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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23963 of 2023

The President.
Mr.N.D.Mohan,
Nainarkuppam Village Panchayath,
Nainarkuppam, Karunguzhi Post,
Vadalur, Cuddalore District. ... Petitioner

Vs.

1.The District Collector,
Cuddalore District, Cuddalore.

2.The District Revenue Officer,
Cuddalore District, Cuddalore.

3.The Revenue Divisional Officer,
Cuddalore District, Cuddalore.

4.Tahsildar, Taluk Office, Kurinjipadi,
Cuddalore District.

5.The Block Development Officer,
Kurinjipadi, Cuddalore District.

6.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai – 600 009. ... Respondents

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[R6 suo-motu impleaded by order dated 23.08.2023
made in W.P.No.23963 of 2023]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to dispose of the petition dated 29.05.2023 filed by the petitioner on behalf of the Villagers as President of Nainarkuppam Village Panchayath relating to the property comprised in Survey No.166/10 of Karunkuzhi Revenue Village.

For Petitioner	: Mr.R.Rajavelavan
For R1 to R4 & R6	: Mr.T.Arun Kumar Additional Government Pleader
For R5	: Mr.E.Sundaram Government Advocate

O R D E R

“IT IS IMPORTANT TO TREAT OTHERS IN THE SAME WAY AS WE LIKE TO BE TREATED”.

The resolution dated 7th April, 2023 passed by Nainarkuppam Village Panchayat and the representation sent by the writ petitioner to the District Collector, dated 18.08.2023, provided cause for the institution of the writ petition under Article 226 of the Constitution of India.

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2. The President, Nainarkuppam Village Panchayat, Cuddalore District is the petitioner and states that no patta shall be granted to the Transgender persons (transmen or transwomen) in their Village. The petitioner along with the village people, in their representation, has stated that allowing Transgender persons in the Village will result in destruction of culture in that locality. Nearby the land proposed to be allotted to the Transgender persons by the District Collector, a Bus Stand situates, where from, School and College going children will get affected. Nearby the said proposed land, village people are residing and in the event of allowing the Transgender persons to reside in that locality, the same would be detrimental to the future life of the youngsters in the Village. Therefore, the writ petitioner / President, Village Panchayat, requested the District Collector not to grant patta to the Transgender persons in their Village.

3. This Court passed an interim order directing the petitioner to produce the copy of the Resolution passed by the Village Panchayat. The petitioner produced the copy of the Resolution along with an affidavit, stating that the 1st respondent / District Collector, Cuddalore District issued a show

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cause notice on 16.08.2023 and the petitioner has given a reply on 18.08.2023.

4. The petitioner has stated that he has chosen to withdraw the writ petition. The objectionable Resolution was passed without knowing the Rights of the Transgender persons. Admittedly, the 1st respondent issued a show cause notice under Section 46(1)(a) and the Tamil Nadu Panchayats Act, 1994. However, the petitioner has raised an objection stating that patta has been granted to houseless poor citizens of the Village by the Government to the inhabitants of the particular Village, based on the identity records like Voters list, Family Card, Aadhar Card etc. Therefore, the case of the Transgenders cannot be considered for grant of free house site patta even under the Government Schemes. It is apparent that on receipt of the show cause notice from the District Collector, the petitioner has offered to withdraw the present writ petition.

5. Social evil in any form is unconstitutional and the resolution passed by a Village Panchayat unanimously cannot be taken in a lighter manner. Allowing the petitioner to withdraw the writ petition would result in

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acceptance of the social evil caused at the instance of the elected body. The Constitutional Courts are failing in its duty to protect the Constitutional Mandates, Philosophy and Ethos, if the petitioner is permitted to withdraw the writ petition. Therefore, the petitioner cannot be allowed to walk away simply by withdrawing the writ petition filed seeking a direction to the District Collector not to grant patta to the Transgender persons in their Village under the Government schemes.

6. Section 3 of the Transgender Persons (Protection of Rights) Act, 2019, enumerates prohibition against discrimination, which reads as under:

> *"No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:*
> *(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;*
> *(b) the unfair treatment in, or in relation to, employment or occupation;*
> *(c) the denial of, or termination from, employment or occupation;*
> *(d) the denial or discontinuation of, or unfair*

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treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

(f) the denial or discontinuation of, or unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be."

7. Chapter VI of the the Tansgender Persons (Protection of Rights) Act, 2019, guarantees protections on Education, Social Security and Health of Transgender Persons. Accordingly, every educational institution funded or recognised by the appropriate Government shall provide inclusive education

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and opportunity for sports, recreation and leisure activities to Transgender persons without discrimination on an equal basis with others.

8. Section 18 of the Tansgender Persons (Protection of Rights) Act, 2019 stipulates "Offences and penalties, who harms or injures endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine".

9. The learned counsel for the petitioner relying on the Rules states that the houseless poor citizens of the Village are granted patta by the Government only to the inhabitant of the particular village based on identity records. Therefore, the Resolution passed by the Village Panchayat and the objections raised through representations are to be considered. Such contentions are made to circumvent the illegal Resolution passed by the petitioner and thus cannot be accepted.

