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W.P.(MD)NO.17544 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2024

PRONOUNCED ON : 06.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17544 of 2024

T.Jeen Joseph

... Petitioner

Vs.

1. The District Collector,
Nagercoil,
Kanyakumari District.

2. The Revenue Divisional Officer,
Padmanabhapuram at Thuckalay,
Kanyakuamari District.

3. Richard Joseph

4. A.R.Dickson

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent herein to issue search warrant to the Inspector of Police, Marthandam, directing him to search for the petitioner's eldest sibling John Joseph, aged about 64 years who is mentally unsound, who has been illegally confined by the respondents 3 and 4 herein and to produce him before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, based on the petitioner's application dated 24.06.2024 in a time bound manner as stipulated by this Court.



For Petitioner : Mr.B.Sargunam

For R-1 & R-2 : Mr.P.Thambi Durai,
Government Advocate.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Government Advocate appearing for respondents 1 and 2.

2. Issuance of notice to respondents 3 and 4 is dispensed with.

3. The case of the petitioner is that his brother John Joseph is mentally unsound and that he is kept under illegal confinement by respondents 3 and 4.

4. Since this writ petition is being disposed of without issuing notice to respondents 3 and 4, it will not be proper on the part of this Court to render any adverse finding in this regard.

5. Section 100 of the Bharatiya Nagarik Suraksha Sanhita, 2023 reads as follows:-



“Search for persons wrongfully confined - If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.”

6. Section 101 of the Mental Healthcare Act, 2017 reads as follows:-

“Report to Magistrate of person with mental illness in private residence who is ill-treated or neglected.—

(1) Every officer in-charge of a police station, who has reason to believe that any person residing within the limits of the police station has a mental illness and is being ill-treated or neglected, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.

(2) Any person who has reason to believe that a person has mental illness and is being ill-treated or neglected by any person having responsibility for care of such person, shall report the fact to the police officer in-



charge of the police station within whose jurisdiction the person with mental illness resides.

(3) If the Magistrate has reason to believe based on the report of a police officer or otherwise, that any person with mental illness within the local limits of his jurisdiction is being ill-treated or neglected, the Magistrate may cause the person with mental illness to be produced before him and pass an order in accordance with the provisions of section 102.”

It is stated that the respondents 3 and 4 are strangers / third parties and that they are not in any way related to the petitioner's family. The petitioner states that he is ready to take care of his elder brother.

7. The petitioner is permitted to submit an appropriate application invoking Section 100 of the Bharatiya Nagarik Suraksha Sanhita, 2023 before the second respondent. The second respondent shall issue search warrant addressed to the jurisdictional Sub Inspector of Police. The petitioner has to spell out all the details of the premises where his brother is said to be illegally confined. The jurisdictional Sub Inspector of Police to whom the search warrant is issued shall search the premises and inform. If it is confirmed that a person having mental illness is being neglected or unlawfully confined, the facts shall be



reported to the jurisdictional Judicial Magistrate. The authorities concerned shall do the needful in accordance with law and as expeditiously as possible. This writ petition stands disposed of. No costs.

06.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

Note: Issue order copy on 07.08.2024.

To:

1. The District Collector,
Nagercoil,
Kanyakumari District.
2. The Revenue Divisional Officer,
Padmanabhapuram at Thuckalay,
Kanyakumari District.



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