



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.15200 of 2022

P.Karl Marx

.. Petitioner-in-Person

Vs

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.

2.The Executive Engineer,
Zone-X, Corporation of Chennai,
No.64, NSK Salai,
Kodambakkam,
Chennai-600 024.

3.The President,
Oakland Flat Owners Association,
Old No.9, New No.17, Melony Road,
T.Nagar, Chennai-600 017.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 and 2 to initiate action against the unauthorized/deviated constructions put up by the third respondent at Old No.9, New No.17, Oakland Apartment, Melony Road, T.Nagar, Chennai-600 017.

For the Petitioner : Mr.P.Karl Marx
Petitioner-in-person

For the Respondents : Mrs.Karthika Ashok
for respondent Nos.1 and 2

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This public interest litigation has been filed to seek a direction on the first and second respondents to initiate action



against the third respondent's unauthorizedly constructed commercial building.

2. The petitioner, a practising lawyer, filed this public interest litigation. During the course of argument, it is stated that his senior was having office in the same building in which now an allegation of its use for commercial purpose has been alleged. It is, further, with the statement that the petitioner's senior had vacated the premises almost 5 to 6 years back. The petitioner, appearing in person, stated that he is residing 6 to 7 kilometers away from the building in question, however, he has right to initiate this public interest litigation in view of the protection under Article 21 of the Constitution of India. Before filing the writ petition, a representation was given to Chennai Municipal Corporation, however no action was taken. Therefore, the petitioner has filed this public interest litigation.

3. Learned counsel appearing for the respondent Corporation submitted that after receipt of the representation made by the petitioner, the officers of Chennai Municipal Corporation had called for the private respondent to find out the approval of the building plan. It is, however, found that the building is existing for last 40 years and if we can take the statement of the petitioner that his senior was having office in the same place and vacated 5 to 6 years back, no justification for delay had been given. It cannot, thus, be considered to be a bonafide public interest litigation and it is not to be used for the purpose it is taken by the petitioner in person. A reference of the order of a Division Bench of this Court in W.P.No.4923 of 2012 [Ramasamy @ Traffic Ramasamy v. The Government of Tamil Nadu, rep. by its Secretary, Municipal Administration, St. George Fort, Chennai-8 and others] decided on 05.03.2012 has been given. More specifically, paragraph 4 of the said order has been referred and the same has been quoted hereunder:

"4. Time and again, the Supreme Court, as also this Court, has observed that public interest litigation is only intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. It has also been held that public interest litigation is to be used as an effective weapon in the armory of law for delivering social justice to the citizens as this jurisdiction is meant for the purpose of coming to the rescue of the downtrodden and not for the purpose of serving private ends. The Supreme Court has held that while exercising the jurisdiction,



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the court must see that very large section of the society, because of extreme poverty, ignorance, discrimination and illiteracy, had been denied justice for time immemorial and in fact, they have no access to justice vide *Ashok Kumar Pandey vs. State of West Bengal* [A.I.R. 2004 S.C. 280], *R & M Trust vs. Koramangala Residents Vigilance Group* [(2005) 3 SCC 91], *State of Uttaranchal vs. Balwant Singh Chaufal*, [(2010) 3 S.C.C. 402], *People's Union for Democratic Rights and others vs. Union of India*, [(1982) 3 S.C.C. 235] and *Pugalenthil vs. State of Tamil Nadu* [W.P. No.4233 of 2012 dated 2.3.2012]."

In the said writ petition, action against the construction of a multi-storied building at No.153/156, Peters Road, Chennai was sought. Therein, the observation of the Division Bench of this Court was that such litigation cannot be said to be public interest. Thus, a prayer is made to dismiss the present writ petition, as otherwise the Apex Court has not approved filing of public interest litigation by an advocate in the case of *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590.

4. We have considered the rival submissions and also perused the materials available on record.

5. This writ petition has been filed to seek a direction for action by the respondents 1 and 2 against the use of commercial building by the third respondent. According to the petitioner, his senior was having office in the same building when he was working as junior, but vacated the premises almost 5 to 6 years back. In view of the above, the petitioner was knowing about the commercial use of the building not only at the time of vacation of the office, but also while working with his senior in the same building. No justification for the delay has been given in filing this public interest litigation. More so, the petitioner is not affected by the use of the building in question, because he is residing 6 to 7 kilometers away. The fact aforesaid has been given to find out the bonafide in filing this public interest litigation. We do not find the present petition to be a bonafide petition filed with an unexplained delay. If really the building was used for commercial purpose, the issue has to be raised then and there while his senior was occupying a part of the building.

6. The aforesaid is only one part because otherwise similar petition was dismissed by the Division Bench and even practice to file such petition was deprecated. The ratio propounded by the Division Bench in W.P.No.4923 of 2012 dated 05.03.2012 applies to the present case also. We are not dealing with the



issue as to whether the building in question is 40 years old or not.

7. It is also a fact that the petitioner is a practising lawyer and the Apex Court in the case of Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590 has not endorsed the public interest litigation in the hands of a practising advocate. Paragraph 20 is relevant and the same is quoted hereunder for ready reference:

"20. It is a disturbing feature which needs immediate remedial measure by the Bar Councils and the Bar Associations to see that the process of law is not abused and polluted by its members. It is high time that the Bar Councils and the Bar Associations ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of "public interest litigation". That will be keeping in line with the high traditions of the Bar. No one should be permitted to bring disgrace to the noble profession. We would have imposed exemplary cost in this regard but taking note of the fact that the High Court had already imposed costs of Rs 25,000, we do not propose to impose any further cost."

8. In view of the discussion made above, we dismiss the writ petition finding it to be not a bonafide petition and otherwise the practice to file public interest litigation by an advocate is not to be appreciated as held by the Apex Court in the case of Dattaraj Nathuji Thaware (supra). There will be no order as to costs.

Sd/-
Assistant Registrar (CS-IV)

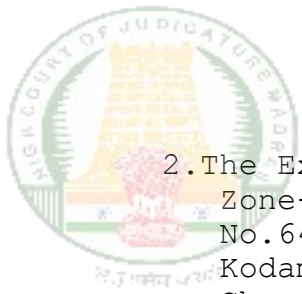
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Sub Assistant Registrar

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To:

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.



2.The Executive Engineer,
Zone-X, Corporation of Chennai,
No.64, NSK Salai,
Kodambakkam,
Chennai-600 024.

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+1cc to Mr.Karthikaa Ashok, Advocate, S.R.No.37382

+1cc to Mr.P.Karl Marx, Advocate, S.R.No.36849

W.P.No.15200 of 2022

BR(CO)

SB(29/06/2022)