khattab (from West Asia) about the Nawabadam of Arcot, which was established by Mughal Emperor Aurangzeb in 1692 and after the demise of 13th Nawab Gulam Muhammed Ghouse Khan in the year 1855 without any issues, the British East India Company annexed the Nawabdom by applying "The Doctrine of Lapse" in the year 1855.

2. It is further stated by the petitioner that the Nawab of Arcot all along supported the British Regime and therefore, the British Government headed by Queen Victoria bestowed upon Azim Jah - one of the descendants of the 13th Nawab as political pensioner and also conferred a title "His Highness The Prince of Arcot" in the year 1867 with several honours, privileges and stipends attached to the said title in perpetuity from 1911 and a Government Order to that effect has also been passed.

3. The petitioner also made a complaint even after independence in the year 1947 and the title "Prince of Arcot" continued to be maintained in perpetuity and despite abolition of privy purse as well as recognition granted under Article 363A of the Constitution of India, the title and privileges conferred by the then British Government continues. It is also pointed out by the petitioner that the residence of the Nawab of Arcot is continued to be maintained by the Central Public Works Department, wherein lakhs and lakhs of public money is being spent and in this regard, has also submitted a representation to the 17.11.2016 to the first respondent, followed by yet another representation dated 27.07.2018 for withdrawal of title and privileges given to the Nawab of Arcot and in the absence of any response, came forward to file this Writ Petition as a Public Interest Litigation.

4. When the matter was listed for admission on 29.11.2018, this Court directed the petitioner to file additional affidavit containing necessary averments/materials and subsequently, in the light of the allegations made, the fourth respondent has been impleaded in the writ petition.

5. Mr.V.Rajesh, learned counsel appearing for the petitioner has drawn the attention of this Court to the affidavit as well as typed set of documents and would submit that despite India had attained independence, the title of "Principle of Arcot" with attendant privileges granted by the British Government continues and it is per se in violation of Article 363A(a) of the Constitution of India and that apart, the Amir Mahal, in which the fourth respondent is residing, is maintained by the Central Public Works Department at the cost of Government exchequer and further that political pension has also been paid per annum and it is high time that such privileges and payment of political pension should be withdrawn and prays for appropriate orders.

6. Mr.G.Karthikeyan, learned Assistant Solicitor General appearing for the first respondent has drawn the attention of this Court to the affidavit filed on behalf of the first respondent dated 25.03.2019 and 24.06.2019 and would submit that in terms of recitals in Letters Patent 1870, when the title "Prince of Arcot" was conferred by the British Government on Late Azeem Jah, it was clearly indicated that the title is automatically inherited by the rightful claimant without any intervention from the Government and such a recognition of the title was only in the nature of an administrative order and after the demise of late Nawab Gulam Mohammed Abdul Khader on 30.08.1993, the issue of recognition of his son Nawab Mohd. Abdul Ali as Prince of Arcot was re-considered upon his request and it was found that the Prince of Arcot was not a ruler within the meaning of Article 366(22) of the Constitution of India and the Letters Patent can be said to be a "Law in Force" within the meaning of the provisions of Article 372 (1) of the Constitution of India and the State Government has also made a positive recommendation and accordingly, the fourth respondent was recognized as the successor to the title "Prince of Arcot" and it was also decided to grant him political pension of Rs.1,50,000/- per annum. It is the further submission of the learned Assistant Solicitor General that the residence of the "Prince of Arcot" is maintained by the Central Public Works Department and as long as the conferment of the title "Prince of Arcot", the said person is eligible to reside in the said premises and it is also a heritage building and therefore, the Central Public Works Department is under obligation to maintain the said building to preserve its heritage and prays for appropriate orders.

7. Mr.P.Sathish Parasaran, learned Senior Counsel appearing for the fourth respondent has drawn the attention of this Court to the counter affidavit of the fourth respondent as well as the supporting typed set of documents

and would submit that the fourth respondent is a descendant of the Nawabs of the Carnatic, who ruled the Carnatic Kingdom in the 18th Century and early 19th Century and in the year 1801, the British Indian Government took over the civil, military and revenue administration of the entire Carnatic territory, leaving the Nawab of Carnatic as a titular head with pension, but without any territory and in the year 1870, the paternal uncle of the last Nawab, Prince Azim Jab was granted the right to use the title "Prince of Arcot" in perpetuity and under the terms of the Letters Patent/Charter of Queen Victoria dated 02.08.1870, which continues to be in force, Prince Azim Jah and his successors in title were conferred the honorary title "Prince of Arcot". It is the further submission of the learned Senior Counsel appearing for the fourth respondent that the Government of India has also recognized the title and issued G.O.Ms.No.517, Public (Political Pension-II) Department dated 01.07.1994, recognizing the fourth respondent as the holder of the title "Prince of Arcot" and a publication to that effect was also published in the Tamil Nadu Government Gazette Extraordinary No.347 dated 07.07.1994.

