

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.10.2020

CORAM

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

WP.NO.15124 OF 2020

R.Kalyanam

.. Petitioner

Versus

1. State of Tamil Nadu
rep.by Secretary,
Municipal Administration and Water Supply
Department, Fort St.George,
Chennai 600 009.
 2. Commissioner,
Municipal Administration Commissionerate,
M.R.C.Nagar, Chennai 600 024.
 3. Regional Director of Municipal Administration
Kodimarathumoolai,
Thanjavur.
 4. The Collector,
Nagapattinam District,
Nagapattinam.
 5. The Special Officer,
Mayiladuthurai District (Newly formed)
Mayiladuthurai 609 001.
 6. Special Officer and Municipal Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai 609 001.
- ...Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the respondents to consider the best place for construction of new bus stand in Mayiladuthurai Town in view of the subsequent developments namely formation of new district with Mayiladuthurai as its head quarters and proposal to construct Collectorate buildings for Mayiladuthurai District at

Mannampandal village or direct the 1st respondent to appoint a technical committee or a team of experts to consider which one of the two places namely Thennamara Salai or Manakkudi Village is more convenient and beneficial for formation of new bus stand and construct the same.

For Petitioner : Mr.A.Muthukumar

For Respondents: Mr.R.Vijayakumar
Additional Government Pleader
for R1 to R6

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.]

The petitioner is a former member of the Tamil Nadu Legislative Assembly Constituency and he came forward to file this Writ Petition styled as a Public Interest Litigation stating among other things that originally Mayiladuthurai was a part of Nagapattinam District till 3rd week of April 2020 and the Government of Tamil Nadu took a policy decision to bifurcate the Nagapattinam District and formed a new district with Mayiladuthurai as it's Head Quarters and a Special Officer has also been appointed to look after all establishments of new district of Mayiladuthurai.

2. Mr.A.Muthukumar, learned counsel appearing for the petitioner would submit that the present Bus Stand in Mayiladuthurai town was constructed in the year 1961-62 and in view of several increase in population, several institutions had also come into being and that apart, Mayiladuthurai Town also lies in close proximity to very many famous religious places and as such, there are always used to be floating population in the said Town. The then Mayiladuthurai Municipality had decided to construct a new bus stand at Thennamara Salai and also accorded sanction for acquisition of 8.74 acres of land in the said town and out of the said extent of land, 4.01 acres belong to Sri Parimala Ranganathsamy Temple, Mayildaduthurai, which is under the control of Hindu Religious and Charitable Endowment Department and another extent of 0.57 acres of land belong to the Trust namely AVC Trust and a private party also owns 0.70 acres and the remaining 3 ½ acres belong to the Government. The Commissioner of HR&CE has also accorded permission to the said Temple to convey the lands admeasuring an extent of 3.91 acres in S.F.Nos.738, 743 and 745 in exercise of it's power under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and the said order was published in the District Gazette of Nagapattinam District, dated 11.04.2006. It is pointed out by the learned counsel appearing for the petitioner that the 6th respondent has announced a proposal to construct a

new bus stand at Mayiladuthurai Village in a land admeasuring an extent of 13.77 acres of land belong to the Dharmapuram Adheenam and it was also widely published in new dailies and upon seeing it, lot of dissent and descent came into being and objections were also raised.

3. The primordial submission made by the learned counsel appearing for the petitioner by drawing attention of this Court to the representation dated 26.08.2020 submitted by the petitioner, is that if the new bus stand is established at Manakkudi Village, distance between the proposed Collectorate will be more than 10 kms and the traveling public has to travel the entire stretch of town to go to the another extent, which also added to the traffic congestion and hence prays for appropriate direction for formation of the Technical Committee to examine the best place for construction of new bus stand at Mayiladuthurai. It is also the submission of the learned counsel appearing for the petitioner is that the ideal place for establishment of new bus stand at Mayilduthurai is Thennamara Salai, Thiruvizhandur, Mayiladuthurai, which itself is about 5kms from Thennamara Salai and the distance between Mayiladuthurai Railway Junction and Manakkudi Village is about 10 kms and therefore, prays for appropriate orders.

