

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2024

PRONOUNCED ON : 10.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35 of 2020
and
W.M.P.No.41 of 2020

Murasoli Trust
Represented by its Trustee,
R.S.Bharathi,
S/o Mr.D.J.Raman,
No.180, Kodambakkam High Road,
Nungambakkam,
Chennai – 600 034.

... Petitioner

Vs.

1.The National Commission for Scheduled Castes,
Rep. by Secretary,
5th Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi – 110 003.

2.Dr.R.Srinivasan

3.Dr.L.Murugan

Vice Chairman,
The National Commission for Scheduled Castes,
5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.

4.The Chairman,

The National Commission for Scheduled Castes,
5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.

5.The State of Tamil Nadu,

Represented by its Secretary to Government,
Department of Revenue and Disaster Management,
Fort St. George, Secretariat,
Chennai – 600 009.

... Respondents

[R-1 cause title amended vide order dated 24.04.2023
made in WMP.No.2784/2020 in WP.No.35/2020]

[R-4 impleaded as per order dated 17.02.2020 made
in WMP.No.2783/2020 in WP.No.35/2020]

[R-5 impleaded as per order dated 03.01.2024 in
WMP.No.16731/2023 in WP.No.35/2020]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Prohibition, prohibiting the 1st respondent from in any way proceeding with the hearing or adjudication of the complaint dated 21.10.2019 given by the 2nd respondent, registered as File No.14/140/TN/2019/ESDW and culminating in notices dated 14.11.2019 and 13.12.2019 by the 1st respondent.

For Petitioner : Mr.P.Wilson
Senior Counsel
For M/s.P.Wilson Associates

For Respondent-1 : Mr.AR.L.Sundaresan
Additional Solicitor General of India
For Mr.S.Diwakar
Senior Panel Counsel

For Respondent-2 : Mr.S.Ravi
Senior Counsel
For Mr.K.Ramanamoorthy

For Respondent-3 : No Appearance

For Respondent-4 : Mr.B.Rabu Manohar
Senior Panel Counsel

For Respondent-5 : Mr.R.Ramanlal
Additional Advocate General IV
For Mr.G.Krishna Raja
Additional Government Pleader

ORDER

The lis is to issue a writ of prohibition, to restrain the National Commission for schedule Caste from proceeding with the hearing or adjudication of the complaint dated 21.10.2019 given by the 2nd respondent herein.

2. The facts in brief would reveal that the petitioner Murasoli Trust is in occupation and the erstwhile owner of the subject property, namely Anjugam Pathippagam had leased out a portion of the property to the petitioner. Subsequently, the petitioner purchased the property and patta has been transferred in the name of the Petitioner. A complaint has been registered by the 2nd respondent before the National Commission for Scheduled Castes [hereinafter referred to as 'NCSC', in short], stating that the subject land is a Panchami land (Depressed Class Land) assigned to the Scheduled Caste people and illegally transferred in the name of other persons. The complaint was registered by the 1st respondent and a notice was issued to the managing trustee of the petitioner's trust, asking them to appear in person before the 1st respondent. Having aggrieved from and out of the said notice issued by the 1st respondent, the writ of prohibition came to be instituted under Article 226 of the Constitution of India.

ARGUMENTS ON BEHALF OF THE PETITIONER:

3. Mr.P.Wilson, learned Senior Counsel appearing on behalf of the petitioner would mainly raise the following issues: -

(a) Whether the complaint made by R.Srinivasan, who is not a

member of Scheduled Caste Community and is not an aggrieved person maintainable?

- (b) Whether the National Commission for scheduled Castes has jurisdiction to adjudicate title disputes of an immovable property under Article 338 of the Constitution of India?
- (c) Whether the National Commission for Scheduled Castes possesses powers of the Civil Court for the purpose of granting declaration of title or other reliefs over an immovable property?
- (d) Whether the Subject property is a Panchami land or land allotted to the depressed classes can be ascertained by the National Commission for Scheduled Castes?
- (e) Whether the registration of the complaint by the 1st respondent aroused out of political mala fides since the 2nd respondent / complainant is the State Secretary of BJP party and the petitioner trust is linked to the DMK party, which is one the principal opposition parties to the BJP.
- (f) Whether the action of the National Commission for Scheduled Castes in issuing notice and conducting an inquiry is vitiated by malice in law due to the fact that the vice chair person, who was hearing the matter belongs to the BJP party's Tamil Nadu unit, and subsequently appointed as Minister in the Union

Government.

4. Mr.P.Wilson, learned Senior Counsel would contend that there is no *prima facie* material produced along with the complaint before the NCSC to conduct an inquiry by invoking the powers under Article 338 of the Constitution of India. The power to declare title of an immovable property has not been vested with the NCSC under Article 338. Therefore, the NCSC has exceeded its jurisdiction by entertaining a vague complaint filed by the 2nd respondent, intended to score political mileage and to defame the petitioner. Therefore, the writ of prohibition is entertainable.

5. Declaration of title cannot be granted by the NCSC The 2nd respondent along with his complaint has not filed any document to establish that the subject property is a Panchami Land (DC land).

6. In support of the above contentions, Mr.P.Wilson, learned Senior Counsel would submit that the Revenue Records stand in favour of the previous owner of the subject property Anjugam Pathippagam. The property was purchased in the year 1974 vide Sale Deed registered as Document No.4381 of 1974 by the owner of the subject property Anjugam

Pathippagam from Shri. P.Madhavan Nair. In 1985, patta was granted in favour of the owner. Under Section 4 of the Tamil Nadu Patta Pass Book Act, 1983, the entries in the Tamil Nadu Patta Pass Book shall be presumed to be true and correct or until the contrary is proved or a new entry is lawfully substituted there for.

