



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Tuesday, the Eleventh day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice R.SUBRAMANIAN
and
The Hon`ble Mrs.Justice L. VICTORIA GOWRI

WP(MD)SR No.7387 of 2023

MANI

... PETITIONER

Vs

1. THE DISTRICT COLLECTOR,
RAMANATHAPURAM DISTRICT.
2. THE REVENUE DIVISIONAL OFFICER,
RAMANATHAPURAM.
3. THE TAHSILDAR,
RAJASINGAMANGALAM TALUK,
RAMANATHAPURAM.
4. THE SUPERINTENDENT OF POLICE,
RAMANATHAPURAM DISTRICT.
5. THE INSPECTOR OF POLICE,
RAJASINGAMANGALAM POLICE STATION,
RAMANATHAPURAM DISTRICT.

... RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a writ of mandamus or any other appropriate writ or order or direction in the nature of writ directing the respondents 4 and 5 to give adequate police protection to fence and to construct a compound wall around the subject property in Survey No.199/5A, measuring 0.14.10 Hectares, Rajasingamangalam Village, Ramanathapuram District.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.J.BARATHAN, Advocate for the petitioner the court made the following order:-



[Order of the Court was made by R.SUBRAMANIAN, J.]

The writ petition is filed to direct the Superintendent of Police, Ramanathapuram District and the Inspector of Police, Rajasingamangalam Police Station, Ramanathapuram District, to give adequate police protection to fence and to construct a compound wall around the subject property in Survey No.199/5A, measuring 0.14.10 Hectares, Rajasingamangalam Village, Ramanathapuram District.

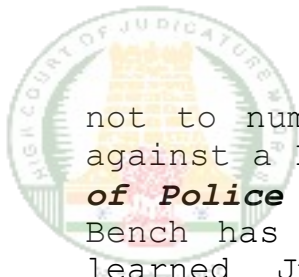
2. The Registry returned the papers in the writ petition relying upon the order of this Court in W.P(MD)No.24367 of 2022, dated 28.10.2022. Operative portion of the said order reads as follows:

"4.The learned Additional Public Prosecutor submits that the learned Counsel for the Petitioner is not present as per the reported decision of the Division Bench of this Court (Hon'ble Mr.Justice M.Sundresh and Hon'ble Mr.Justice N.Sathish Kumar) without availing a alternate remedy and also as per the reported decision, they have to file Crl.M.P. Petition. Instead the Petitioner has filed the Writ Petition (Criminal) seeking direction to register the case. Therefore, as per the submission of the learned Additional Public Prosecutor, this petition itself is not maintainable. Also, the learned Additional Public Prosecutor relied on the latest ruling of the Hon'ble Supreme Court in the case of The State of Maharashtra and others Vs. Greatship (India) Limited (2022 LiveLaw (SC) 784).

5.The Registry is directed not to number a case as Writ Petition seeking direction and to file the criminal cases against the Police Officers."

3. Unconvinced by the attempt of Mr.J.Bharathan, learned counsel for the petitioner to satisfy the Registry on the maintainability of the writ petition, the Registry has placed the papers before us for a decision on maintainability.

4. We find ourselves unable to agree with the views expressed by the Hon'ble Mr.Justice SATHI KUMAR SUKUMARA KURUP, in the order in W.P(MD)No.24367 of 2022. There is a very long line of precedents rendered by the Hon'ble Supreme Court as well as this Court regarding the power of a Constitutional Court to entertain a writ petition on the ground of availability of alternative remedy. Particularly, the exercise of power under Article 226 of the Constitution of India, has been held to be a plenary power where refusal to exercise jurisdiction has been held to be a self-imposed restriction than a legal bar. Even in the judgment relied upon by the learned Single Judge in support of the direction issued by him



not to number a case seeking a direction to file a criminal case against a Police Officer, namely, in **G.Prabakaran vs. Superintendent of Police and another** reported in **2018(5) CTC 625**, the Division Bench has only stated that the proper remedy is to approach the learned Judicial Magistrate under Section 156(3) of Criminal Procedure Code and the Court in exercise of its power under Section 482 of Code of Criminal Procedure Code, cannot directly entertain a petition for registration of a criminal case. The jurisdiction under Article 226 of the Constitution of India was not the subject matter of decision of the Division Bench in Prabakaran's Case. Even in **State of Maharashtra vs. Greatship(India) Limited** reported in **2022 SCC OnLine SC 1262**, the Hon'ble Supreme Court has dealt with the discretion of the Court, particularly, a Constitutional Court to exercise jurisdiction in cases where an alternative remedy is projected as a bar. The Hon'ble Supreme Court has laid down that Constitutional Courts will be slow in exercising jurisdiction under Article 226 of the Constitution of India where there is an alternative remedy available.

5. We find that the Hon'ble Supreme Court has not concluded that availability of an alternative remedy would amount to absolute bar for exercising the jurisdiction under Article 226 of the Constitution of India. We are therefore, unable to sustain the direction issued by the learned Single Judge in the order in W.P(MD) No.24367 of 2022. We make it clear that the exercise of jurisdiction under Article 226 of the Constitution of India in cases where availability of alternative remedy is projected as a bar, is a matter of discretion of the Court and it cannot be laid down as a absolute bar. We therefore, overrule the objections of the Registry and also the direction issued by the learned Single Judge in W.P(MD) No.24367 of 2022.

6. Registry is directed to number the writ petition if it is otherwise in order and list it for admission in the usual course.

sd/-
11/04/2023

/ TRUE COPY /

/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PM

TO

1. THE DISTRICT COLLECTOR,
RAMANATHAPURAM DISTRICT.

<https://www.mhc.tn.gov.in/judis>



2. THE REVENUE DIVISIONAL OFFICER,
RAMANATHAPURAM.
3. THE TAHSILDAR,
RAJASINGAMANGALAM TALUK,
RAMANATHAPURAM.
4. THE SUPERINTENDENT OF POLICE,
RAMANATHAPURAM DISTRICT.
5. THE INSPECTOR OF POLICE,
RAJASINGAMANGALAM POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

- 1 THE REGISTRAR GENERAL,
MADRAS HIGH COURT, MADRAS.
- 2 THE ADDITIONAL REGISTRAR GENERAL,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 THE SECTION OFFICER,
WRIT SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
WP(MD) No. SR7387 of 2023
Date : 11/04/2023

NA/BUC/SAR-4/18.04.2023/4P/10C