8. The learned Senior Counsel appearing for the fourth respondent would further submit that admittedly, Amir Mahal was taken over by the Government of India after independence and they are bound to maintain it and accordingly, they are maintaining it out of Government funds and the fourth respondent has been given only a right of occupation in the said property and the Order of the Governor in Council No.305 dated 09.08.1872 clearly states that the property is intended to be only for the occupation of the incumbent "Prince of Arcot". The learned Senior Counsel appearing for the fourth respondent has drawn the attention of this Court to the judgment and decree dated 21.01.1963 made in C.S.No.27 of 1961 and would submit that a finding has been given that this is not a case of a conferment of title but merely of continuance of a title already conferred by the previous Government and therefore, it do not fall within the ambit of Articles 366(22), 363A (a) and 363A(b) of the Constitution of India. It is also the submission of the learned Senior Counsel appearing for the fourth respondent that the fourth respondent being conferred the title "Prince of Arcot" is like any other citizen of India and he does not enjoy any privilege like high ranking statutory functionaries like the President and Prime Minister of India and the fourth respondent presently holding a regular Indian Passport and do not enjoy any diplomatic status or immunity and he is also assessed to statutory levies and further pointed out that the present writ petition, filed as a Public Interest Litigation, is nothing but an abuse of process of law and it is only a Publicity Interest Litigation and that apart, the

petitioner has approached the Court without clean hands and prays for dismissal of this writ petition with exemplary cost.

9. This Court paid its best attention to the rival submissions and also perused the entire materials placed before it.

10. It is not in serious dispute that Fort St.George Gazette dated 18.04.1871 was published conferring the title of "Prince of Arcot" and it was also recognized by the Government after independence. Princess Amatul Fazl Fazilu Thunnisa Begam had filed a Civil Suit in C.S.No.27 of 1961 on the file of this Court against Nawab Ghulam Mohideen Khan Bhadur and Others to declare that he is solely entitled to succeed to the office, name, state, degree, style, dignity, title and honour of Ameer-i-Arcot or the Prince of Arcot in India and all the rights and privileges attached thereto and full fledged trial took place wherein while dealing with Issue No.1, this Court held that right claimed is not a civil right and therefore the Suit is barred and further held that the Letters Patent issued by the then British Indian Government (referred supra) did not create any office of "Prince of Arcot" but only created a title or dignity which was continued by the Union of India after the death of the last Prince of Arcot.

11. The fourth respondent is also recognized as successor to the title "Prince of Arcot", vide D.O.No.5869/69-16 dated 22.10.1970 issued by the Public (Political) Department, Government of India. The very same department has sent a communication to the fourth respondent dated 07.09.1979 stating among other things that the President's Orders de-recognizing the rulers with effect from 06.09.1870 will apply only to those who come within Article 366(22) of the Constitution of India and the Prince of Arcot does not come within this category. The Ministry of Home Affairs, Government of India, sent a communication dated 23.06.1994 to the Chief Secretary, Government of Tamil Nadu stating that the Government of India has decided to sanction political pension of Rs.1,50,000/- p.a. and it will be paid until now to the Prince of Arcot should be continued and consequently, a communication was also sent by the Public (Political Pension II) Department dated 01.07.1994. The Hon'ble Minister for Home Affairs in answering to an Unstarred Question No.1560 dated 10.06.1998 on the Floor of the Rajya Sabha, has also gave a statement that the title "Prince of Arcot" is without investiture, rites, ornaments, territory or ceremonies whatsoever and he is in receipt of political pension of Rs.1,50,000/- per annum granted by the British Government and continued by the Government of India after independence and he does not belong to the category of

Princes/Rulers/Chiefs to whom Articles 201, 362 and 366(22) of the Constitution of India apply and further stated that the Government of India have provided a residence known as Amir Mahal, which is maintained by the Central Public Works Department and the State Government has also exempted him from the provisions of the Arms Act to possess certain Fire Arms.

12. The writ petitioner proceeded on the footing as if Article 363A(a) of the Constitution of India would apply to the case on hand. In the considered opinion of the Court, in the light of the above said qualitative materials, the contention put forward by the writ petitioner in this regards is liable to be rejected.

13. The Government of India thought fit to recognize the Letters Patent and the reply of the Hon'ble Home Minister of the Union of India on the Floor of the Rajya Sabha on 10.06.1998 would also disclose the fact that "Prince of Arcot" is a mere title without any investiture, rights, ornaments, territory or ceremonies whatsoever. It is also pointed by the fourth respondent in the counter affidavit that he is like any other citizen of India and not immune from prosecution like other high ranking statutory functionaries like the President or Prime Minister of India and he is also a tax payer and also paying other statutory levies of this country.

14. In *Noida Entrepreneurs Association v. Noida and Others* [(2011) 6 SCC 508] it was observed as under:

"Whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur at omne per quad devenitur ad illud, which means, whenever a thing is prohibited, it is prohibited whether done directly or indirectly."

15. In the case on hand, this Court finds that the conferment of title "Prince of Arcot" and maintenance of the residence, namely Amir Mahal which belongs to the Government of India is maintained by the Central Public Works Department and payment of Political Pension by the British Indian Government and continued by the Government of India is not at all prohibited.

16. This Court, even for the sake of arguments considers the said decision as administrative decision, cannot interfere unless such a decision reflect arbitrariness or illegality in the decision making process and execution. In the considered opinion of this Court, the relevant orders of the Central Government as well as

the State Government referred to above do not run contrary to the express provisions of law. The writ petition is misconceived and lacks merit and substance.

17. In the result, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Jvm
To

- 1.The Secretary,
The Union of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi-110 001.
- 2.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai-9.
- 3.The District Collector,
O/o. The Collectorate,
Rajaji Salai, Chennai-600 001.

+1cc to Mr.V.Rajesh , Advocate SR.No. 77678
+1cc to Mr.G.Karthikeyan , Advocate SR.No. 77667
+1 cc to Government Pleader Sr.No. 78119

W.P.No.31249 of 2018

A.SK(30/09/2019)