

Madras High Court

R.Kalpana vs The Tahsildar on 7 November, 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20381 of 2017 and 20409 of 2017

R.Kalpana

... Petitioner in
W.P.20381/2017

S.Perumalsamy

... Petitioner in
W.P.20409/2017

Vs.

The Tahsildar,
Tahsildar Office,
Sivagangai Taluk,
Sivagangai District.

... Respondent in

W.P.20381/2017

1.The Tahsildar, Sankarankovil Taluk, Sankarankovil, Tirunelveli District.

2.The Inspector of Police,
Panavadalichathiram Police Station,
Panavadalichathiram,
Sankarankovil Taluk,
Tirunelveli District.

... Respondent in
W.P.20409/2017

Prayer in W.P.(MD) No.20381 of 2017: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondent to conduct survey and to mark boundaries in petitioner's land situated in survey No.9/3, Iluippakkudi Village, Thamarakki Group, Sivagangai Taluk, Sivagangai District and to issue a patta in the petitioner's name based on the outcome of such survey based on petitioner application dated 09.07.2012 within a time frame as may be stipulated by this Court.

Prayer in W.P.(MD) No.20409 of 2017: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the first respondent to survey the lands

in Survey Nos.259/16A, 259/15, 259/10, 259/2, 255/8C and 255/8C with the help of the 2nd respondent herein situated at Narikudi Village, Sankarankovil Taluk, Tirunelveli District on the basis of the petitioner's representation dated 24.10.2017 after receiving necessary charges from the petitioner.

!For Petitioner in

W.P.20381/2017

: Mr.J.Pooventhera Rajan

For Petitioner in

W.P.20409/2017

: Mr.V.Malaiyendran

For Respondent in

: Mr.J.Gunaseelan Muthaiah,
both petitions

Government Advocate.

: COMMON ORDER

The petitioners in these writ petitions seek a direction for conducting survey and marking of boundaries of their lands.

2.The petitioner in W.P.(MD) No.20381 of 2017 gave an application as early as on 09.07.2012. A sum of Rs.80/- was remitted in the Treasury on the said date. She has been giving representations ever since. In the typed set of papers, a representation dated 21.05.2015 is enclosed with acknowledgement. The petitioner has complained in the said representation that she had moved the authority as early as in the year 2012 and that she had also remitted the requisite charges. Since the authorities did not redress her grievance, she was left with no other option but to invoke the writ jurisdiction of this Court.

3.The petitioner in W.P.(MD) No.20409 of 2017 has a similar story to narrate. He has also moved the authorities in November 2015. A sum of Rs.780/- had been remitted by him in the Treasury. Two years have gone by. But, there has been no response from the officials. Therefore, he has also knocked the door of this Court.

4.The law relating to survey of land and settlement of boundary disputes has been consolidated in Tamil Nadu Act VIII of 1923. Sections 9 and 10 of the said Act are particularly relevant. The survey officer shall have power to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice. If a boundary is disputed, the survey officer shall make an inquiry and then determine the boundary and record it in accordance with his decision. Notice to parties to the dispute and to registered holders of land affected is contemplated. There are provisions for appeal, second appeal and revision. The aggrieved individual can institute a suit in terms of Section 14 of the Act.

5.The Survey, Settlement and Land Records department of the Tamil Nadu Government functions under the directions of the Revenue Ministry. There is a survey manual containing elaborate

provisions. The exercise of survey and issuance of patta are some of the important functions discharged by the revenue officials. The public have immense stake in these matters.

6.The petitioners have not rushed to this Court immediately. Only when the waiting become truly intolerable, they chosen to file the above writ petitions.

7.H.W.R.Wade and C.F.Forsyth in their classic work ?Administrative Law? distinguish between illegal action by excess or abuse of power and illegal inaction by neglect of duty. When public authorities are possessed of legal powers, they have a discretion to act or not. But, when they have legal duties, they have an obligation to act. The public duty in the case of private person is enforced by invoking criminal law. For example, it is an offence if income return is not filed by an assessee, who is obliged to do so. The common law took the same approach to the problem of making public authorities carry out their duties. Wilful neglect of a public duty was held to be an indictable offence. Neglect of the duties of a public office was once criminal offence. Where the duty was statutory, the offence was sometimes called contempt of statute. Of course, this doctrine of contempt of statute is now regarded as obsolete. (Pages 496 and 497 - 10th Edition).

8.The Right to Public Services legislation has been enacted by a number of States. Of course, for unfathomable reasons, the idea is being resisted by the State of Tamil Nadu. Just as there is Right to Information Act, there must be a corresponding Right to Public Services Act. In Karnataka, there is a statutory arrangement in place and it goes by the same ?Sakala?. The Union Government even introduced the Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011. But, unfortunately, it was not taken up and got lapsed. Now, the moot question is whether this Right to Public Services should be seen only as a statutory right. The time has come to recognize this right as implicit in Article 14 of the Constitution of India.

9.The Central Vigilance Commission declared that October 30 to November 04 shall be observed as Vigilance Awareness Week. It is possible to check petty corruption only if the officials are obliged to discharge their public functions in a time bound manner. The disciplinary authority must proceed against the erring official, who is guilty of inaction. The Government of Tamil Nadu has issued G.O.Ms.No.99 Personnel and Administrative Reforms (A) Department dated 21.09.2015 mandating that grievance petitions must be given disposal within 30 days. The Hon'ble First Bench in W.P.No.40155 of 2016 dated 18.11.2016 has held that this time frame must be adhered to.

10.India is a welfare State. The public officials are termed as Government servants. The cadre of Government servants is referred to only as Service. The concept of right to public service proceeds on the premise that service is a right of the citizen. He cannot be left to the mercy of the Government servants. A modern administration is a vast administrative network regulating the lives of citizens.

11.If one wants to sell his land, he must necessarily go through the Registration department. If one wants to ride a two wheeler, he must possess a driving license issued by the Transport department. If one wants to build a house on his private land, he must get planning and building approval from the local body. The interface between the citizen and administration covers every aspect of one's life. The official takes advantage of the situation. He can simply keep the application pending and drive

the citizen mad. Out of sheer exasperation, the applicant will cough up the bribe amount to speed up things. Koushik Basu as Chief Economic Advisor of the Government of India submitted a paper in March 2011 ?Why, for a Class of Bribes, the Act of Giving a Bribe should be Treated as Legal?. The noted economist called certain bribes as harassment bribes. The evil can be checked only if Right to Public Service is recognised as a fundamental right as a facet of Article

14.

12.Of course, if requisite man power is not available, it will not be possible to cater to the needs of the public. Survey work is a long and laborious one. It is said that this department is under staffed. But then, it is the duty of the Government to ensure that sufficient number of personnel are available in every department so that this fundamental right of the citizen is not violated.

13.When the matters were taken up for disposal, the learned Government Advocate informed this Court that the authorities would carry out the work of survey in these two cases without any delay. I therefore allow both the writ petitions as prayed for. No costs.

To

1.The Tahsildar, Tahsildar Office, Sivagangai Taluk, Sivagangai District.

2.The Tahsildar, Sankarankovil Taluk, Sankarankovil, Tirunelveli District.

3.The Inspector of Police, Panavadalichathiram Police Station, Panavadalichathiram, Sankarankovil Taluk, Tirunelveli District..