

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2018

DELIVERED ON : 23.01.2019

CORAM:

**THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM**

**W.P.No.21701 of 2018
and WMP.No.25459 of 2018**

M.L.Ravi
President, Desiya Makkal Sakthi Katchi,
S/o.M.Lakshmipathy,
No.21/11, Perianna Street,
Chennai-600 001. ... Petitioner

Vs.

- 1.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 2.The Secretary,
Revenue and Finance,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 3.The Principal Secretary to Government,
Tamil Development and Information Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 4.The Secretary,
Public Works Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing them not to spend money from public exchequer for construction of memorial for Selvi J.Jayalalitha and to take steps to recover the money if any spent by the Government from her property or any other purpose, to pass such further orders.

For Petitioner : Mr.T.Sivagnanasambandan

For Respondents : Mr.Vijay Narayan, Advocate General
assisted by
Mr.V.Jayaprakash Narayanan,
Government Pleader &
Mr.E.Manoharan,
Additional Govt. Pleader

ORDER

M.SATHYANARAYANAN, J.

The present Writ Petition, styled as a Public Interest Litigation, is filed by Mr.M.L.Ravi, President of “Desiya Makkal Sakthi Katchi” and according to him, it is a registered political party fighting against corruption. The deponent of the affidavit, namely Mr.M.L.Ravi, S/o.M.Lakshmipathy, residing at No.21/11, Perianna Street, Chennai-1, also claims that he is a practicing Advocate and a Social Activist.

2. Grievance expressed by the petitioner is that a memorial is being constructed in honour and memory of the former Chief Minister of Tamil Nadu and former General Secretary of “Anaithu India Anna Dravida

Munnetra Kazhagam” [AIADMK], namely Selvi J.Jayalalitha at a cost of Rs.50.80 Crores on the burial place (Samadhi) at Marina Beach, Chennai by the Government of Tamil Nadu. It is the case of the petitioner that the said area falls within Coastal Regulatory Zone (CRZ) Category-II and without getting prior permission/authorization/clearance, especially with regard to Environment Impact Assessment, construction in the form of memorial cannot come in place.

3. It is contended by the petitioner that originally Selvi J.Jayalalitha was convicted by the Special Court for the Trial of Prevention of Corruption Act Cases, Bangalore, Karnataka for the commission of offences under the Prevention of Corruption Act, 1988 and other related I.P.C. offences, vide judgment dated 27.09.2014 and on appeal by her and other convicted accused, the judgment of conviction and sentence passed by the Trial Court was set aside by the Karnataka High Court and the judgment of acquittal passed by the Karnataka High Court was put to challenge in Criminal Appeal Nos.300 to 303 of 2017 and Criminal Appeal Nos.314 to 319 of 2017. The Hon'ble Supreme Court, vide common judgment dated 14.02.2017, had reversed the order of acquittal passed by the Karnataka High Court and also recorded the fact that the appeal against Selvi J.Jayalalitha got abated, as she died. It is also brought to the knowledge of

this Court that Review Petitions in R.P.(Crl)Nos.176 – 185 of 2017 were filed and those review petitions came to be dismissed on 05.04.2017 and the Curative Petitions (Crl)Nos.95 – 104 of 2017 were also came to be dismissed by the Hon'ble Supreme Court, vide order dated 27.09.2018.

4. The General Secretary of “Desiya Makkal Sakthi Katchi” has submitted a representation dated 10.05.2018 to the respondents 1, 2 and 4 stating among other things that the construction of memorial for a convicted accused is a bad precedent and since the cost of construction of memorial is borne out of public funds and the State of Tamil Nadu is also facing severe financial crisis, public money collected from taxpayers cannot be utilized for construction of such a memorial and also made a request not to allocate/utilize the public money for such purpose. The Deputy Secretary to Government, Public Works Department, Government of Tamil Nadu, Chennai-600 009, has sent a communication in Letter No.10741/Y2/2018-1 dated 24.05.2018 to the third respondent inviting the attention of the said official to the above cited representation dated 10.05.2018 indicating that the said representation is transferred to the said department for taking necessary action. The grievance expressed by the petitioner is that despite the representation being forwarded to the third respondent, he has not been favoured with any kind of response and therefore, he is constrained to

approach this Court by filing the present Writ Petition praying for appropriate relief.

