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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD).No.8573 of 2020

and

W.M.P.(MD).No.7943 of 2020

K.Ayyammal

... Petitioner

Vs.

1.The Registrar,
State Human Rights Commission,
No.143, P.S.Kumarasami Raja Street,
Cheanni.

2.Mr.M.Kannan
formerly the Inspector of Police,
Karimedu Police Station,
Madurai City.

... Respondents

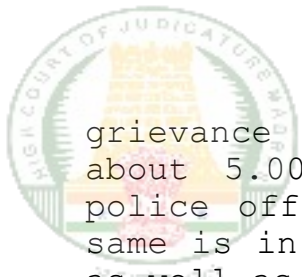
Prayer: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the entire records pertaining to the order passed by the first respondent in S.H.R.C.No.5733 of 2019/HC2 vide order dated 03.12.2019 and quash the same and consequently direct the State Human Rights Commission, Tamil Nadu to enquire the petitioner's complaint dated 06.06.2019 and to dispose of the same strictly in adherence to the provisions of the Protection of Human Rights Act, 1993.

For Petitioner	: Mr.R.Anand
For R1	: Mr.Arulvadivel @ Sekar
For R2	: Mr.R.Murugan
	Additional Government Pleader

O R D E R

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner claims to be an assignee of land in Survey No.994/1A, T.S.No.116, Melamadurai Village, Arapalayam Main Road, Madurai West Taluk admeasuring to an extent of one cent and the same was given to her through the Scheme of giving free house site pattas as she happened to be a landless poor and the petitioner claims to be in occupation for several decades so also 42 persons. The



grievance expressed by the petitioner is that on 19.12.2016, at about 5.00 a.m., the second respondent accompanied with certain police officials, started demolishing the superstructures, and the same is in violation of the Article 21 of the Constitution of India as well as the United Nation Covenants of Human Rights.

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2. The petitioner subsequently filed W.P.(MD).No.3461 of 2017 so also along with some other persons similarly placed, who had also filed W.P.(MD).Nos.781 and 333 of 2017, praying for the writ of Certiorarified Mandamus to quash the proceedings, of the Revenue Divisional Officer, Madurai, dated 03.08.2015 and the consequential order dated 15.12.2016 passed by the District Revenue Officer, Madurai and directing them to restore the possession of the petitioner bearing Plot No.7 situated at Old Survey No.994/1A, Ward No.5, Block No.33, T.S.No.116, Arapalayam Main Road, Melamadurai, Madurai. The learned single Judge had passed a common order dated 01.04.2019, by directing the jurisdictional Tahsildar to carry out the work of survey, measurement and demarcation of the assigned sites within a period of twelve weeks from the date of receipt of a copy of this order and in respect of the assignee of the land in Plot No.37, after taking note of the fact that she is no more, directed the concerned jurisdictional Tahsildar to assign the said land in favour of any other eligible person and allowed the writ petitions accordingly.

3. Mr.R.Anand, learned counsel appearing for the petitioner would vehemently contend that though the second respondent had committed illegal act of barging, trespassing into the land and demolishing the superstructure on 19.12.2016, the fact remains that the petitioner is an illiterate person, having poor economic background and hailing from lowest strata of the Society, and though the complaint came to be lodged belatedly on 06.06.2019, the complaint given before the first respondent concerned cannot be said to be barred by limitation, on the ground that it is a continuous cause of action, and the first respondent without taking note of the factual aspect and legal position, has erroneously rejected the plaint, on the ground of limitation and prays for interference.

4. The learned counsel appearing for the petitioner, in support of his submissions, has relied upon the judgment of the Hon'ble Supreme Court dated 08.01.2020, made in Civil Appeal Nos.60 and 61 of 2020 **(Vidya Devi vs. Himachal Pradesh and others)**.

5. Mr.Arulvadivel @ Sekar, learned Standing counsel accepts notice on behalf of the first respondent and would submit that even as per the contents of the complaint of the petitioner dated 06.06.2019, the alleged illegal /unauthorised act on the part of the second respondent took place on 19.12.2016 and the complaint came to be lodged belatedly, only on 06.06.2019 and the State Human Rights Commission, in the light of the period of limitation provided under



Section 36 (2) of the Protection of Human Rights Act, 1993, has rightly rejected the complaint on the ground of limitation and it cannot be faulted with and prayed for dismissal of this writ petition.

