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W.P(MD)No.21386 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.11.2022

PRONOUNCED ON : .11.2022

CORAM :

THE HON'BLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

W.P(MD)No.21386 of 2022

Panchavarnam

...Petitioner

Vs.

- 1.The Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 2.The Additional Chief Secretary (Home),
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 3.The Additional Chief Secretary (Law),
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 4.The Director General of Police,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 5.The Inspector General of Police,
Southern Zone, Madurai.
- 6.The District Collector,
Office of the District Collector,
Thoothukudi District.
- 7.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,



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Tiruchendur,
Thoothukudi District.

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8.The Tahsildar,
Office of the Tahsildar,
Tiruchendur,
Thoothukudi District.

9.The Superintendent of Police,
Office of the Superintendent of Police,
Thoothukudi District.

10.The Inspector of Police
Temple Police Station
Tiruchendur,
Thoothukudi District.

11.T.Murugan

12.V.M.Senthilkumar

13.Satheeshkumar

...Respondents

(Respondents 1 to 5 are *suo motu* impleaded vide order of this Court, dated 25.11.2022 and the original Respondents are re-arranged accordingly)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondents 1 to 5 (now ranked as Respondents 6 to 10) to conduct enquiry based on the Petitioner's representation dated 21.07.2022 and take necessary action against Respondents No.6 to 8 (now ranked as Respondents 11 to 13) for excommunicating the Petitioner and the petitioner's family members by not permitting them to enter into the temple and also not allowing them to take water from the public well.

For Petitioner : Mr.D.S.Haroon Rasheed

For R1 to R10 : Mr.T.Senthil Kumar
Additional Public Prosecutor



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ORDER

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This Writ Petition has been filed to direct the original Respondents 1 to 5 (now ranked as Respondents 6 to 10) to conduct an enquiry based on the Petitioner's representation dated 21.07.2022 and to take necessary action against the original Respondents 6 to 8 (now ranked as 11 to 13) for excommunicating the Petitioner and her family members by not permitting them to enter into the temple and also not allowing them to take water from the public well.

2. When the case came up for hearing on 14.09.2022, this Court had directed the District Collector, Thoothukudi/first Respondent as well as the Superintendent of Police, Thoothukudi/fourth Respondent to conduct an enquiry in the village, Subramaniapuram 5th Ward, Isakkiyamman Kovil Street, Thiruchendur, where the Petitioner resides, regarding conduct of Kattapanchayat/Khap Panchayat, which is an outmoded practice of the pre-independent days. When this country attained independence from the Imperial British Empire, the leaders, who fought for independence, convened the Constituent Assembly to decide about the future of the Country and to administer the Country.



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Accordingly, they decided to make this country as Democratic Republic, as stated in the Constitution of India as follows.

*“WE, THE PEOPLE OF INDIA, having solemnly resolved
to constitute India into a SOVEREIGN SOCIALIST SECULAR
DEMOCRATIC REPUBLIC and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity
and integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of
November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO
OURSELVES THIS CONSTITUTION.”*

3. In furtherance of the same, the Constitution of India was framed after much deliberations. They dreamt the future of India, where the people live without any discrimination. In furtherance of the same, the Officials were selected and trained as Administrators, the Collectors of the Districts, who are invariably District Magistrates in the discharge of the law and order and the Superintendent of Police/Commissioner of Police, who are trained in the National Police Academy. They are trained in the Academy by imparting the terms and the values of the



constitutional scheme of administration.

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4. Here in this case, in spite of the order passed by the Division Bench of this Court in W.P.No.18955 of 2005 (***K.Gopal Vs. The State of Tamil Nadu represented by its Chief Secretary, Chennai and another***) dated 05.07.2005, the Inspector of Police, H8 Thiruvotriyur Police Station, had denied such instances. The observations of the above case are apposite and extracted herein below:-

“17.Although we are not making any comment on the correctness or otherwise of the allegations in the petition, we wish to make it clear that if these allegations are correct it is an extremely serious matter and if this trend is not curbed immediately it will lead to very adverse Law and Order situation in this State.