7. Section 6 of the Tamil Nadu Patta Pass Book Act states entries in the patta pass book to be *prima facie* evidence of title. In the present case, patta has been granted based on the Sale Deed executed in favour of Anjugam Pathippagam and subsequently in the name of the petitioner and thus, there is no reason for the NCSC to entertain a complaint and adjudicate the title of the property. The power assumed to conduct inquiry by the 1st respondent is falling beyond the scope of Article 338 of the Constitution of India.

8. The learned Senior Counsel drew the attention of this court that “Land” is the subject under State List and, as per the records maintained by the Government of Tamil Nadu, the subject property is a ryotwari land and at no point of time it was classified as Panchami land. The Chief

Secretary to Government of Tamil Nadu submitted a report before the NCSC that the subject property is a ryotwari land. Thus, the NCSC has no jurisdiction.

9. The petitioner would rely upon the following judgments:

(1) In the case of **Professor Ramesh Chandra vs. University of Delhi** reported in **ILR (2007) II Delhi 593**, the relevant portion of the order reads as under:

“6. It is not possible to agree with the learned senior counsel that the Commission under Article 338 of the Constitution of India is an adjudicatory body which can issue binding directions or injunction orders. Clause 8 of Article 338 of the Constitution of India has conferred limited powers of a civil court on the Commission on matters relating to summoning and enforcing attendance of any person in India and examining him on oath, for discovery and production of documents, receiving evidence on affidavits, requisitioning any public document or copy thereof from any court or office, issuing commission for examination of witnesses and documents. It also has powers of a civil court in

respect of matters which the President by a rule may confer. No such rule has been brought to our notice. While conferring limited powers of a civil court for some purposes, Article 338 has not given the Commission the power to adjudicate and pass binding and executable decrees like a civil court. The above powers are procedural powers vested with a Civil Court, which have been given to the Commission for the purpose of investigation and enquiry into the complaints in terms of sub-Clause (a) and (b) of Clause 5. A reading of Clauses 6 and 7 shows that the Commission is required to submit its report, which is to be placed before each house of the Parliament along with the memorandum explaining the action taken or proposed to be taken on the recommendation made by the said Commission and in case of non-acceptance the reasons for the same. In case the report or any part thereof relates to matter with which a State Government is concerned, a copy of the report is required to be forwarded to the Governor of the State who is required to lay the report before the legislature of the State along with memorandum explaining the action taken or proposed to be taken on recommendation relating

to the State and reasons for non-acceptance of the said recommendations. It is clear from the reading of Clauses 6-8 that the reports made by the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. It cannot be said that the reports of the said Commission are alternative to the hierarchical judicial system envisaged under the Constitution of India.”

(2) In the case of **Municipal Corporation of Delhi vs. Lal Chand** reported in **(2013) 204 DLT 118**, the relevant portion of the order reads as under:

“9. It is thus quite clear that the Commission clearly exceeded its jurisdiction by taking upon itself adjudicatory, role of deciding the title of the land subject matter of the complaint made by respondent No. 1, constituting a Demarcation Committee and directing MCD to handover possession of the said land to respondent No. 1. No such power, in my view, could have been exercised by the Commission which even if it is presumed that the complaint

made by respondent No. 1 comes within the purview of sub-clause (b) of clause (5) of Article 338 could only have forwarded it to MCD with appropriate recommendations. Neither the Commission could have taken an adjudicatory role which law assigns only to a Court of competent jurisdiction nor could it have directed MCD to hand over a disputed piece of land to respondent No. 1. Even thereafter, the Commission in its meeting held on 04.04.2011 directed demarcation of the area by a Committee which was to include three persons named by the petitioner and minutes dated 16.05.2011, requiring that the claim of the petitioner should be considered in the light of the findings of the Demarcation Committee constituted by DDA on the directions of the Commission. The Commission went to the extent of observing in the meeting held on 20.06.2011 if the officers, of MCD tried to grab the land of a Scheduled Caste, they would be booked under POA Act, 1989. This clearly was beyond the power of the Commission.”

(3) In the case of All India Indian Overseas Bank SC and ST

Employees' Welfare Association and Others vs. Union of India reported in **(1996) 6 SCC 606**, the relevant portion of the order reads as under:

“10. Interestingly, here, in clause (8) of Article 338, the words used are "the Commission shall ... have all the powers of the Civil Court trying a suit". But the words "all the powers of a Civil Court" have to be exercised

“while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.””

(4) In the case of **Thirumala Tirupati Devasthanams vs. Thallappaka Ananthacharyulu** reported in **(2003) 8 SCC 134**, the relevant portion of the order reads as under:

“14. On the basis of the authorities it is clear that the Supreme Court and the High Courts have power to issue writs, including a writ of prohibition. A writ of prohibition is normally issued only when the inferior court or tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violation of the rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental rights.”

(5) In the case of **T.Ananthacharyulu vs. Principal Subordinate Judge, Tirupati** reported in **1996 (2) A.P.L.J. 382**, the relevant portion of the order reads as under:

“29. Sri Anantha Babu's contention is that no writ of prohibition shall issue to a civil court prohibiting it from proceeding with the suit and the only remedy even in respect of matters of jurisdiction an aggrieved person has is only by preferring an appeal. We think the statement of law is not absolute and unqualified. Where facts clearly establish that the court lacks total jurisdiction or where a party is seeking to abuse

the jurisdiction of the court or where matters were settled by pronouncements of higher courts and on pleadings or in respect of the prayer sought, there is little ambiguity or dispute, this court, in exercise of its jurisdiction under Article 226 of the Constitution of India, which is founded on equitable considerations, would not hesitate to issue a writ of prohibition.”

