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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

THE HON'BLE MR.JUSTICE P.D. AUDIKESAVALU

W.P.No.10073 of 2018

Merlin Mary

...Petitioner

Vs

The Officer-In-Charge,
Records Punjab Regiment,
The Punjab Regiment,
Pin code - 908 761,
C.o, 56, APO.

...Respondent

Prayer :- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus to call for records relating to the order passed by the Respondent in Ref.No.2480198/LC/ pension / 24.07.2017 and 04.09.2017 and quash the same consequently direct the Respondent to pay interest on the belated payment of arrears of pension from 01.01.2006 to 01.04.2017 to the Petitioner.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr. M.Arvind Kumar

O R D E R

Heard Mr. A.R.Nixon, Learned Counsel for the Petitioner and Mr.M.Arvind Kumar, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The husband of the Petitioner, viz., M.Alexander, committed suicide on 09.07.1998 while in the service of the Respondent and ordinary family pension with effect from 01.01.2006 was granted to the Petitioner along with arrears only in the year 2017. The Petitioner had made a representation dated 11.07.2017 for grant of interest for the belated payment of arrears of pension, which was rejected by Order No. 2480198/LC/Pen dated 24.07.2017 passed by the Record Officer, OIC Records, Punjab Regiment. Thereafter, the Petitioner had made another representation dated 16.08.2017 for grant of interest for the belated payment of arrears of pension for the



period from 01.01.2006 to 01.04.2017, which was rejected by Order 2480198/LC/Pen dated 04.09.2017 passed by the Senior Record Officer, OIC Records, Punjab Regiment. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said orders and for a consequential direction to the Respondent to pay interest on the belated payment of arrears of pension from 01.01.2006 to 01.04.2017.

3. When the matter is taken up for hearing today, Learned Counsel for the Petitioner was required to substantiate as to how the Writ Petition can be entertained by this Court as neither the Respondent has its seat of authority nor any part of the cause of action has arisen, within its territorial limits of its jurisdiction, in terms of clauses (1) and (2) of Article 226 of the Constitution of India, 1950. In response to such query, Learned Counsel for the Petitioner states that the impugned orders have been served on the Petitioner at her residence at No. 7/165, Middles Street, Melakovilpatty, Batlagundu Post, Nilakottai, Dindigul District which falls within the territorial limits of jurisdiction of the Madras High Court.

4. The question whether the mere service of an order to the Petitioner at her residence would entitle her to seek legal remedy under Article 226 of the Constitution of India before the High Court when her residence is situated within the territorial limits of jurisdiction of the High Court arose for examination before the Hon'ble Supreme Court in State of Rajasthan -vs- M/s.Swaika Properties [(1985) 3 SCC 217], where it has been held as follows:-

"8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under S.52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under S. 52 (1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer



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to the question whether service of notice is an integral part of the cause of action within the meaning of Art. 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under S. 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under S. 52 (2) for the grant of an appropriate writ, direction or order under Art. 226 of the Constitution for quashing the notification issued by the State Government under S. 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under S. 52(1) of the Act by a petition under Art. 226 of the Constitution, the remedy of the respondents of the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

This leads to the next issue as to whether the impugned orders sent by the Respondent to the Petitioner at her residence at Dindigul forms part of the cause of action to file this Writ Petition. In this context, reference could be made to the decision of the Hon'ble Supreme Court in State of Punjab -vs- Khemi Ram [(1969) 3 SCC 28]], in which it has been held as follows:-

"17.It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order



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becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus may go away from the address given by him for service of such orders, or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides...."

This would mean that the despatch of the order by the authority passing the order would suffice for the purpose of communicating the order and its actual delivery to the addressee is immaterial and hence, that cannot form any part of the cause of action.

5. Even if it is assumed that this Court would have territorial jurisdiction in addition to the other Courts, the principle of forum convenience would clearly operate to the effect that the Writ Petition ought not to be entertained in this Court when the part of the cause of action is trivial or negligible as in this case as fortified by the decision of the Division Bench of this Court in C.Ramesh -vs- Director General of Police (Order dated 06.06.2013 in W.P. (MD) No. 8790 of 2013), where it has been held as follows:-

"7. Exercise of jurisdiction is based on arising of the cause of action, either in whole or in part in any one of the said Revenue Districts. [See RAJASTHAN HIGH COURT ADVOCATES' ASSOCIATION Vs. UNION OF INDIA AND OTHERS (2001 (2) SCC 294) and B.STALIN Vs. THE REGISTRAR, SUPREME COURT OF INDIA AND OTHERS (2012 (3) LW 489 (FB))].

8. It should be remembered that the part of cause of action must be substantial in nature. The territorial jurisdiction of the Court is linked with the place of accrual of cause of action. [See U.P. RASHTRIYA CHINI MILL ADHIKARI PARISHAD, LUCKNOW Vs. STATE OF U.P. AND OTHERS (1995 (4) SCC 738)].

9. Referring to KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA (2004 (3) CTC 365), a Full Bench of this Court in SANJOS JEWELLERS Vs. SYNDICATE BANK, BANGALORE AND OTHERS (2007 (5) CTC 305), held as under:- "30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a



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determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the Doctrine of forum conveniens. [See BHAGAT SINGH BUGGA Vs. DEWAN JAGBIR SAWHNEY, AIR 1941 CAL 670 : ILR (1941) 1 CAL 490; MADANLAL JALAN Vs. MADANLAL, 1945 (49) CWN 357: AIR 1949 CAL 495; BHARAT COKING COAL LTD. Vs. JHARIA TALKIES & COLD STORAGE (P) LTD., 1997 CWN 122; S.S.JAIN & CO. Vs. UNION OF INDIA, 1994 (1) CHN 445, and NEW HORIZONS LTD. Vs. UNION OF INDIA, AIR 1994 DEL 126].

10. Question of entertaining a lis disclosing a cause of action or part of cause of action is based on the averments contained in the affidavit etc. At that stage, the truth or otherwise of the averments need not be gone into. But, there must be necessary averments disclosing a cause of action, so that the Court can take cognizance of/entertaining the lis exposed in the petition for taking further action. [See OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND OTHERS (1994 (4) SCC 711)]

11. A Court cannot arrogate/assume/confer upon itself a jurisdiction- territorial jurisdiction, when it has no such jurisdiction. Lack of jurisdiction to entertain a matter goes to the root of the matter, otherwise whatever action taken or orders passed by the Court becomes a nullity, it is non est and of no consequence at all resulting in wasting of precious public time. Courts are barred from indulging in hypothetical and academic exercises."

6. When it is pointed out that the Writ Petition cannot be entertained in this Court in view of the aforesaid legal position, Learned Counsel for the Petitioner seeks permission of the Court to withdraw this Writ Petition with liberty to file fresh Writ Petition for the same relief before the jurisdictional High Court and he has made an endorsement to that effect in the court record.

In fine, the Writ Petition is dismissed as withdrawn granting such liberty. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

Maya/skr



To

1. The Officer-In-Charge,
Records Punjab Regiment,
The Punjab Regiment,
Pin code - 908 761,
C.o, 56, APO.

Copy To

The Section Officer,
E.R.Section,
High Court, Madras.

+3ccs to Mr.A.R.Nixon, Advocate Sr.No.19757

+2ccs to Mr.M.Arvind Kumar, Advocate Sr.No.19625

W.P.No.10073 of 2018

SSI(CO)
RVM(11/05/2022)