18.Mr. Rahamath Ali, learned counsel for the third respondent has stated that voluntary bodies have been existing since time immemorial to represent the interest of the people in the rural areas and fishermen's hamlets. In our opinion it is always open to the people to form voluntary private organisations but such organisations cannot exercise sovereign functions, and they cannot take the law into their own hands as alleged in this case. Sovereign functions can only be exercised by the State or by the authorities constituted under the statute such as Municipal Corporations, Panchayats constituted under the Tamil Nadu Panchayats Act, etc. If the allegations in the petition are correct then it will mean that the third respondent is exercising sovereign functions like imposition of fine, issuing decrees, etc., and committing unlawful acts like depriving somebody from using water supply or electricity, excommunicating or expelling people from the village, etc. This can certainly not be done by private bodies. For instance, imposition and realisation of tax and fine or issuing decrees can only be done in accordance with some statute by the empowered statutory



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authorities, and it cannot be done by private bodies. Moreover, if the allegations of the petitioner are correct it means that the respondent - 3 has taken the law into its own hands, and is acting in a wholly unlawful manner like goondas and hooligans.

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21. We may in particular refer to Crl.O.P.No.28886 of 2003, *Rajendran and others v. State of Tamil Nadu*, decided by this Court on 08.04.2004. In the said case, the allegations were that one Suganthi working as a Senior Telecom Office Assistant in the C.G.M.Office, Tamil Nadu Circle, Chennai and her mother Krishnammal, a widow working as a Headmistress in an Elementary School, were directed by six persons, claiming themselves to be Kattapanchayatdars of Valayapatti village, to pay a fine of Rs. 50,000/- for not having complied with their direction to Suganthi to join her husband. Suganthi had alleged that she was treated very badly by her husband and tortured, and hence she left the matrimonial home alongwith her children and shifted to Cuddalore where she had been transferred, and then to Chennai. In March 2003 she sent a lawyers notice to her husband requesting consent for mutual divorce. At that time her mother was living alone in the village.”

5. In that order, there was a direction to all the District Collectors, District Judges and District Judicial Magistrates to circulate the order. The order was circulated to all the Heads of the Departments of the Government, the Collectors of the Districts, the Superintendent of Police and to the Commissioner of the respective Cities with a direction to circulate it down the hierarchy. The said direction is as follows:

“30. The learned Advocate General will communicate this order to the Chief Secretary forthwith. Copy of this order will also be sent by the Registrar General of this Court to the Judicial Magistrate concerned along with copies of the writ petition and affidavits. The Magistrate will treat the affidavits of the petitioner in this petition as a complaint under *Section 156(3)* Cr.P.C. and he



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shall ensure a proper investigation by the police into the matter.

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31. With the above observations, the writ petition is disposed off. However, to monitor the directions given above list this petition before the First Bench every three months (i.e. On 05.10.2005, 05.01.2006, and so on) on which dates compliance and progress reports must be submitted before us by the above-mentioned officials.”

6. In spite of the said directions from the Division Bench of this Court, the said evil practice till continues. It is condemnable. The report of the Superintendent of Police is based on the enquiry conducted by field level. But it does not reflect the real issue. On perusal of the status report, it is found that the report of the Superintendent of Police indirectly justifies the conduct of the so called Kattapanchayathars.

7. It is to be noted that the so-called Kattapanchayathars are not the law abiding citizens to respect the rule of law. They are running a parallel administration contrary to the Constitutional Scheme of things, which attracts the same legal measures as dealt by the State against the Naxalites.

8. In the light of the above, the Inspector General of Police, Southern Zone at Madurai is directed to convene a meeting of the



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Officials to curtail the social evil, so that the individuals in the village, for whom the Constitution of India guarantees fundamental rights, can enjoy their fundamental rights without any restrictions. All the District Collectors or the Superintendents of Police cannot enforce the individuals calling themselves as leaders of their community (caste) or imposing punishment ostracizing/ex-communicating the individuals from the community, dictating terms to the traders not to sell goods preventing the individuals from drawing water from the common well and also indirectly imposing restrictions that are duly issued by the Court of law after conducting trial and collecting evidence, as per the law of the land, whereas here it is a case, wherein calling themselves as "leaders of the community" without any support from the law governing the country either the Constitution of India or any other laws in the statute book is still operating. Therefore, the Inspector General of Police, Southern Zone, Madurai shall conduct a detailed enquiry through his Officials in various Districts under the Madurai Bench of the Madras High Court to nominate an Officer, who is upright, honest, fearless and has the respect for the values of the Constitution.

