



W.P. No.11431 of 2021

IN THE HIGH COURT OF JUDICATRE AT MADRAS

DATED: 28.06.2024

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

AND

THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P. No. 11431 of 2021

Thirugnanam

..Petitioner

Vs.

1. The District Collector,
Collector Office,
Singaravelar Maaligai,
No.62, Rajaji Salai, 4th Floor,
Chennai District.
2. The Member Secretary,
Chennai Metropolitan Development
Authority (CMDA),
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road, Ansari Estate,
Egmore, Chennai – 600 008.
3. The Thasildhar,
Madhavaram Taluk Office,
Gandhi Main Road,
Balaji Nagar,
Madhavaram, Chennai – 600 066.
4. The Corporation Commissioner,
The Chennai Corporation,
Rippon Buildings, Chennai – 600 033.



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5. The Village Administrative Officer,
VAO Office, Gopalsamy Nagar,
Madhavaram,
Chennai – 600 051.

6. The Inspector of Police,
M2- Madhavaram Milk Colony
Police Station,
Chennai – 600 051.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 25.03.2021 and further direct the respondents to remove the encroachments made in the vacant plot allotted for constructing public park, for constructing shops, and for common purpose usage, in Kamarajar Nagar, Mathur, Manali, Chennai – 600 068.

For Petitioner :: Mr.S. Silambu Selvan

For Respondents :: Mr.C. Selvaraj
Addl. Govt.Pleader for
R1, R3, R5 and R6.
Mr.Gopinath for R4
Ms.P. Veena Suresh for
R2 (CMDA)

O R D E R

(Made by M. SUNDAR,J.)

Mr.S. Silambu Selvan, learned counsel on record for sole writ

petitioner is before us.

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



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2. When the hearing commenced, this Bench wanted to know about learned counsel's say qua previous listing on 21.06.2024. It came to light that learned counsel is neither aware of the proceedings made in the previous listing nor did the learned counsel express any regret or remorse. To be noted, proceedings made in the previous listing on 21.06.2024 has been duly uploaded in the official website of this Court and the same reads as follows:

'There is no representation for the writ petitioner.'

2. *Mr.P.Balathandayutham, learned Special Government Pleader for 1st respondent and Ms.P. Veena Suresh, learned counsel for 2nd respondent are before us.*

3. *With the intention of giving an opportunity to the petitioner's counsel, list this matter on 28.06.2024.'*

Be that as it may, considering the interest of the litigant/writ petitioner, we take up the matter.

3. The nucleus of the captioned matter is writ petitioner's complaint that there is encroachment qua vacant plot said to have been 'allotted' for constructing public park, for constructing shops and for common usage in Kamarajar Nagar, Mathur, Manali, Chennai – 600 068.

4. It is seen from the case records that writ petitioner has also sent a representation dated 25.03.2021; that representation has been sent to five different addressees and they are respondents 1 to 5 before us.



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5. As regards the purported allotment of vacant site for constructing public park, for constructing shops and for common usage, it comes to light that there is no approval by 'Chennai Metropolitan Development Authority'/2nd respondent ('CMDA' for the sake of brevity and convenience) and learned counsel for 2nd respondent confirms this position. To be noted, only sketch of unapproved layout has been placed before this Court as part of the case file.

6. Mr.C. Selvaraj, learned Additional Government Pleader is before us for respondent Nos.1, 3, 5 and 6 and he also represents Mr.R. Gopinath, learned Standing Counsel for 4th respondent.

7. As there is no approval for the layout, the aforementioned complaint (described as nucleus of captioned matter) - being predicated on a sketch which is described as layout, seen in the light of the stated position of 2nd respondent that they have not even received any application for layout approval, we find that writ petitioner has no legal right as against the official respondents. To seek a mandamus, legal right for a writ petitioner is imperative and the lead case in this regard is ***Praga Tools [Praga Tools Corporation Vs. Imanuel and others]*** reported in ***AIR 1969 SC 1306***], wherein the principle is a condition precedent for issue of mandamus is that one seeking a mandamus should have a legal right to the performance of a



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legal duty against whom mandamus is sought. Relevant paragraph in

Praga Tools is paragraph No.6 and the same reads as follows:

*6. In our view the High Court was correct in holding that the writ petition filed under Article 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not he, but the company who sought to implement the impugned agreement. No doubt, Article 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See *Sohan Lal v. Union of India*), [1957 SCR 738] In *Regina v. Industrial court* [(1965) 1 QB 377] mandamus was refused against the Industrial court though set up under the Industrial courts Act, 1919 on the ground that the reference for arbitration made to it by a minister was not one under the*



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Act but a private reference. “This Court has never exercised a general power” said Bruce, J. in R. v. Lawisham Union [(1897) 1 QB 498, 501] “to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties”. Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. [Cf. Halsbury's Laws of England, (3rd ed.), Vol. II, p. 52 and onwards].

8. In the light of the narrative thus far, we are not inclined to

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9. However, before we write the concluding part of this order, we make it clear that other rights of writ petitioner, if any, in Civil Court/other fora are left open and are preserved. In other words, if the writ petitioner chooses to exercise such rights before Civil Court or other fora, the same shall be considered on its own merits and in accordance with law with this order neither providing an impetus nor impeding the same.

10. Captioned WP fails and the same is dismissed albeit with the aforementioned observation and preservation of rights in the aforesaid manner. We refrain from imposing costs.

nv

(M.S.J.) (K.G.T.J.)
28.06.2024

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