

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.NO.4536 OF 2018
AND
W.M.P.NO.5589 OF 2018

B.Sathish Kumar

... Petitioner

Vs.

1. State rep. by
The District Collector - Kancheepuram District,
Thaiyar Kullam,
Kanchipuram - 631 501.
2. The Director,
Directorate of Environment,
Panagal Maligai, No.1, Jeenis Road,
Saidapet, Chennai - 600 015.
3. The Commissioner,
Department of Geology and Mining,
Thiru.Vi.Ka. Industrial Estate,
Guindy,
Chennai - 600 032.
4. The Chief Executive Officer,
Cantonment Board - St.Thomas Mount,
North Parade Road, St.Thomas Mount,
Chennai - 600 016.
5. The Tahsildar - Alandur,
No.15/17, Military Quarters,
Alandur,
Chennai - 600 016.
6. The School Management Committee,
Marian Matriculation Higher Secondary School,
4/6A, Hill Shrine Road,
St. Thomas Mount,
Chennai - 600 016.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondent Nos.1 to 5 to take suitable action against the illegal quarrying and earthmoving actions of the 6th respondent, to retrieve all the land that was encroached upon by the 6th respondent, and also to restore the St. Thomas Mount hill to its original shape, contour and environmental character.

For Petitioner : Mrs.Lekha Shankar

For R1 to R3 & R5: Mr.E.Manoharan
Additional Government Pleader

For R4 : Mr.Mohan
for M/s.King & Partridge

For R6 : Mrs.Selvi George

O R D E R

The petitioner claims to be a practicing lawyer (Enrollment No.3159 of 2016) and belongs to Alandur Bar Association. Learned counsel appearing for the petitioner, on instructions, would submit that the petitioner is also having a certificate of practice.

2.The petitioner came forward to file this writ petition styled as a Public Interest Litigation, stating among other things that, he is a resident of St. Thomas Mount, which is a historically renowned and valuable place and the 6th respondent is running "Marian Matriculation Higher Secondary School". According to the petitioner, as per the information as stated by the Tahsildar, Alandur, who is the 5th respondent herein, the 6th respondent school does not own any particular land, as the entire hill comprising St. Thomas Mount belongs to the Government and the Revenue records do not show any land belonging to the said school. The petitioner would further submit that the 6th respondent also started putting up constructions and is continuing to do so even during night hours and in this regard, the petitioner has submitted a complaint dated 30.05.2017 to the Director, Department of Environment, Saidapet, Chennai - 600 015, and it was responded, vide communication of the District Environmental Engineer, Tamil Nadu Pollution Control Board, Maraimalai Nagar, Kancheepuram District, dated 24.6.2017, by stating that the said official has directed the Deputy Director, Geology and Mining, Kancheepuram, and the Cantonment Executive Officer, Cantonment Board, St. Thomas Mount, Chennai, to take necessary action on the complaint

and to intimate the details of action taken to the petitioner as well as to their office.

3.Attention of this Court was also invited to the communication of the Department of Geology and Mining, dated 14.07.2017, wherein, the District Collector, Kancheepuram District, was directed to take suitable action based on the complaint and report as to the action taken. The learned counsel appearing for the petitioner would submit that, since the complaint dated 30.05.2017 did not yield any kind of response, the petitioner, being a Public Interest Litigant, and also a practicing Advocate belonging to the Alandur Bar Association, is constrained to approach this Court and prays for appropriate orders.

4.The writ petition was entertained on 02.03.2018 and listed on various dates and when the matter is listed today, the 4th respondent has filed a report dated 09.12.2019 and the contents of the same would disclose that the 6th respondent had applied to the Cantonment Board for planning permission of school building and accordingly, planning permission was issued on 05.10.2016 for ground + 2 floors, totally measuring 36,108 sq.ft. comprised of FSI of 0.146. The site was inspected and the FSI statement along with the present drawing sketch, as furnished by the Engineering Department, is enclosed along with the report. The said report further reads that a watchman room admeasuring 232.16 sq.ft. has been put up without approval, for which, notice under Section 247 of the Cantonments Act, 2006, has been issued to the 6th respondent on 05.12.2019. The said report also contains the FSI statement, planning permission and the notice under Section 247 of the Cantonments Act, 2006, for unauthorized construction.

5.It appears from the arguments advanced by the learned counsel appearing for the petitioner, as well as from the perusal of the materials that, the petitioner, who claims to be a practicing advocate and also a Public Interest Litigant, has failed to do any exercise before filing this writ petition styled as Public Interest Litigation. Though the petitioner, in Para No.2 of the affidavit, would aver among other things that, "... As per my information as stated by the Tahsildar-Alandur, who is the 5th respondent herein, the school does not own any particular land as the entire hill comprising the St.Thomas Mount belongs to the Government, and that the Revenue records do not show any land as belonging to the school. ..." , in support of the said submission, no material whatsoever has been produced in the Typed Set of Papers. The petitioner, who claims to be a practicing lawyer and belonging to the Alandur Bar Association, is supposed to be aware of the importance of pleadings. In a writ petition, importance is always attached to the pleadings,

however, unfortunately, the petitioner had made averments without any supporting materials.

6.The Hon'ble Supreme Court of India, in a decision reported in 2010 (3) SCC 402 [State of Uttaranchal v. Balwant Singh Chauhan], in Paragraph Nos.22, 23, 173 and 174, has dealt with the issue pertaining to a Public Interest Litigation filed by a practicing lawyer, and has held :

"It was expected from a member of noble profession not to invoke jurisdiction of the Court in a matter where controversy itself is no longer res integra. The petitioner a local practising lawyer, ought to have bestowed some care before filing his writ petition in public interest under Article 226 of the Constitution of India."

7.In the considered opinion of this Court, the petitioner has failed to carry out any useful exercise before filing this Public Interest Litigation. In the light of the report of the 4th respondent, it cannot be said that the 6th respondent has put up unauthorized construction, except to an extent of 232.16 sq.ft. in the form of watchman room, for which also, a notice dated 05.12.2019 under Section 247 of the Cantonments Act, 2006, has already been issued by the 4th respondent. In the considered opinion of this Court, this writ petition styled as a Public Interest Litigation lacks merits and substance and deserves dismissal.

8.Therefore, this writ petition stands dismissed. Consequently, connected miscellaneous petition is closed.

9.Though this Court is intended to award costs, in the light of the fact that the petitioner claims to be a practicing lawyer, gives him one more opportunity not to indulge in any such vexatious exercises. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District,
Thaiyar Kullam,
Kanchipuram - 631 501.
2. The Director,
Department of Environment,
Panagal Maligai, No.1, Jeenis Road,
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3. The Commissioner,
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5. The Tahsildar - Alandur,
No.15/17, Military Quarters,
Alandur, Chennai - 600 016.

+1cc to M/s.King & Partridge, Advocate, S.R.No.1418
+1cc to Mrs.Selvi George, Advocate, S.R.No.1501
+1cc to Mrs.Shalini Mehrunisa, Advocate, S.R.No.1782

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SR(CO)
CS/11/02/2020

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