

W.P(MD)No.9542 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)No.9542 of 2014
and
M.P.(MD)Nos.1 and 2 of 2014**

Habeeb Mohamed

... Petitioner

Vs.

- 1.The Home Secretary,
Government of Tamil Nadu,
Fort.St.George, Chennai – 600 009.
- 2.The Director General of Police,
Tamil Nadu Police Head Quarters,
Kamarajar Salai, Chennai – 600 004.
- 3.The Superintendant of Police,
Thanjavur District, Thanjavur.
- 4.The District Collector,
Thanjavur District, Thanjavur.
- 5.The Inspector of Police,
Sethubavachathram Police Station,
Thanjavur District.
- 6.Chella Pandian,
The Deputy Superintendant of Police,
Pattukkottai, Thanjavur District.



W.P(MD)No.9542 of 2014

7.K.Ravichandran,
Sub Inspector of Police,
Sethubavachathiram Polie Station,
Thanjavur District.

8.Karuppu @ Muruganantham

9.Ramanathan

10.Muneeswaran

11.Samiyappan

12.Ganesan

13.Ammayappan

14.Ragavan

15.Muruganantham

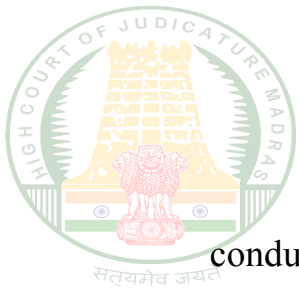
16.Velavan

17.Yagappa

18.Kannan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st to 4th respondents to pay compensation a sum of Rs.15,00,000/- each apart from the interim compensation to the damages caused to the petitioner's properties as well as the properties mentioned in the petitioner's complaint and consequently collect the compensation amount from the 6th to 18th respondents proportionately and to pass an order to



W.P(MD)No.9542 of 2014

conduct Judicial enquiry by a team comprising of retired High Court Judges, Human Rights activists, Secular Journalists and to submit a report to this Court for the initiation of appropriate Legal action in this regard.

For Petitioner : Mr.C.M.Arumugam

For Respondents : Mr.S.RA.Ramachandran,
Addl. Government Pleader for R1 to R7

Mr.A.Anandha Prakash for R8 to R18.

ORDER

Vadivelu, the iconic Tamil comedian, plays the role of an MLA in the film “Maamannan”. He is contesting for re-election. His adversary has a different game plan. Vadivelu is unable to canvass. He is being prevented from even entering villages and localities. Fortunately, technology comes to his rescue. He reaches out to the voters through social media.

2.Karuppu @ Muruganantham, the eighth respondent herein faced a similar situation. He was campaigning for BJP during the 2014 Lok



W.P(MD)No.9542 of 2014

Sabha elections. On 14.04.2014, at around noon, when he along with his party cadre entered Mallipattinam village, a group of Muslims numbering around 50 under the leadership of one Rahmankhan assembled at the outskirts of the village to prevent Karuppu @ Muruganantham.

3.The case of the writ petitioner is that the eighth respondent is a notorious character against whom several criminal cases are pending. On the occurrence date, he entered the petitioner's village along with his supporters who raised slogans against Muslims and indulged in physical violence. They caused damage to the mechanized boats belonging to the petitioner and others. A petrol bunk belonging to one Mohd.Maraikayer also came under attack. Vehicles were set ablaze. The petitioner lodged representation seeking payment of compensation from the State for the damage suffered by the villagers of Mallipattinam. He also wanted judicial enquiry to be conducted. Since his request was not considered, the present writ petition came to be filed.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition.



W.P(MD)No.9542 of 2014

According to him, the incident took place on account of the failure of State machinery and the district administration to uphold law and order.

He called upon this Court to grant relief as prayed for.

5.The official respondents have filed counter affidavits and the learned Additional Government Pleader took me through their contents. The learned counsel for respondents 8 to 18 also opposed the writ prayer and submitted that case for grant of relief has not been made out. The respondents pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. There is no dispute that the eighth respondent had filed his nomination to contest as BJP's candidate in the 2014 Lok Sabha elections for Thanjavur constituency. Right to vote may only be a statutory right. But right to seek votes is a fundamental right. Because democracy is a basic feature of the Constitution. One can seek votes in a variety of ways. Parties and candidates hold rallies and meetings. If anyone causes disturbance, it is an electoral offence. Section 127 of the Representation of the People Act, 1951 is as follows :



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W.P(MD)No.9542 of 2014

“127.Disturbances at election meetings.—(1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, [shall be punishable with imprisonment for a term which may extend to [six months or with fine which may extend to two thousand rupees], or with both.] [(1A) An offence punishable under sub-section (1) shall be cognizable.]

