



W.P.(MD)No.28079 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE N.MALA**

W.P.(MD)No.28079 of 2024

Chellappa

... Petitioner

/Vs./

1.The District Collector,
Tenkasi District,
Tenkasi.

2.The Revenue Divisional Officer,
Kadaiyanallur Taluk,
Tenkasi District.

3.The Head Surveyor,
Kadaiyanallur Taluk,
Tenkasi District.

4.The Inspector of Police,
Sendamaram Police Station,
Tenkasi District.

5.Ramaraj
6.Thangarathinam
7.Manoharan
8.Mariyammal
9.Minnal Kodi
10.Ivel
11.Mariselvi
12.Ishwarya
13.Mariyammal

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the third respondent to survey the petitioner's land situated in S.No.739/5 to an extent of 0.08.50 hectare and S.No.739/11 to an extent of 0.16.00 hectare of Sernthamangalam Village, Kadaiyanallur Taluk, Tenkasi District on the basis of the petitioner's representation dated 03.09.2024.

For Petitioner : Mr.M.Sankar
For R1 to R3 : Mr.A.Kannan
Additional Government Pleader
For R4 : Mr.K.Gnana Sekaran
Government Advocate (Crl.side)

ORDER

This Writ Petition is filed for issuance of a Writ of Mandamus directing the third respondent to survey the petitioner's land situated in S.No.739/5 to an extent of 0.08.50 hectare and S.No.739/11 to an extent of 0.16.00 hectare of Sernthamangalam Village, Kadaiyanallur Taluk, Tenkasi District on the basis of the petitioner's representation dated 03.09.2024.

2. The petitioner purchased the land in S.No.7395 to an extent of 0.08.50 hectre and S.No.739/11 to an extent of 0.16.00 hectare at Senthamangalam Village, Kadaiyanallur Taluk, Tenkasi District under a sale deed dated 16.04.2009 vide Doc.No.815/2009. While so, the private



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respondents who occupied the southern part of the petitioner's land were giving troubles. Therefore, the petitioner decided to survey his land and to demarcate the boundaries. The petitioner made an online application along with the requisite fee on 02.09.2024. The petitioner also sent a representation on 03.09.2024, to the official respondents requesting them to demarcate the land. Since the official respondents failed to take steps, the petitioner filed the above Writ Petition for the aforesaid relief.

3. It is seen that the petitioner submitted the online application along with requisite fees on 02.09.2024, and on the very next day i.e on 03.09.2024, the petitioner submitted a representation.

4. The Hon'ble Supreme Court of India on the nature of a writ of mandamus held as follows in the following cases:

(i)Saraswathi Industrial Syndicate Limited and others Vs Union of India reported in **1974 (2) SCC 630**.

"24. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi-judicial proceedings was before the High Court. The powers of the high Court under Article 226 are not strictly confined to the limits to which proceedings for



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prerogative writs are subject in English practice. Nevertheless the well recognised rule that no writ or order in the nature of a Mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties the salutary general rule which is subject to certain exceptions applied by us as it is in England when writ of Mandamus is asked for could be stated as we find it set out in Halsbury's Laws of England (3rd edition vol. 13 p. 106):

"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."

25. In the cases before us there was no such, demand refusal. Thus no ground whatsoever is shown here for the issue of any writ order or direction under Article 226 of the Constitution. These appeals must be and are hereby dismissed but in the circumstances of the case we make no order as to costs.

(ii) In Amrit Lal Berry Vs K.N.Kapur and others reported in

1975 (4) SCC 714, the Court held as follows:

"25. In the petition of K. N. Kapur & others, we do not even find at assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognised by this Court is Kamini Kumar Das Choudhury v. State of West Bengal & Ors. that a demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus, would also operate against the petitioners."



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WEB COPY (iii) In the State of Haryana and others Vs Chanan Mal and

others reported in 1977 1 SCC 340, it was held as follows:

"43. Any petitioner who applies for a writ or order in the nature of a mandamus should, in compliance with a well known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a Court for such an order even where the alleged obligation is established."

5. Even in the latest judgments reported in **2022(17) SCC 188 (Union of India and others Vs. Bharat Forge Limited and another)** and **2023(1) SCC 386 (Hero Motocorp Limited Vs. Union of India and others)**, the Hon'ble Supreme Court of India had enunciated the principles of writ of mandamus

6. From a reading of the aforesaid judgments, it is clear that there should be a demand and refusal for mandamus. The purpose behind making a demand is to give an opportunity to the authorities to redress the grievance. The demand is not an empty formality, but it should be made with a view of giving an opportunity to the authority to comply with the same. Giving of reasonable opportunity, in my view, is not a



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mere ritual. The authority should be given practicable time to comply with the demand. In the present case, the representation was submitted on the very next day of the application and therefore, in my view, in the absence of reasonable opportunity to the respondents to process the application, the mandamus prayed for cannot be issued. I am therefore inclined to dismiss the writ petition. It is open to the petitioner to submit fresh representation to the respondents giving reasonable time for compliance, failing which, to apply for writ of mandamus. The writ petition is dismissed with the above observation. No costs.

26.11.2024

Index : Yes / No
NCC : Yes / No
CM

To,
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N.MALA, J.

CM

Order made in
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Dated:
26.11.2024