(6) In the case of **Whirlpool Corporation vs. Registrar of Trademarks, Mumbai and Others** reported in **(1998) 8 SCC 1**, the relevant portion of the judgment reads as under:

“19. Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. 15 laid down:

“Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary

harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer-acting without jurisdiction under Section 34, Income Tax Act.””

10. Relying on the above judgments, the learned Senior counsel for the petitioner reiterated that the 2nd respondent in order to gain political mileage given a vague and false complaint against the subject property in which the petitioner is in occupation and the 3rd respondent during the relevant point of time was holding the post of Vice Chairman and registered the complaint. However, the 3rd respondent became the Hon'ble Minister in the Union Government and therefore, writ of prohibition is maintainable and the 1st respondent / commission has no jurisdiction or powers under Article 338 to entertain such complaint for the purpose of declaration of title of an immovable property.

ARGUMENTS BY THE LEARNED A.S.G:

11. The learned Additional Solicitor General of India would submit that point of jurisdiction of the National Commission for Scheduled

Castes raised by the petitioner is untenable. Article 338 of the Constitution of India stipulates the duties of the NCSC Under Sub Clause (5) to Article 338, the duties casted upon the NCSC, is to investigate and monitor all matters relating to the safeguards provided for the Schedule Castes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

12. Article 338 (5)(b) states that “To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes”. Sub Clause(f) stipulates “To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may subject to the provisions of any law made by Parliament, by rule specify”.

13. The learned A.S.G. for the 1st respondent relied on Sub Clause (8) to Article 338 that the NCSC has been conferred with the powers of a Civil Court trying a Suit for (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any documents; (c) receiving evidence on affidavits; (d) requisitioning any public or office bearer from any court or office; (e) issuing commissions for the examination of witnesses and documents, or any other matters which the President may, by rule, determine. Therefore, the Commission on receipt of any complaint is bound to conduct an investigations or inquiry in all matters relating to safeguards provided for Scheduled Castes.

14. In the present case, the 2nd respondent complainant has raised an allegation that the Panchami lands have been illegally transferred in favour of Non-Scheduled Caste persons and in order to protect the interest of the Scheduled Castes Community people, an inquiry is decided to be conducted. When the NCSC has got powers for discovery of documents by receiving evidence on affidavits from all the persons, the writ of prohibition to curb the Constitutional powers conferred on the NCSC is not maintainable.

15. The NCSC, no doubt, cannot be a substitute for the Civil Court. Declaration of title of property is within the domain of the Civil

Court. However, the NCSC is empowered to conduct an inquiry and ascertain the character of the land. In the present case, if there is any fraud or abuse of power or creation of false documents with reference to the allegation of transfer of Panchami lands to other persons, if identified, the NCSC shall issue suitable orders. Therefore, an attempt made by the petitioner to riddle with the constitutional powers conferred on the NCSC is unacceptable.

16. The provisions of the Patta Pass Book Act referred by the petitioner would have no application in respect of the powers conferred on the National Commission under Article 338. Under the provisions of the Tamil Nadu Patta Pass Book Act, entries in Patta Pass Book to be a *prima facie* evidence, but cannot be conclusive evidence. Mere patta would not confer title on any person. Therefore, relying on the provisions of the Tamil Nadu Patta Pass Book Act is of no avail to the petitioner and irrelevant.

17. With reference to the motive and political consideration, it is immaterial who is the complainant. It is the allegation, which is to be inquired into by the National Commission for Scheduled Castes, in

discharge of its duties under Sub Clause (5) to Article 338 of the Constitution. Even in case, a political party member has given a complaint, such complaints are to be inquired into by the NCSC, since it is the duty mandated on the NCSC under the Constitution.

18. The learned A.S.G. submitted that the judgments relied on by the petitioner are distinguishable both on facts and on the ground that the present writ petition is a writ of prohibition to restrain the National Commission from conducting an inquiry and therefore, the judgments relied on by the petitioner are of no avail to them.

19. The learned A.S.G. would further submit that the Government of Tamil Nadu supporting the petitioner is of no surprise, since the petitioner claims to be the owner of the subject property and they belong to DMK party. Since the DMK party is ruling the State of Tamil Nadu, the Government submitting a report would be insufficient and the Government of Tamil Nadu has to submit its report documents, evidences, etc., before the National Commission for Scheduled Castes for the purpose of thorough examination and to ascertain the truth behind the allegations raised by the

2nd respondent in his complaint. The NCSC is not going to declare the title in favour of any person. If any transfer of Panchami Land (DC Land) has been made illegally, the NCSC is empowered to issue appropriate orders. While conducting an inquiry, the NCSC necessarily has to summon the concerned officials and other persons to call for records etc., by following the procedures, to find out whether there is any illegality or otherwise has been committed by transferring the Panchami lands to other persons, resulting deprivation of the rights of the Scheduled Caste Community people.

20. Therefore, the declaration of title in favour of the owner of the property by the Civil Court, cannot be compared with an inquiry to be conducted by NCSC to ascertain the character of the land for the purpose of safeguarding and protecting the interest of the Scheduled Caste Community people by exercising the powers conferred under Article 338 of the Constitution of India.

