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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.21693 of 2021
and
W.M.P.No.22873 of 2021

1.S.Parthiban
2.R.Sivasankar

...Petitioners

Vs.

1. The Commissioner,
The State Election Commission,
Elections Building (3rd & 4th Floor),
Villianur Main Road,
Reddiarpalayam, Puducherry - 605 01.

2. The Commissioner,
Bahour Commune Panchayat,
Mary Street, Bahoor,
Pondicherry - 607 402.

3. The Under Secretary to the Government
Beach Road,
Puducherry - 605 001.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned Notification dated 04.06.2021 published vide G.O.Ms.No.17/LAS/2021 issued by 3rd respondent, quash the same for Bahour Commune Panchayat and consequently direct the 2nd respondent to conduct delimitation of the Bahour Commune Panchayat on the lines of the issues raised herein above within a specified time frame and thereafter conduct the election within a reasonable time.

For Petitioners : Mr.Srinath Sridevan
for Mr.R.Udhayakumar

For R1 : Mr.V.Chandrasekaran
Senior Panel Counsel



For R2 & R3 : M/s.N.Mala
Government Pleader (Puducherry)

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O R D E R

(Order of the Court was made by T.S. SIVAGNANAM, J.)
(Through Video Conferencing)

This writ petition has been filed by the petitioners, challenging the notification issued by the respondent/Government in G.O.Ms. No.17/LAS/2021, dated 04.06.2021, in respect of Bahour Commune Panchayat and consequently, to direct the 2nd respondent to conduct delimitation of the Bahour Commune Panchayat on the lines of the issues raised by the petitioners.

2.The sum and substance of the contentions of Mr.Srinath Sridevan, learned counsel appearing for Mr.R.Udhayakumar, learned counsel for the petitioners, is that, under Article 243 (d) of the Constitution of India, "Panchayat" has been defined to mean an Institution of Self-Government constituted under Article 234B, for the rural areas. Article 243(e) defines "Panchayat area" to mean the territorial area of a Panchayat. Therefore, it is of the submission of the learned counsel that the territorial area of the Panchayat can never be obliterated under a delimitation exercise and if that is done, it goes against the constitutional mandate of Self-Government, which has been envisaged under Article 243B of the Constitution of India, which states that, there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of Part-IX of the Constitution. In support of his contentions, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Gujarat Pradesh Panchayat v. State of Gujarat and others [(2007) 7 SCC 718] for the proposition that, in the light of the Constitutional provisions in Part-IX, the State Legislature cannot do away with the democratic bodies at the local level nor their normal tenure be curtailed otherwise than in accordance with law nor can the State Government delay elections of these bodies.

3.Before we consider this legal submission, there is a hurdle, which the petitioner has to cross, and unless the petitioner succeeds in doing so, we would not be required to undertake the exercise to consider the above submission made by Mr.Srinath Sridevan. This hurdle pointed out by M/s.N.Mala, learned Government Pleader (Puducherry) is that this writ petition is not maintainable and liable to be dismissed on the ground of inordinate delay and laches.



4. We test the correctness of this submission. The challenge in the writ petition is to the notification issued by the Government of Puducherry in G.O.Ms.No.17/LAS/2021, dated 04.06.2021. The contention of the petitioner is that, under the impugned Government Order, consequent upon the delimitation exercise, Murthikipam Village has lost its identity and has effaced and has been included within the territorial limits of Mathikrishnapuram and Manapet. The petitioner's contention is that the impugned Government Order has been issued on 04.06.2021 and it is for the first time, such exercise has been completed pursuant to the delimitation and therefore, the petitioner is entitled to question the same.

5. As rightly pointed out by the learned Government Pleader, the delimitation exercise commenced with the exercise of notifying the draft proposal vide G.O.Ms.No.60/LAW/A4/2016, dated 28.01.2016. This draft proposal was based upon the 2011 census. The draft proposal was given wide publicity and objections were called for from the general public and objections were received by the Government and after hearing the objections, the delimitation proposal was finalized and notified vide G.O.Ms.No.50/LAS/2019, dated 07.03.2019. Therefore, it would be incorrect to state that the delimitation exercise was done under the impugned Government Order dated 04.06.2021.

6. An endeavour was made to state that, so far as the Village Panchayat which is subject matter of this writ petition is concerned, the delimitation was done for the first time under the impugned Government Order dated 04.06.2021. This submission is stated to be factually incorrect, as the exercise was done and necessary proposal was there in G.O.Ms.No.60/LAW/A4/2016, objections were called for under draft proposal and it culminated in a final notification dated 07.03.2019.

7. Furthermore, on a reading of G.O.Ms.No.17/LAS/2021, dated 04.06.2021, it is clear that, under G.O.Ms.No.50/LAS/2019 dated 07.03.2019, notification has been published in Official Gazette and the Government has notified the delimitation of Village Panchayat Wards for the purpose of conduct of elections to the Village Panchayats and in the said Government order, in Annexure-II, which is the statement showing the wards into which Village Panchayats have been divided and the extent of each such Village Panchayat Ward, some errors in the boundaries of the ward(s), list of areas/streets included in the ward(s) and clerical errors, etc., have occurred, which have been mentioned, and it was considered necessary to correct such errors in order to facilitate the preparation of error free electoral roll and ultimately, smooth conduct of elections to the Village Panchayats without any hitch. In the said Government Order, it



has been further recorded that, objections or suggestions were called for from the general public vide notification in G.O.Ms.No.14/LAS/2021, dated 19.05.2021, and objections or suggestions received were considered, and after hearing the objections or suggestions, an Amendment Notification in G.O.Ms.No.14/LAS/2021, dated 19.05.2021, was published in the Official Gazette. Thus, G.O.Ms.No.17/LAS/2021, dated 04.06.2021, states that, in exercise of powers conferred under Sub-Section (1) of Section 12, read with Section 11 of the Puducherry Village and Commune Panchayats Act, 1973, the Lieutenant-Governor, Puducherry, confirms the Amendment Notification in G.O.Ms.No.14/LAS/2021, dated 19.05.2021, published in the Official Gazette dated 19.05.2021.

8.Thus, it is clear that, what is impugned is only the Amendment Notification to rectify certain errors in boundaries, streets, clerical errors, etc., and the notification upon completion of the delimitation exercise is under G.O.Ms.No.50/LAS/2019, dated 07.03.2019. Therefore, the present attempt of the petitioner is clearly barred by delay and laches and therefore, the relief sought for cannot be granted.

9.In the light of the above technical ground, this writ petition is not maintainable. Therefore, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.The legal submissions made by Mr.Srinath Sridevan, as noted above, are left open.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

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+1 CC to Mr.R.Udhayakumar, Advocate sr 52971.

W.P.No.21693 of 2021

RSI (CO)
SP(28/10/2021)