5. Mr.T.Sivagnanasambandan, learned counsel appearing for the petitioner has drawn the attention of this Court to paragraph Nos.542 to 544 of the common judgment dated 14.02.2017 made in Criminal Appeal Nos.300 - 319 of 2017 and would submit that in Paragraph No.541(vi) of the said common judgment, the Hon'ble Supreme Court observed that ***“the flow of money from one account to the other proves that there existed active conspiracy to launder the ill-gotten wealth of A1 (Selvi J.Jayalalitha) for purchasing properties in the names of the firms*** and in Paragraph No.542, the Hon'ble Supreme Court had set aside the judgment of acquittal passed by the Karnataka High Court and affirmed/restored the judgment of the Trial Court in toto against A2 to A4 and it was observed that though in the process of scrutiny of the facts and the law involved and the inextricable nexus of A1 with A2 to A4, reference to her role as well as the evidence pertaining to her has been made, she having expired meanwhile, the appeals, so far as those relate to her stand abated. It is the further submission of the learned counsel appearing for the petitioner that in the light of the said findings recorded by the Hon'ble Supreme Court, A1/one of the respondents in the appeals filed against the judgment of

acquittal, namely, Selvi J.Jayalalitha was declared to be a conspirator, but for her demise, she would have been definitely convicted and sentenced on account of the restoration of the Trial Court judgment and therefore, public money cannot be spent to erect memorial for such a person and would further contend that even otherwise, huge sums of public money amounting to Rs.50.80 Crores cannot be spent for such a memorial and it is also for non-productive purpose and hence, prays for appropriate orders as this Court may deem fit in the circumstances of the case.

6. *Per contra*, Mr.Vijay Narayan, learned Advocate General assisted by Mr.V.Jayaprakash Narayanan, learned Government Pleader (In-charge) and Mr.E.Manoharan, learned Additional Government Pleader appearing for the respondents would submit that admittedly, the Karnataka High Court had reversed the order of conviction passed by the Trial Court by allowing the appeals filed by the accused and had set aside the conviction, which had the effect of acquittal and appeals have been preferred against the judgment of acquittal passed by the Karnataka High Court in Criminal Appeal Nos.300 – 319 of 2017 and the Hon'ble Supreme Court had reversed the judgment of the Karnataka High Court and affirmed and restored the judgment of the Trial Court and thereby, the conviction and sentence passed against A2 to A4 got restored and the Hon'ble Supreme Court in the very

same judgment has taken note of the fact that the first respondent in the said appeals, namely Selvi J.Jayalalitha expired and therefore, the appeals so far as those relate to her stood abated. The learned Advocate General would further submit that in the light of abatement of the appeals, it cannot be said that she was convicted and therefore, there is no stigma of conviction attached to her. Insofar as the contention as to the spending of public money for construction of memorial, the learned Advocate General had invited the attention of this Court to the counter affidavit of the third respondent dated 26.10.2018 and would submit that the Government of Tamil Nadu had so far set up 68 Memorials, 4 Arangams, 5 Commemoration Pillars and 1 Monument and maintain and preserve them properly and it is further pointed out in the said counter affidavit that Selvi J.Jayalalitha had served 6 times as the Chief Minister between 1991 and 2016 and taking into consideration the importance of the leader whose contributions have led to the upliftment of the society, a policy decision has been taken to construct a memorial for the former Chief Minister of Tamil Nadu, namely Selvi J.Jayalalitha.