ARGUMENTS ON BEHALF OF THE SECOND RESPONDENT:

21. Mr.S.Ravi, learned Senior Counsel appearing on behalf of

the 2nd respondent has submitted that in paragraph 14 of the writ affidavit, the petitioners have stated that they are the tenants, but in the year 2022, the patta has been transferred in the name of the petitioner during the pendency of the writ petition. The owner at the time of filing of writ petition was Anjugam Pathippagam, who was not impleaded in the present writ petition. There is no express or implied bar under Article 338 of the Constitution of India, prohibiting a Non-Scheduled Caste person to submit a complaint before the NCSC. Thus, the complaint filed by the 2nd respondent was registered by the 1st respondent. Any person can give a complaint and the 2nd respondent being the State Office Bearer in BJP political party filed the complaint to safeguard the interest of the Scheduled Caste Community people. Merely because complaint was filed a the member of political party, the same cannot be rejected and the truth is to be ascertained by conducting an inquiry.

22. One Mr.D.Periyasamy, BJP State Executive Member, belongs to Scheduled Caste Community also has registered his complaint before the 1st respondent. The notice issued by the 1st respondent would indicate that the said Mr.D.Periyasamy has given a separate complaint.

23. Regarding the ground raised by the petitioner that the complaint is not supported with the material evidences. It is only a complaint filed at the first instance and evidence, depositions, materials all are to be submitted during the course of inquiry by the parties before NCSC and therefore, the writ of prohibition, prohibiting a constitutional body from conducting an inquiry is not maintainable.

24. The original documents, classification of the lands and its origin are to be examined by verifying the original records. In the present case, the Government of Tamil Nadu has not produced the entire revenue records and they have selectively produced, so as to support the claim of the writ petitioner. Since the DMK party is the ruling party and the petitioner belongs to the DMK party, the Government of Tamil Nadu is not placing all the revenue records in entirety. Therefore, an investigation and a detailed inquiry by summoning the entire original records, recording of evidence would be necessary for the purpose of ascertaining the truth, whether the subject property is a Panchami land or not.

ARGUMENTS BY THE LEARNED A.A.G.:

25. Mr.R.Ramanlal, learned Additional Advocate General appearing on behalf of the 5th respondent would submit that the Government of Tamil Nadu verified the Revenue Records and found that the subject property is Patta land and not a Panchami land. A report was already submitted by the Chief Secretary to the Government of Tamil Nadu to the NCSC along with revenue documents and therefore, the very complaint is untenable. As far as the Government records are concerned, there is no evidence to establish that the subject land is a Panchami land.

26. The role of the Government of Tamil Nadu is to ensure that the revenue records are maintained and if necessary, produce for verification before the NCSC. In the present case, the Chief Secretary to Government of Tamil Nadu submitted Report before the National Commission and the Government is ready and willing to produce the revenue records if any further verification is required. The Government of Tamil Nadu has no other say with reference to the other allegations raised between the writ petitioner and the other respondents.

APPLICABILITY OF THE JUDGMENTS RELIED ON BY THE

PETITIONER:

27. In the case of the **Professor Mr.Ramesh Chandra [ILR (2001) 11 Delhi 593]**, the scope of the power of Civil Court extended and to be exercised by the NCSC under Article 338(8) of the Constitution has been considered. The court held that the reports made by the NCSC (National Commissioner for Scheduled Cast) are recommendatory in nature and cannot be equated with the decrees passed by the Civil Court. In the instant case, the above stage has not yet come. It is the complaint which is sought to be inquired into by the NCSC and the instant writ is for prohibition. Thus, the proposition has no application with reference to the facts of the present case.

28. In **Lalchand's case [(2013) 204 DLT 118]**, the court found that the NCSC exceeded its jurisdiction by taking upon itself adjudicatory, role of deciding the title of the land, is the subject matter of the complaint made by the first respondent in the said case. In the present case, it is not an *inter se* dispute between the private parties regarding the title of an

immovable property. The complaint is that the Panchami lands allotted to the Scheduled Caste members were illegally transferred in favour of other persons resulting in deprivation of the right of the Scheduled Caste community members. Therefore, the NCSC adjudicating the title of an immovable property is not present with reference to the complaint made in the present case. Thus, this case is also of no avail to the petitioner. More so, in Lalchand's case, a demarcation committee was constituted by DDA on the directions of the Commission. Such a situation have not arisen in the present case.

29. In the case of **Indian Overseas Bank SC and ST Employees Welfare Association [(1996) 6 SCC 606]**, the Supreme Court considered the powers of NCSC under Article 338 of the Constitution. However, in the present case, the relief sought for is to restrain the commission from conducting inquiry on the complaint filed by the second respondent.

30. The Hon'ble Supreme Court in **Tirumala Tirupati Devasthanam's case [(2003) 8 SCC 134]**, considered the principles to be

adopted to issue a writ of prohibition. It was made clear that a writ of prohibition would lie if any inferior court or tribunal proceeds to act without or in excess of jurisdiction, act in violation of the rules of natural justice, act under law which is itself ultravires or unconstitutional and proceeds to act in contravention of fundamental rights. In the present case, whether the principles settled by the Hon'ble Supreme Court would have any application with reference to the facts on hand is to be considered. In the present case, it is a complaint given to NCSC that the Panchami Lands allotted to SC, ST have been transferred in favour of other persons depriving the rights of the Scheduled Caste community members and therefore, the NCSC has got powers to consider the issues raised between the parties by conducting an inquiry and pass appropriate orders on merit. There is no exclusion of land matters to be inquired into by the NCSC.