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10. Rights of Transgenders has long been discussed. The social stigma attached to Transgenders is yet to be removed. It is beyond understanding as to how a human can be differentiated based on physical, social or mental differences. As long as the majoritarian group of the society with select ideals keep stigmatising and ostracising a minority group purely based on gender, this will not only promote unhealthy social living conditions but also hamper the growth of our Great Nation.

11. It is important to note that Transgenders have to be absorbed/employed/brought into the mainstream activities of the society and for that change in attitude towards them is essential. Each and every human being have their own likes and dislikes, but when it comes to living in a society under the umbrella of togetherness, it is vital to accept the differences within us.

12. **Each and every living being is a gift. Gifts may be wrapped in various colours, designs and appearances and these gifts springs up with countless surprises. It is the same with each one of us. The level of mental and social pressures faced by such distinctive community of people can**

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only be understood by an empathetic mind. They have been ostracised by this very society for centuries. THIS SOCIAL OSTRACISATION IS THE ANTI-THESIS OF HUMANITY.

13. Members of the Transgender community are often abused by their own family. They face ill-treatment at the hands of certain members of the society and more often their voices are not heard.

14. This very society, which sees them as a bringer of good luck and seeks their blessings, also treat them with contempt. It is this contradictory presumption in the society, which is queer.

15. Societal thoughts and certain poorly constructed conventions ought to be blamed for such inhuman mentality and gender based discrimination. The peer social pressures, family pressures, mental and psychological pressures faced by the Transgender persons have been well documented on earlier occasions.

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16. Though the State is taking measures to implement welfare measures by bringing in legislations and policies to support the transgender community yet, the message gets lost in the lengthy organisational structure of the executive. The bottom rung of the Executive structure, who are in direct contact with the members of the Transgender community fail to implement these welfare schemes in letter and spirit.

17. We are all brought up in different social, religious, ideological and economic backgrounds. Differences are inevitable, but an understanding of this diversity is essential for a harmonious societal structure. Gender is what we believe ourselves to be, it is a self identified factor. To accept this requires an education and awareness centred on harmonious living. Education must be such that it should transcend beyond appearance, colour, physique and gender stereotypes. No one should make another feel less accepted in the society. This is the worst form of discrimination. In no way is one less than the others and under no circumstance shall one be made to feel less than another.

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18. A question arises as to whether nearly after 76 years of independence, inspite of the myriad of legislations and speeches and articles and documentations and policies, has social injustice been washed away from the echelons of this society? A honest conscience knows the answer to this. Why we are unable to remove this social injustice? Why are we not able to accept the differences within us? The answer is well known. The mind is failing to accept the truth which our conscience already knows.

19. In 2014, the Hon'ble Supreme Court of India in the case of **National Legal Services Authority vs. Union of India (UOI) and Others** reported in **2014 (3) CTC 46**, categorically held that Transgender persons are to be recognised as third gender and subsequently, the Government of India enacted the Transgender Persons (Protection of Rights) Act, 2019, which bestowed rights and protection to the Transgender community in India. It is also important to hear the voices of this community. And the essential requisite for that lies in giving a platform for Transgender persons to speak about their needs and rights, and it is only through this, the societal change can be brought about and the vision to bring them as a part of mainstream can be achieved. In order for this, the reservation for Transgenders must

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extend to forums of law making institutions. It is in these law making forums, where Transgender persons can express their views and discuss their rights. More so, Transgender persons have a Right to Reservation, owing to the fact that "they are socially Backward Class. It is the right time, the State of Tamil Nadu initiate steps to provide reservations to Transgender persons in the local body elections as a welfare measure with a view to include the Transgender in a mainstream society and for their democratic participation.

20. Considering the importance and to create awareness against the social evils of this nature, this Court is inclined to pass the following orders:

(1) The relief as such sought for in the present writ petition stands rejected.

(2) The 1st respondent / District Collector, Cuddalore District is directed to initiate all appropriate actions under the Tamil Nadu Panchayats Act, 1994 for removal of the President and the Members of the Nainarkuppam Village Panchayat by following the procedures.

(3) The 1st respondent / District Collector, Cuddalore District shall ensure that the Transgender persons are granted free house site patta based on their eligibility.

(4) The 1st respondent / District Collector, Cuddalore District is

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directed to ensure that the Transgender persons are allowed to participate in Village festivals, ceremonies and are permitted to conduct worship in all religious institutions etc.

(5) The Government of Tamil Nadu is directed to initiate all appropriate steps to grant reservations to Transgender persons in the local body elections as an initial measure to bring the Transgender persons in the mainstream society.

23. With the above directions, this Writ Petition stands disposed of. However, there shall be no order as to costs.

23.08.2023

Jeni/Sha
Index : Yes
Neutral Citation : Yes
Speaking order

Note: *Registry is directed to communicate this order copy to the Chief Secretary to Government of Tamil Nadu for the purpose of implementation of this order.*

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To

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Cuddalore District, Cuddalore.

2.The District Revenue Officer,
Cuddalore District, Cuddalore.

3.The Revenue Divisional Officer,
Cuddalore District, Cuddalore.

4.Tahsildar, Taluk Office, Kurinjipadi,
Cuddalore District.

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S.M.SUBRAMANIAM, J.

Jeni/Sha

W.P.No.23963 of 2023

23.08.2023

https://www.mhc.tn.gov.in/judis