9.In the reported judgment of the Division Bench of this Court in



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K.Gopal -vs- The State of Tamil Nadu represented by Chief Secretary

and others reported in ***2005 SCC Online Mad 466***, as early as 2005 and

Rajendran and others vs The State, reported in ***MANU/TN/0353/2004***,

it was notified to all the Officers. But it had not been taken to its value. It has been ignored in the due course of time. It will give rise to repercussions in the society resulting in communal clashes ending in loss of valuable lives and properties of the individuals indirectly resulting in economic loss to the State. To curtail that, the Inspector General of Police is advised to nominate a Senior Officer in every District to conduct such enquiries and to take collective measures in coordination with the respective District Collectors and the Staff of the Revenue Departments.

10.The Village Administrative Officer is the field staff of the Revenue Department. He or she is in the know of such things. Also, the District Judiciary in various Districts can conduct the legal literacy in the villages, where the evil practices prevail. The police had to act with an iron hand regarding the conduct of Kattapanchayat. They can be dealt with by detaining them in Prison for conducting Kangaroo Courts (Kattapanchayat/Khaap Panchayath) and imposing fines, which is not supported by any law in the statute book. Therefore, their conduct is



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illegal. For their illegal conduct in running a parallel Government, they shall be detained in Prison. The Police Officials are not rising to the occasions/challenges faced by the law abiding citizens.

11.This Court expresses its displeasure in the counter filed by the Superintendent of Police, Thoothukudi District. The same is rejected, as it does not reflect the true picture. It indirectly admits the allegations levelled by the Petitioner. Therefore, the Director General of Police, Tamil Nadu, is also directed to issue appropriate orders to the Officers concerned to register the First Information Report with proper provisions of law, so that the violators of the Division Bench ruling of this Court can be pulled up before the Court for registration of the cases, for taking the cases and investigating the same to its logical end in laying the final report before the various Courts concerned.

12.In the past, when there was spurt in cases involving cheating of money of innocent people of their hard earned money, by seeking deposit in the financial establishment for high interest rate, those who had in the middle class expecting higher income deposited their hard earned money, which was swindled by the financial establishments. Therefore, based on



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the number of cases pending for trial and the parties, who lost money having approached this Court, based on which, Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, was enacted, thereby, the properties acquired by the Financial Establishments, were attached. Simultaneously, the accused were arrested. In the criminal trial, there is a possibility of the accused terms upto 10 years in Prison. In civil case, it was treated in the nature of Execution Petition in attachment and rising attachment. The formation of Special Court under TANPID Act had brought down the cheating cases. Therefore, the pendency of the cases by financial establishments had been brought down.

13.In the cases, where, woman was attacked or harassed, Tamil Nadu Prohibition of Harassment of Women Act, 1998, was enacted, thereby, reducing the number cases pending under the IPC provisions, where the victims loses confidence in the Investigation Agency. Now, on similar line, when there is allegation of Khaap Panchayath/Katta Panchayat by innocent citizen to approach this Court to initiate action. This issue was seized by the Law Commission and it had sent its recommendations. One of the recommendations is seeking the Government to bring about a new legislation to curb the issue.



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14. In the above discussion, (1) The Chief Secretary to Government, Government of Tamil Nadu, Chennai, (2) The Additional Chief Secretary (Home), Government of Tamil Nadu, Chennai, (3) The Additional Chief Secretary (Law), Government of Tamil Nadu, Chennai, (4) The Director General of Police, Government of Tamil Nadu, Chennai, and (5) The Inspector General of Police, Southern Zone, Madurai, are *suo motu* impleaded as Respondents 1 to 5.

15. The Respondents 1 to 3 shall make endeavour to bring about a Legislation to bring down the cases of Khaap Panchayath/Katta Panchayath. The Government of Tamil Nadu is requested to consider the new Legislation to bring down the cases of Khaap Panchayath/Katta Panchayath. The fourth Respondent, as head of Police and the fifth Respondent shall take effective steps through their Officers by issuing appropriate orders and also prevail upon the Government to form a new Legislation to curb the Khaap Panchayath/Katta Panchayath, with penal clause on the line of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders,



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Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act,
1982 (Goondas Act).

With the above directions, **this Writ Petition is disposed of.** No costs.

Index :Yes/No
Internet: Yes/No
mm/cmr

25.11.2022

Note: Office is directed to communicate this order
to the Respondents 1 to 5 through e-mail also.

To

- 1.The Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.
- 2.The Additional Chief Secretary (Home),
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.
- 3.The Additional Chief Secretary (Law),
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.
- 4.The Director General of Police,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.



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- 5.The Inspector General of Police,
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SATHI KUMAR SUKUMARA KURUP, J.

mm/cmr

order made in
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