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.”

What applies to election meetings would apply with equal force to electoral campaigns also. Candidates/party cadre are entitled to engage



W.P(MD)No.9542 of 2014

in door to door campaigning. They can go to any locality or area for the purpose of peacefully canvassing for votes. No individual has the right to prevent or restrict the exercise of the said right. The right to campaign is traceable directly to Article 19(1)(a), (b) and (d) of the Constitution of India. This right is derivable from the right to freedom of speech and expression, the right to assemble peaceably and without arms and the right to freely move throughout the territory of India. Without elections, there is no democracy. Unless there is free and effective campaigning, elections will be rendered a farce. The State is under a constitutional obligation to ensure that this right is upheld at all costs and under any circumstance. The persons who attempt to restrain candidates and party cadre from exercising this right shall be dealt with an iron hand.

7.In *Kaushal Kishor v. State of UP (2023) 4 SCC 1*, the Hon'ble Supreme Court held that a fundamental right under Article 19 can be enforced even against persons other than a State or its instrumentalities. The majority decision paves the way for horizontal application of certain fundamental rights against fellow citizens. Respectfully applying the said ratio, I hold that the fundamental right of Karuppu @



W.P(MD)No.9542 of 2014

Muruganantham was infringed by the acts of a section of villagers of Mallipattinam.

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8.It is true that on 14.04.2014, certain violent incidents took place.

The question is whether for the damage suffered by the writ petitioner and others, compensation should be awarded. It is seen that as many as four FIRs on the file of Sethubavachathiram Police Station (Crime No. 62, 63, 65 and 66 of 2014) were registered. Crime No.63 of 2014 was lodged by one Mohammad Azharuddin. It reads as follows:-

“எங்கள் ஊரில் முஸ்லும் இனமக்கள் அதிகமாக வசித்து வருகிறார்கள். 14.04.2014-ந் தேதி காலை 11.10 மணிக்கு பாரதிய ஜனதா வேட்பாளர் கருப்பு முருகானந்தம் எங்கள் தெருவிற்கு ஓட்டு கேட்டு வருவதாக தகவல் வந்தது. அதற்கு எதிர்ப்பு தெரிவித்து எங்கள ஊரைச் சேர்ந்த முஸ்லும் இனமக்கள் ரஹ்மான்கான் தலைமையில் 50 மேற்பட்டோர் எங்கள ஊரின் மெயின் ரோட்டில் வாகனத்துடன் தடுப்பதற்காக நின்று கொண்டிருந்தோம்.”

“In our village, Muslims live in large numbers. We received information that on 14.04.2014, at around 11.10 A.M, BJP candidate Karuppu @ Muruganantham was to come our street to seek votes. To lodge oppose the same and to prevent them, as many as 50 Muslims of our village



W.P(MD)No.9542 of 2014

WEB COPY

under the leadership of Rahmankhan were waiting in the main road in vehicles.”

9.This was clearly anti-democratic. The defacto complainant in Crime No.63 of 2014 and others ought not to have even attempted to prevent the eighth respondent and others from conducting their election campaign. Probably, it is this that triggered the entire occurrence. In any event, it is not for this Court to go into the factual aspects. The learned Additional Government Pleader would state that the FIRs have been charge sheeted and the cases are pending trial in S.C.Nos.179, 210 and 250 of 2019 on the file of Additional District Court, Pattukkottai and C.C No.241 of 2022 on the file of Judicial Magistrate, Peravurani.

10.The State can be directed to pay compensation under certain circumstances. That would require undertaking scrutiny of factual aspects. Before me, there are allegations and counter allegations. The jurisdictional criminal courts are seized of the matter. Under Section 357 of Cr.P.C, they are competent to award compensation. The petitioner can very well avail the said remedy.



W.P(MD)No.9542 of 2014

11. Granting liberty to the petitioner to apply to the trial court

seeking compensation at the conclusion of the trial, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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VERDICTUM.IN



W.P(MD)No.9542 of 2014

G.R.SWAMINATHAN, J.

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W.P(MD)No.9542 of 2014

19.07.2023