31. The Andhra Pradesh High Court in **T.Anandh Charyalu's case [1996 (2) APLJ 382]**, reiterated the principles settled by the Hon'ble Supreme Court. There a writ of prohibition was filed to prohibit the Civil Court from proceeding with the suit. The court held that the remedy for an aggrieved person is to prefer an appeal. In **Whirlpool Corporation case**

[(1998) 8 SCC 1], the Hon'ble Supreme Court reiterated the judgement of the Constitution Bench in **Kalcutta Discount Company limited Vs. ITO Case**, where the power to issue a writ of prohibition was considered. Therefore, this court is of the considered opinion that none of the cases relied on by the petitioners are of any avail to them for the purpose of considering the facts and circumstances of the present case which is distinguishable.

DISCUSSIONS :

32. The object of the 'NCSC', can be carved out from the wordings under Article 338 of the Constitution of India. The unambiguous provision clearly sets out the vision of the NCSC. The Scheduled Castes are one of the socially disadvantaged group in the country. It is without any doubt that all efforts must be made to raise the social status of the disadvantaged community and this can be ensured only through the constant vigil put forth by the NCSC to safeguard their rights.

33. Land is an important component in enabling the upliftment

of the social status in a society and to ensure that men are guaranteed the right to live with dignity. The logical step in any civilisation to socially uplift the disadvantaged class of people, is to ensure their respectable presence in the society and secure them a life with dignity and respect. This object was the basis on which the erstwhile British Government brought about The Depressed Class Land Act, 1892. This Act was to ensure that the landless labourers from the disadvantaged Communities are guaranteed parcels of land known as 'Panchami land' for their social upliftment. The transition of an underprivileged community from landless labourers to landowners is a huge step in catalysing the social equity in the society.

34. The NCSC is a Constitutional Body. The functions of the NCSC is set forth under the Constitution and hence, it derives its powers and functions directly from the Constitution. While discharging the assigned functions, the Constitutional Body is entitled to functional independence.

35. It is noteworthy that Article 338(8) of the Constitution contemplates that the NCSC has all the powers of a Civil Court, including the powers to summon, receiving evidence, requisitioning public record,

issuing commissions and other such powers as stipulated under Article 338(8) of the Constitution. In the present instance, on receipt of a specific complaint, the Constitutional Body has well within the parameters as enshrined under Article 338 of the Constitution issued a notice calling for inquiry. The power to inquire under Article 338 of the Constitution is encompassed within the scope of NCSC. It is to be noted that the NCSC has not issued any direction or order in this matter. It has only issued notice calling for inquiry. There is no bar on the NCSC to issue a notice when it has received a specific complaint with respect to deprivation of the legal rights of the Scheduled Caste members. When there has been a violation of any legal right or constitutional safeguards of the Scheduled Caste Community, the NCSC is entitled to inquire into the allegations.

36. Further more, the Rules of Procedure of the National Commission for Scheduled Castes have been issued under the power derived from Article 338(4) of the Constitution. Rule 7.2(a)(vii) particularly states that where the property and other related matters are under immediate threat prompt action of the Commission is required. It is not the case where the Commission is interfering into the *inter se* property dispute between two

parties, whereas it is a case where an inquiry is sought for, as to whether Panchami land specifically allotted for the members of the Scheduled Caste Community at large for ensuring their social upliftment has been transferred to any other person, who in essence is legally ineligible to hold such lands. Here the legal right to property of the Scheduled Caste members are at stake. When the law clearly puts forth that the Panchami lands are allotted only to a particular disadvantaged community, usage or illegal transfer of such land renders the entire object frivolous. It is also the constitutional obligation of the Government under Article 46 of the Constitution, to promote with special care the educational and economic interest of the weaker sections of the people and in particular, the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.

37. According to Legal Jurist Hans Kelsen, every Legal System is based on a 'Grund Norm' or 'Basic Norm'. It is without any doubt that the Indian Constitution is the 'Grund Norm' based on which our Indian Legal System operates. The powers and functions of any Quasi Judicial Body created under the aegis of the Constitution, directly derives its source of

power from the Constitution and also it is bound by the limitations as set out by the Constitution. Such functions are considered constitutional functions and it cannot be prohibited on the ground that it is merely a Commission. A Commission when operating as a Constitutional Body, has its own powers and scope as stipulated under the Constitution. In the case on hand, the Commission has issued notice calling for the details, on receipt of specific complaint alleging the deprivation of rights of the disadvantaged community. It is the incumbent duty of the Commission to inquire into any allegations affecting the rights of the disadvantaged class of people. All the more, only notice has been issued and no explicit recommendations or direction has been issued.

38. The petitioner is seeking for a Writ of Prohibition to prohibit the Commission from proceeding with the inquiry. The primary purpose of the Writ of Prohibition is to prevent lower court, Administrative Body or Tribunal or Commission from exceeding its jurisdiction or acting in a manner contrary to the principles of natural justice. It is pertinent to note that Writ of Prohibition can be issued only where there is:-

(i) lack of jurisdiction or excess jurisdiction;

(ii) violation of principles of natural justice or violation of basic rights and

(iii) acts unconstitutionally or lack of evidence in judgments or errors in law.