6. The learned counsel for the first respondent has also placed reliance upon the decision rendered by the Hon'ble Supreme Court reported in **2004 (2) SCC 579 (N.C.Dhondial vs. Union of India and Others)**.

7. This Court has carefully considered the rival submissions and perused the materials placed on record.

8. It is relevant to extract Section 36 of the Protection of Human Rights Act, 1993.

"36. Matters not subject to jurisdiction of the Commission.- (1) the Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Government shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

9. The contents of the complaint dated 06.06.2019 submitted by the petitioner before the first respondent would disclose that the second respondent had committed the alleged illegal acts on 19.12.2016, by trespassing into the land of the petitioner and demolished the superstructure and the complaint in this regard, came to be given only on 06.06.2019, nearly after two years and odd.

10. The petitioner has also filed W.P.(MD).No.3461 of 2017, challenging the order of cancellation of the assignment / patta, and restore the possession in respect of Plot No.7 situated at Old Survey No.994/1A, Ward No.5, Block No.33, T.S.No.116, Arappalayam Main Road, Melmadurai, Madurai 625 016. Similarly, one Nagamani has filed W.P.(MD).No.781 of 2017 for the similar relief. The learned Judge, by common order dated 01.04.2019, had directed the jurisdictional Tahsildar to carry out the work of survey, measurement and demarcation of the assigned sites within a period of twelve weeks from the date of receipt of a copy of this order. The contents of the order do not disclose the pleadings made by the petitioner herein with regard to the alleged trespass and demolition of the superstructure. It is to be noted at this juncture that the patta / assignment came to be cancelled on the ground of violation of the conditions viz., not putting up the construction, within a stipulated time.

11. Similarly, same issue arose for consideration in the above said decision of the apex Court. It is relevant to extract paragraph Nos.15 and 17.



"15. Now, let us look at Section 36 of the Protection of Human Rights Act, which reads thus:

36. Matters not subject to jurisdiction of the Commission
"(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the Section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. If an authority is needed for this proposition the observations of this Court in *S.S. Gadgil Vs. M/s Lal & Co.* [AIR 1975 SC 171] may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus:

"Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income-tax Officer to bring to tax escaped income." The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide *Uttam Das vs. S.G.P.C.* [(1996) 5 SCC 71] and *Bhinka Vs. Charan Singh* [AIR 1959 SC 960]).

16. In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the Section is being referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar under Section 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this view point is that such a view, if accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant case. The time limit prescribed is referable to the alleged 'act' constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and so long as the affected person remains under illegal detention. The commission of offensive act is complete at a particular point of time and it does not continue to be so even



after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3.4.1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention which gives rise to violation of human rights ceased on 3.4.1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to say that the arrest or detention beyond 3.4.1994 was in accordance with law and at the same time the arrest/detention continued to be wrongful. It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression 'continuing offence' in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3.4.1994, there was no breach of obligation imposed by law either by means of positive or passive conduct of the alleged wrong-doers. To characterize it as a continuing wrong is, therefore, inappropriate. One year period for taking up the enquiry into the complaint, therefore, comes to an end by 3.4.1995. Just as in the case of Section 473 Cr.P.C., there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(a) inter alia lays down that 'ordinarily' a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable.

12. There is no specific provision available for condonation of delay and the first respondent being the creator of a statue have to abide by the stipulations contained in the statute.

13. In the considered opinion of the Court, in the absence of specific provision for condonation of delay, the statutory commission viz., the first respondent has no inherent power to condone the delay in filing the complaint. The above cited decision of the Hon'ble Supreme Court is a complete answer to the pleading made by the petitioner in the writ petition and there is no merit in this writ petition and it deserves dismissal and accordingly, the writ petition is dismissed. However, in the circumstances of the case, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)



The Registrar,
State Human Rights Commission,
No.143, P.S.Kumarasami Raja Street,
Cheanni.

W.P. (MD) .No.8573 of 2020
and
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Kv(18.08.2020) 6P 2C