7. The learned Advocate General appearing for the respondents would further submit that in the 99th Meeting of the Tamil Nadu State Coastal Zone Management Authority, clearance has been issued under Para

8 II CRZ II (i)(ii) and (iii) of Coastal Regulation Zone Notification 2011 for the proposal of the Executive Engineer, Building and Construction Division-I, Public Works Department for the construction of memorial for the former Chief Minister Selvi J.Jayalalitha at Survey No.3372, Kamarajar Salai, Chepuak, Chennai, subject to certain conditions and planning permission has been obtained under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 from CMDA, vide Permit No.C/9697/01-A to N/2018 and File No.C4/2884/18 dated 19.03.2018 and in terms of Section 238 of the Chennai City Municipal Corporation Act, 1919, necessary building permission has been obtained from the Town Planning Section – Works Department, Greater Chennai Corporation, vide Building Plan No.CEBA/WDCN09/00093/2018 dated 21.03.2018 and the third respondent has also issued necessary Government Orders in G.O.(Ms)No.13 dated 10.01.2018.

8. The learned Advocate General has further invited the attention of this Court to the decision in ***State of A.P. v. S.Narasimha Kumar and Others [(2006) 5 SCC 683]***, wherein the Hon'ble Supreme Court held that where a respondent, who has been acquitted by the Lower Court dies, there is no one to answer the charge of criminality, no one to defend the appeal and no one to receive the sentence and as such, the judgment of the Hon'ble

Apex Court in reversing the order of acquittal passed by the High Court of Karnataka cannot be termed as causing any stigma convicting the former Chief Minister and as such, there is no bar for constructing the memorial, in honour and memory of Selvi J.Jayalalitha, who acted as the Chief Minister of Tamil Nadu for 6 times between 1991 and 2016. It is also urged by the learned Advocate General that the present writ petition is nothing but a Publicity Interest Litigation and the writ petitioner, who claims to be the President of a registered political party, with an oblique and *mala fide* motive, is espousing the cause of some persons/parties, who are inimical to the name and fame of the former Chief Minister and prays for dismissal of this Writ Petition with exemplary costs.

9. This Court paid it's best attention to the rival submissions and also perused the entire materials placed before it.

10. The learned counsel appearing for the petitioner made the following primordial submissions:

(a) In the light of the fact that the Hon'ble Supreme Court, while reversing the order of acquittal passed by the High Court of Karnataka, had branded respondent No.1 in the said appeals,

namely Selvi J.Jayalalitha as a conspirator, it cannot be said that she has been acquitted by the Hon'ble Apex Court.

(b) Public / Taxpayers money amounting to a sum of Rs.50.80 Crores cannot be spent to construct the memorial and instead, it can be utilized for some other productive projects to cater to the needs of poor and downtrodden and essentially for public interest.

11. Let this Court considers the effect of the abatement of the criminal appeals which had been preferred against the order of acquittal.

12. It is relevant to extract Section 394 of the Criminal Procedure Code, 1973:

“394. Abatement of appeals.

(1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.—In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister."

13. In *State of Kerala v. Narayani Amma Kamala Devi and Others* [AIR 1962 SC 1530], the question arose for consideration was that can an application for revision under Section 493 of the Criminal Procedure Code be entertained by the High Court after the death of the accused person against whom the order was made? It is to be noted at this juncture that the concerned accused was convicted by the Trial Court and on appeal to the Sessions Court had also ended in dismissal and therefore, revision was preferred. The Hon'ble Supreme Court has taken into consideration the scope of Section 431 CrPC (Old Code) and in paragraph No.4 observed that,

"That Section provides that every appeal against acquittal and every other appeal under Chapter XXXI except an appeal from a sentence of fine shall finally abate on the death of the appellant. The High Court or the Court of Session cannot therefore exercise its appellate jurisdiction in favour of a dead person even if an appeal has been filed by him, except in an appeal from a sentence of fine."