39. In this instance, the notice issued by the NCSC is within the jurisdiction ascribed to it by the Constitution and it is not a case of lack or or excess jurisdiction and keeping in consonance with the principles of natural justice, a primary notice has been issued and no further action has ensued. Hence, this court feels that the petitioner with no adequate reason has approached the court to restrain the commission from initiating an inquiry based on a complaint received. This court finds no merit in seeking a writ to restrain, which will only inhibit the natural course of legal proceedings that needs to be carried out by the Commission. The petitioner with no relevant reasoning has sought for this writ to prevent the Commission from conducting an inquiry. It is at the very preliminary stage that a Writ of Prohibition is sought for when there is no *prima facie* violation by the NCSC on any accounts.

40. The petitioner is well within its rights to demonstrate its case before the Commission. But this court is of the opinion that on receipt of the notice itself, to approach this Constitutional Court for an order to restrain the NCSC to proceed with the natural course of inquiry, is an unnecessary act of haste and is uncalled for. All the more, it is not a case of complete lack of jurisdiction or where an inquiry is inconsistent with the principles of natural justice. It is only right by the law to allow the Constitutional Bodies to perform their assigned function within the framework prescribed, more specifically, Article 338(5)(a) and (b) of the Constitution of India, which reads as under:-

“338. National Commission for Scheduled Castes:-(5) *It shall be the duty of the Commission-*

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes.”

Further, Article 338(5)(e) and 338(5)(f) read as under:-

“338. National Commission for Scheduled Castes:-(5) *It shall be the duty of the Commission-*
(e) to make in such reports recommendation as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and
(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by the Rule specify.”

41. A cursory reading of the abovementioned clause sets out that the primary duty of the Commission is to provide safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and an elaborate reading of Article 338(5)(b) mentions

the duty of the Commission to inquire into the specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes.

42. It is beyond doubt that the Scheduled Castes are entitled to Panchami lands and it is purely for their benefit and welfare that the Depressed Class Land Act was brought about. The Panchami lands are specifically allotted to the members belonging to the disadvantaged Scheduled Caste members. Any encroachment or occupation of such lands is *per se* illegal and strikes at their legal right to the occupation of such lands. It squarely falls within the ambit of the NCSC to probe any such complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes. It is the duty of the Commission to inquire into any such illegal occupation of Panchami lands.

43. Article 338 (5) mandates certain duties to be performed by the National Commission for Scheduled Castes. Article 338(5)(a) empowers the Commission to investigate and monitor all matters relating to safeguards provided for Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Government and to

evaluate the working of such safeguards. Powers are conferred on the NCSC to safeguard and protect the interest of the Scheduled Caste Community people. Though the subject of 'land' has been incorporated in Entry 18 List II Schedule VII of the Constitution, the National Commission for Scheduled Caste under Article 338 is empowered to deal with such land matters, so as to ascertain whether the Panchami Lands allotted to the Scheduled Caste Community people are safeguarded and protected. In other words, the NCSC is empowered to investigate and monitor all matters, including land matters, if such lands are Panchami lands, assigned in favour of the Scheduled Caste Community people. The language employed in Article 338(5)(a) of the Constitution, is to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes. Therefore, it is not as if the NCSC has no jurisdiction to inquire into the land matters.

44. The constitutional powers conferred on the National Commission, if completely bridled, would result in defeating the objects sought to be achieved by the Constitution 89th Amendment Act, 2003. The court cannot presume that the Commission will exceed its powers, while conducting inquiry or passing final orders. Mere presumption cannot be a

ground to issue a Writ of Prohibition. The scope of writ of prohibition cannot be expanded, so as to curb the powers of the commission from exercising its duties mandated under Article 338 (5) of the Constitution of India.

45. The learned Additional Advocate General of the Government of Tamil Nadu placed records along with the notes of the District Collector Chennai, before this court. Perusal of the notes would reveal that vide Document No.2925 of 1912 dated 23.10.1912 the lands in old Paimash Nos.789, 793, 794, 805, 806 and 807 of erstwhile Puliur Village, now Nungambakkam Village, had been acquired by a German Company, namely, M/s.Carl Simon Soehne. Vide Document No.3740 of 1916 dated 19.12.1916, The Governor General in Council ceased the operations of M/s.Carl Soehne Company as per Section 4 of Enemy Trading Ordinance 1916 (V of 1916) and vide G.O.Ms.No.1514, Public Department, dated 24.08.1916, appointed Mr.Francis Henry Wilson as a Liquidator and who by public auction awarded the land in old paimash Nos.794, 805 and 806 to an extent of 22.79 acres of old Puliur Village (Now Nungambakkam) to M/s.Best and Company, who was the highest bidder.

Subsequent purchase of the land by one Tmt.Parvathy Madhavan Nair. Mr.Madhavan Nair transferred the property in favour of M/s.Anjugam Pathipagam are stated. The transfer of registry by the Tahsildar Nungambakkam in favour of M/s.Anjugam Pathipagam was made on 29.07.1985. Subsequently from the Permanent Land Register dated 16.02.2022, it is clear that the patta was transferred in favour of Murasoli Trust represented by its Managing Trustee Mr.Udhayanidhi Stalin and it seems that the subject property has been purchased by the petitioner.