4. Mr.R.Vijayakumar, learned additional Government Pleader accepts notice on behalf of the respondents 1 to 5 and Mr.P.Srinivas, learned standing counsel accepts notice for the 6th respondent and they would submit that it is a policy decision and in the absence of any averment / allegation as to the arbitrariness in taking such decision, the writ petition is not maintainable and prays for dismissal of the same.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. In (2014) 4 LW 562 (R. Eakamparam v. Government of Tamil Nadu,), locating of new bus stand in Karur Municipality came up for consideration in the Public Interest Litigation. Hon'ble Mr.JusticeV.Ramasubramanian, (the Hon'ble Judge, then was) speaking for the Bench, on an exhaustive and thorough analysis, found that a policy decision taken to locate a bus stand in a particular place, cannot be gone into by this Court in a Writ Petition filed as a public interest litigation and it is relevant to extract the following paragraphs of the said decision:

31.But, unfortunately, the justifiability of the acceptance of the land in question by the Municipality cannot be gone into by this Court. A democratically elected body has considered the pros and cons of the proposal and arrived at a conclusion to locate the

bus-stand in the land in question. The Government had also examined the proposal and found the land to be suitable. Therefore, we cannot re-examine the issue and decide in a public interest litigation, whether the place now chosen is the most suited one for the Municipality to locate a bus-stand or not. In Paragraph 13.E of the counter affidavit filed by the Government, they have given the reasons for deciding to locate the bus-stand in the land in question. Paragraph 13.E can be usefully extracted as follows:

"13.E. The site proposed in 2009 in Thoranakalpatty was then outside the municipal limits of Karur Municipality, which was subsequently annexed to Karur Municipality. The distance from Karur Town is 10 KM. Some portion of the 21.4 Acres of the lands belonged to private individuals and they had not transferred the lands to Karur Municipality. Moreover, the Karur Municipality had financial difficulties in getting the lands. The present site in Thirumanilaiyur, even though outside municipal limits of Karur Municipality, is within 4 KM from Karur Town and is easily approachable. Moreover, the lands had been donated by its owners vide Gift Deed dated 07.10.2013 registered as Document No. 6741/2013 on the file of Sub-Registrar, Karur West, and thereby no cost has been involved in the acquiring of the lands."

33. The correctness of the reasons stated above cannot be examined by this Court in a writ petition under Article 226 of the Constitution. There is a limit upto which the jurisdiction of this Court under Article 226 for a judicial review of the administrative action can be extended. Once we find that the decision of the respondents is supported by reasons, we cannot examine each and every reason and call upon the respondent to justify the same. It is quite unfortunate (or at least interesting to note) that today, even while the legal pundits keep debating on the one hand, the extent to which judicial activism could go, the public on the other hand, keep knocking at the doors of this court even in respect of matters such as the location of a bus stand, location of a railway station and the location of even public toilets (we ourselves have cases of this nature). But this court cannot function as a supervisory body for all the departments of the Government. Hence, the second contention is rejected.

51. Even in respect of any area where a development plan has come into operation, there are no fetters for the State Government or the Central Government or any

local authority to use or cause to be used, any land or carry out any development in that area. This is made clear by Section 47, which reads as follows:

"47, Use and development of land to be in conformity with development plan-- After the coming into operation of any development plan in any area, no person other than any State Government or the Central Government or any local authority shall use or cause to be used any land or carry out any development in that area otherwise than in conformity with such development plan:

Provided that the continuance of the use of any land for the purpose and to the extent for, and to which it is being used on the date on which such development plan comes into operation, may be allowed for such period and upon such terms and conditions as may be specified in such development plan."

7. The Division Bench has also taken note of the decision rendered by the Division Bench of this Court in 2009 (4) LW 459 (S. Venkatesan v. Government of Tamil Nadu and others) wherein it has been held that "the final decision as to where the bus-stand is to be located is to be left with the Government to decide and the Court cannot substitute its views over that of the Government".

8. In 2008 (5) SCC 511 [Common Cause (A Regd. Society) v. Union of India], the Writ Petition was filed under Article 226 of the Constitution of India seeking a direction to the Government to take certain measures, including setting up of Road Safety Committees and enactment of Road Traffic Safety Act to minimise road accidents and the Hon'ble Supreme Court of India has considered the earlier decisions with regard to the nature, object and scope of Public Interest Litigation and also it's misuse. It is relevant to extract the following paragraphs of the said decision:

43. The directives sought for in this petition require the expertise of administrative and technical officials, apart from financial resources. Not only should the court not give such directives because that would violate the principle of separation of powers, but also because these are highly technical matters to be left to be dealt with by administrative and technical authorities who have experience and expertise in the matter. For instance, what should be the maximum permissible speed for vehicles in a city, where should speed breakers be fixed, when

should heavy vehicles be allowed on roads, and other matters for ensuring road safety are all matters to be dealt with by the authorities concerned under the Motor Vehicles Act and other enactments, and it would be wholly inappropriate for the judiciary to meddle in such matters. Decisions on such matters by the judiciary land the administrative agencies in practical difficulties and make them bear the brunt of the decisions of the court, some of which are wholly oblivious to administrative needs and as such ill conceived.

44. Moreover, if once the courts take upon themselves the task of issuing ukases as to how administrative agencies should function, what is there to prevent them from issuing directions as to how the State Government or the Central Government should administer the State and run the country? In our opinion such an approach would not only disturb the delicate balance of powers between the three wings of the State, it would also strike at the very basis of our democratic polity which postulates that the governance of the country should be carried on by the executive enjoying the confidence of the legislature which is answerable and accountable to the people at the time of elections. Such an approach would in our opinion result in judicial oligarchy dethroning democratic supremacy.