In paragraph No.6 of the said decision, the Hon'ble Apex Court observed that

".. the High Court may in its discretion exercise any of the powers conferred on a court of appeal by Sections 423, 426,

427 and 428.... make it clear that a High Court's power of revision does not extent to anything more than what the Court of appeal can do. When therefore a court of appeal cannot give any relief in respect of an order of conviction and sentence of fine or any other order made against an accused person after the accused person is dead, how can the High Court in revision give any such relief after the accused person's death..."

14. Proviso to Section 394(2) CrPC makes it very clear that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate. In the Explanation to the said Section, it is stated that "**near relative**" means a parent, spouse, lineal descendant, brother or sister.

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15. Thus, in a case of appeal against conviction and sentence by the appellant/accused, if he/she dies during the pendency of the appeal, any of his/her near relative may, within 30 days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal and if leave is granted, the appeal shall not abate.

16. Section 401 CrPC, which speaks about the High Court's power of revision says that the ***“High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307....”*** Therefore, Section 394 CrPC equally applies to revision against conviction and sentence also.

17. The word ***“Abatement”*** in *P.Ramanatha Aiyar's The Law Lexicon 5th Edition* is that ***“In Criminal Law : Abatement of proceedings connotes their termination without any decision on the merits and without the assent of the prosecutor”***.

18. In *State of A.P. v. S.Narasimha Kumar and Others [(2006) 5 SCC 683]*, the question arose for consideration before the Hon'ble Supreme Court was as to whether an appeal from a composite order of sentence combining the substantive imprisonment with fine is for the purposes of Section 431 CrPC (Old Code) corresponding to Section 394 CrPC, is not an appeal from the sentence of fine. It is relevant to extract Paragraph No.9 of the said decision:

"9. Every other appeal under Chapter XXXI, except an appeal from a sentence of fine, finally abates on the death of the appellent. By "every other appeal" is meant an appeal other than

one against an order of acquittal, that is to say, an appeal against an order of conviction. Every appeal against conviction therefore abates on the death of the accused except an appeal from a sentence of fine. An appeal from a sentence of fine is excepted from the all pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representatives on whom the estate devolves are entitled to ward off that liability. By Section 70 of the Penal Code the fine can be levied at any time within six years after the passing of the sentence and if the offender has been sentenced for a longer period than six years, then at any time previous to the expiration of that period; "and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts". The fact that the offender has served the sentence in default of payment of fine is not a complete answer to the right of the Government to realize the fine because under the proviso to Section 386(1)(b) of the Code the court can, for special reasons to be recorded in writing issue a warrant for realizing the fine even if the offender has undergone the whole of the imprisonment in default of payment of fine. The sentence of fine remains outstanding though the right to recover the fine is circumscribed by a sort of a period of limitation prescribed by Section 70, Penal Code."

Ultimately, the Hon'ble Apex Court concluded that the appeal filed by the State of Andhra Pradesh so far as it questions the correctness of the judgment in Criminal Revision No.1424 of 2001 stands abated on the death of the respondent D.V.Chandrasekhar / A3.

19. In *Shivshankar Harjivanrai Joshi (deceased by L.Rs.) v. State of Gujarat [2008 CriLJ 2908- Gujarat (DB)]*, the State of Gujarat preferred an appeal against the judgment of acquittal, acquitting the respondent/accused for the offences punishable under Section 161 of the Indian Penal Code and

under Section 5(2) of the Prevention of Corruption Act and pendency of the appeal, the respondent/accused died and in paragraph No.5 of the said judgment, the Division Bench of Gujarat High Court observed that,

"Final abatement means there is no discretion with the Court and even there is no question of revival. It appears that the intention of the legislature is to put an end and there is no question or scope of revival as the appeal is to be disposed of as abated finally. However, at the same time, when an appeal results in abatement on account of death of the respondent / accused, there is no decision on merits confirming the judgment and order of acquittal. In an appeal against the order of acquittal, on the death of the accused considering Section 394 of the Cr.P.C., the Court has thereafter no jurisdiction to decide; consider the appeal and the judgment and order impugned in the appeal on merits. The Court has no other discretion but has to dismiss the appeal as abated on the death of the accused in an appeal under Section 378 of the Cr.P.C. against the judgment and order of acquittal."