46. The learned Senior Counsel Mr.Wilson would submit that the notice dated 14.11.2019 was issued stating that Dr.L.Murugan, Hon'ble Vice Chairman, National Commission for Scheduled Cast has re-fixed the hearing date. In letter dated 15.11.2019 and 13.12.2019, also the commission has stated that the Vice Chairman will conduct an inquiry. The notice issued asking the petitioner to appear before the Vice Chairman itself is untenable since the Vice Chairman would not constitute the commission under article 338 of the Constitution of India. The learned Senior Counsel would reiterate that the notices communicated to the petitioner would be sufficient to form an opinion that there is a political

vendetta. The learned Additional Solicitor General of India would oppose the said submission by stating that the Commission under Article 338 means Chairman, Vice Chairman and the members and therefore, an inquiry will be conducted only by the commission as contemplated under Article 338 and by following the rules of procedures framed. Further, Dr.L.Murugan discontinued as Vice Chairman of NCSC. Thus, the apprehension of the petitioner became vanished; and the commission shall conduct an inquiry into the allegations raised by the second respondent in the complaint.

47. During the further hearing, Mr.Ravi, learned Senior Counsel appearing on behalf of the second respondent would submit that the documents filed by the petitioners and the documents filed by the Government of Tamil Nadu would reveal certain inconsistencies. The petitioner produced the sale deed registered as document No.4381 of 1974 dated 22.06.1994 to establish that Anjugam Pathippagam purchased the subject property. However, the copy of the permanent land register and patta copy issue register would reveal another document number 4383 of 1974 dated 22.06.1974. The second respondent produced the copy of the letter issued by the joint Sub Registrar Saidapet to the Tahsildar in letter No.185

of 2019 dated 21.11.2019, which would reveal that there is no such document vide document no.4381 of 1974 was registered on the file of the Sub-Registrar Office, Saidapet. The certified copy of document No.4383 of 1974 is unconnected with the subject property in the writ proceedings. Citing inconsistencies through registered documents and revenue records, the learned Senior Counsel Mr.Ravi would submit, document No. 4381 of 74 dated 22.06.1974 is not found in the encumbrance certificate. The encumbrance certificate reveals only about the document No. 4383 of 1974 and the document No.4383 of 1994 as per the certified copy obtained by the second respondent, is relating to an immovable property in Tiruvannamalai and no way connected with the subject property in the present writ proceedings.

48. Learned Senior Counsel for the second respondent relied on the memo filed by the Government of Tamil Nadu, enclosing the copy of the report submitted by the Chief Secretary to Government vide letter dated 26.12.2019. In the said letter itself the complaint given by Mr.T.Periyasami who belongs to scheduled caste community has been referred.

49. On behalf of the first respondent, set of documents were filed before this court containing the copies of the permanent land register, patta copy issue register, encumbrance certificate copy, document no.3440 of 1960 document No.1645 of 1936, document No.1873 of 1957, document No.4381 of 1974 & document No.4383 of 1974, non-availability report from Archives and Historical Research Department, Gazette copies from Kancheepuram District and letters received from Kancheepuram District. These documents also required to be scrutinised for the purpose of culling out the truth behind the allegations set out in the complaint. When the petitioner claims that they are the owners of the property and the subject property is not a Panchami land, equally the second respondent is entitled to establish their case by producing documents and evidence before the NCSC. Such an adjudication in the present case is inevitable since the allegations are serious causing infringement of the rights of the members of the scheduled caste community. However, this court is not inclined to scrutinise or consider any of the documents filed either on the side of the petitioner or by the respondents, since the High Court cannot adjudicate disputed facts in the present writ of prohibition. The High Court cannot conduct a roving inquiry to identify the character of an immovable property or the

classifications originally made and the developments made subsequently. Whether any transfer of Panchami land by reclassifying the land or otherwise made are to be inquired into for the purpose of ascertaining the truth. The High Court in writ proceedings cannot usurp the powers of the commission. Such original powers have to be exercised in the manner contemplated under Article 338 and the rules of procedures framed thereunder. In the event of deciding any such disputed facts in the writ proceedings, no doubt, parties will be prejudiced. Any finding in this regard would result in miscarriage of justice and therefore, all such allegations at all circumstances must be inquired into by the competent forum.

50. The Constitutional mission of a vibrant democracy will blossom on the bed rock of transparency and truth. Truth being the foundation, all other components are supplemental. The ultimate aim of all the constitutional institutions are to cull out the truth through an inquiry by affording opportunity to the parties. Therefore, the High Court have to exercise restraint in entertaining such writ petitions challenging show cause notice, initiation of proceedings under law to conduct inquiry by the competent authority and to issue prohibitory orders etc. The practice of

entertaining such writ petitions and keeping those matters pending for a long period would defeat the constitutional principles and the purpose for which the actions were initiated would get defeated. It is the tactics commonly adopted by litigants to institute litigation after litigation, based on one or the other ground, with an idea to prolong and protract the proceedings so as to bury the same and escape from the clutches of law. Such ideas at no circumstances be encouraged, but to be thwarted.

REGARDING THE POLITICAL VENDETTA:

51. In the present writ petition, this court is of the opinion that it is the duty of the Political Parties to play their role in voicing out for the people of our great Nation. There is a marked difference in the leverage given to a complaint filed by political parties rather than a common individual filing a complaint. A common man, though within his rights, can file a complaint, there is substantial weightage given when the political parties take up the cause of the public and fight for the said cause.

52. Moreover, a common man, though with the will to fight for a cause can approach any Constitutional Institution to redress his grievance, at times the practical difficulties in terms of finances or the means to approach may not always be at his disposal. During such times, it becomes the bounden duty of the Political Parties to appeal the grievances of the common man, more-so, the disadvantaged sections of the society by bringing their issues to the forefront and to fight for their cause.