45. In our opinion the court should not assume such awesome responsibility even on a limited scale. The country can ill afford to be governed through court decrees. Any such attempt will not only be grossly undemocratic, it would be most hazardous as the courts do not have the expertise or resources in this connection. The judiciary is not in a position to provide solutions to each and every problem, although human ingenuity would not be lacking to give it some kind of shape or semblance of a legal or constitutional right e.g. by resorting to Article 21.

53. The people must know that courts are not the remedy for all ills in society. The problems confronting the nation are so huge that it will be creating an illusion in the minds of the people that the judiciary can solve all the problems. No doubt, the judiciary can make some suggestions/

recommendations to the legislature or the executive, but these suggestions/recommendations cannot be binding on the legislature or the executive, otherwise there will be violation of the seven-Judge Bench decision of this Court in P. Ramachandra Rao case [(2002) 4 SCC 578 : 2002 SCC (Cri) 830] and violation of the principle of separation of powers. The judiciary must know its limits and exercise judicial restraint vide Divl. Manager, Aravali Golf Club v. Chander Hass [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289 : JT (2008) 3 SC 221]. The people must also realise that the judiciary has its limits and cannot solve all their problems, despite its best intentions.

56. The view that the judiciary can run the Government and can solve all the problems of the people is not only unconstitutional, but also it is fallacious and creates a false impression and false illusion that the judiciary is a panacea for all ills in society. Such illusions, in fact, do great harm to the people because it makes the people believe that their problems can be solved by others and not by the people themselves. It debilitates their will and makes them believe that they can solve their problems and improve their conditions not by their own struggles and creativity but by filing a PIL in court.

9. Since the decision to locate bus stand falls within the domain of the concerned official respondents and in the absence of any malafide or arbitrariness in the said decision, this Court is not in a position to come to the aid of the petitioner.

10. In the result, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar

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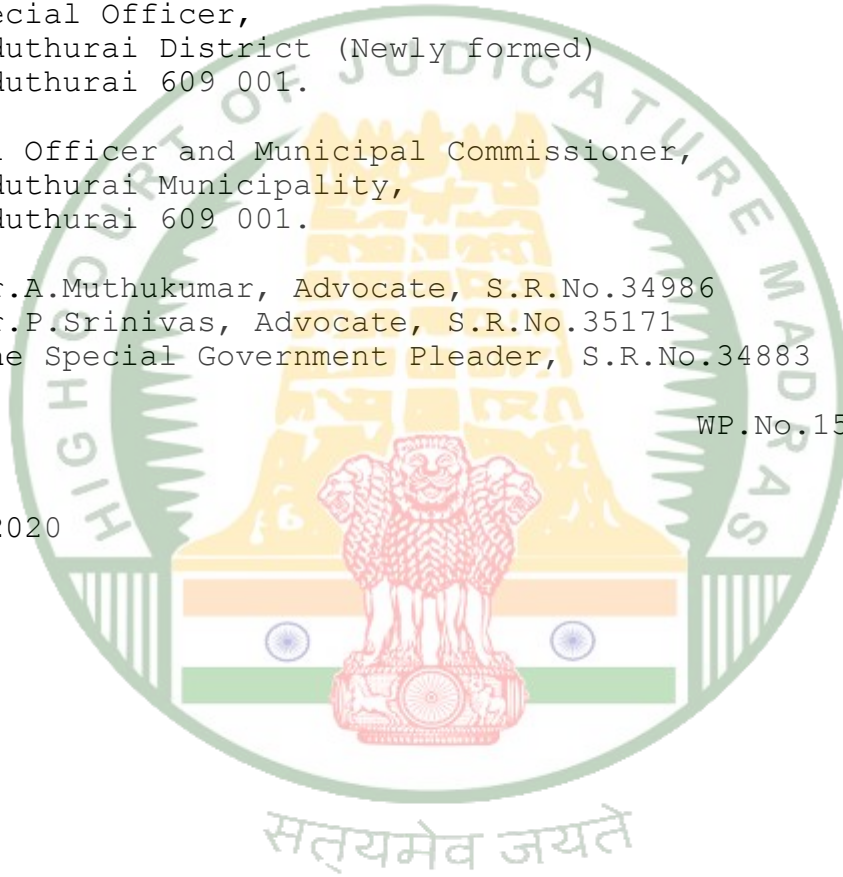
1. The Secretary,
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2. Commissioner,
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Mayiladuthurai 609 001.

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.34986
+1cc to Mr.P.Srinivas, Advocate, S.R.No.35171
+1cc to the Special Government Pleader, S.R.No.34883

WP.No.15124 of 2020

RSV(CO)
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