53. In a country with composite culture, multi party system evolved with every political party in this country having their own ideologies, vision and goals. The common man is well aware about the roles played by each and every party in our country. When an individual or a group of individuals are affected in one or many other ways by the actions of the political order or in general, then they tend to approach people in power or they gravitate towards these political parties, since the latter can articulate their grievance with more conviction and the voice of these voiceless people tend to reach a larger group, which in turn helps them to fight their cause. It then becomes the duty of such political party to express the problems faced by the individuals and fight before the relevant forum

for the said cause.

54. In instances where such matters come up before this court, the question of malafidness is raised in most of the cases where one or more parties to the writ petition are political parties. This has become a common practice. Though the court is empowered to inquire and deal with the issue of malafidness in the cases placed before it, what constitutes the primary point is, Whether the larger interest of the public is affected in any way?. Whether any section of the people are unduly affected that a certain political party on their behalf has approached this court? This must be the preliminary point to be examined. More than the political parties involved in the dispute, the nature of the dispute is what ought to be examined at the first instance since the court is most importantly concerned about the constitutional and legal rights of the public at large.

55. It is the constitutional duty of this court to make sure that the rights of every citizen of our great Nation is protected and secured and in any cases of violation, the court without any hesitation ought to step in. When there is a breach of any right, as such, the courts make sure that the

remedial measures are carried out at the earliest. When issues such as these where larger groups of people especially the disadvantaged sections of the society are affected, it is in the normal course for political parties to agitate the matter on their behalf and this court in such instances cannot at the threshold call it an act of malafidness. Where larger public interest is involved and the rights of larger group of individuals are at stake, the court cannot attribute malafidness to the political parties agitating such cause. In fact, it is the bounden duty of the political parties to fight for the cause of justice and raise the concerns of the affected people before the relevant forum.

56. The petitioner has placed his premise on the ground of political vendetta. Though the ground of political vendetta ought to be examined by the court, it cannot be taken as a sole ground. When the rights of the people are evolving across spectrums, the courts must go beyond the issue of malafidness/political vendetta and look into the merits of the matter. **The ground of malafidness/political vendetta coexist with other grounds raised in the petition. The argument of political vendetta ought to be examined alongside other grounds raised in the petition and not as**

a solitary ground.

57. In the event where actual violation of the rights of people have been brought to the fore vide a petition/complaint by any political party and where such matter requires in-depth investigation, then the complaint cannot be dismissed on the ground of political vendetta. Wherever there is flagrant transgression or where larger group of people are affected, then this court cannot dismiss it on the ground of malafidness/political vendetta. It is a known fact that political parties especially the opposition always keeps a constant vigil on the actions of the ruling party. It is in fact the duty of the opposition to do the same. So when these parties spot violations or illegalities due to the actions of the ruling party, they approach the courts or appropriate quasi judicial bodies demanding an investigation or inquiry into the matter. In the process they point out the undue actions of the ruling party. This is sign of healthy democracy. Of course, the opposition might use this as a tool to further their own political agenda. However, the courts cannot go into these political affairs and see whether the political parties acted with vendetta or not.

58. The courts during such instances need to traverse beyond this argument and test the nature of allegations put forth. If the court *prima facie* finds some element of truth into the allegations made, then the argument of malafidness/ political vendetta must subside and the courts have to delve deeper into the nature of allegations. The foremost duty of this court is to protect the constitutional and legal rights of the citizens of our great Nation.

59. The court finds that in a multitude of petitions especially those concerning political parties, there has been an indiscriminate use of the argument of malafidness/political vendetta. **It is a fact that petitions filed before the judicial bodies are not devoid of vendetta. But can the entire petition be dismissed at the threshold only because it was lodged with a dose of vendetta. The importance accorded to the complaint should travel beyond this point.**

CONCLUSIONS:

60. Documents produced by the Government of Tamil Nadu

and on behalf of the first respondent and the inconsistencies pointed out by the learned Senior Counsel for the second respondent with reference to the said documents and revenue records would be sufficient to form an opinion that, disputed facts exist. Such disputed facts relating to immovable properties cannot be adjudicated in the present writ proceedings. The complaint before the NCSC is that the Panchami lands allotted to scheduled caste members were transferred to other persons in an illegal manner. Thus an investigation and an inquiry by the commission is warranted for the purpose of ascertaining the truth regarding the character of the land in safeguarding and protecting the interest of the scheduled caste members. The notices issued by the commission to the writ petitioner to appear before the third respondent Dr.L.Murugan lost its relevance, since he came to be appointed as Hon'ble Minister and presently not holding the post of Vice Chairman of NCSC.

61. In view of the discussions, the following orders are passed:-

(1) The first respondent/NCSC is directed to issue fresh notice to the parties in the manner contemplated and by following the Rules of Procedures.

(2) Thereafter, the first respondent/NCSC is directed to proceed with the inquiry by affording opportunity to all the parties and pass appropriate orders on merits and in accordance with law, uninfluenced by the observations made in this order relating to disputed facts.

(3) With the above directions, the writ of prohibition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

10.01.2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Jeni/Shah/Svn

To

- 1.The National Commission for Scheduled Castes,
Rep. by Secretary,
5th Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi – 110 003.
- 2.The Vice Chairman,
The National Commission for Scheduled Castes,
5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.
- 3.The Chairman,
The National Commission for Scheduled Castes,
5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.
- 4.The Secretary to Government,
The State of Tamil Nadu,
Department of Revenue and Disaster Management,
Fort St. George, Secretariat,
Chennai – 600 009.

W.P.No.35 of 2020

S.M.SUBRAMANIAM, J.

Jeni/Sha/Svn

W.P.No.35 of 2020

10.01.2024