The Division Bench of Gujarat High Court has also considered the relief sought for by the heirs of the deceased as to the terminal benefits and observed that the heirs of the deceased shall not be entitled to consequential other benefits, if any, automatically on disposal of the present appeal as having abated and they shall not be permitted to claim arrears of wages on the ground that the appeal has been abated on account of the death of the accused and also referred to the decision in *State of T.N. v. V.T.Thulasingham and Others [1994 Supp (2) SCC 405 : AIR 1955 SC 1314]*.

20. In the light of the above cited pronouncements, the position of law in respect of the appeal against acquittal is that, on the demise of the respondent/accused in the said appeal, the appeal abates and there is no decision on the merits of the appeal filed by the State and thus, the order of acquittal passed by the Trial Court / Lower Appellate Court, have not been set aside.

21. The Hon'ble Supreme Court in *B.R.Kapur v. State of Tamil Nadu and another [(2001) 7 SCC 231]* has considered the question of constitutional importance, namely whether a person who has been convicted of a criminal offence and whose conviction has not been suspended pending appeal can be sworn in and can continue to function as the Chief Minister of a State? The second respondent in the said appeal was Selvi J.Jayalalitha, who was the Chief Minister of the State of Tamil Nadu between 1991 and 1996. The Hon'ble Apex Court concluded that on the date on which the second respondent was sworn in as the Chief Minister she was disqualified, by reason of her convictions under the Prevention of Corruption Act and the sentence of imprisonment of not less than two years for becoming a member of the legislature under Section 8(3) of the Representation of the People Act. It is relevant to extract paragraph No.40 of the said judgment:

“40. In much the same vein, it was submitted that the presumption of innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second respondent. Before we advert to the four judgments relied upon in support of this submission, let us clear the air. When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well.”

In the light of the observations made in the above said paragraph, if an accused succeeds in the appeal against conviction, the stigma of conviction is wiped out cleanly, as if it never existed.

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22. In the order dated **27.04.2018 made in W.P.No.3153 of 2018**

[J.Anbazhagan, M.L.A. v. The Speaker, Tamil Nadu Legislative Assembly, Chennai-600 009 and Others], the prayer was to issue a Writ of

Mandamus directing the respondents to forthwith remove the portrait of

Selvi J.Jayalalitha from the precincts of the Tamil Nadu Legislative

Assembly, as she has been found guilty of corruption charges by the Hon'ble Supreme Court of India. The Hon'ble First Bench of this Court [*Hon'ble Ms.Indira Banerjee, as the Chief Justice then was and Hon'ble Mr.Justice Abdul Quddhose*], in paragraph No.30 of the said order, observed as under:

“30. It may be morally wrong to glorify the corrupt. However, in the absence of any law which prohibits display of portraits of a person convicted of corruption, this Court cannot interfere with the display of a photograph on that ground, for that might amount to imposition of a punishment not authorized by law. Furthermore, admittedly, the conviction of Selvi Jayalalitha was set aside by the High Court in appeal, and the appeal filed by the State of Karnataka against her acquittal abated by reason of her death.”

23. In the case on hand, the former Chief Minister of Tamil Nadu, namely Selvi J.Jayalalitha was originally convicted by the Trial Court for the commission of offences under the Prevention of Corruption Act, 1988 and other related offences under the Indian Penal Code and on appeal filed by her and other accused before the High Court of Karnataka, the conviction and sentence passed against them were set aside and all of them were acquitted. Challenging the same, the State of Karnataka and others preferred criminal appeals before the Hon'ble Supreme Court and by the time before the orders could be pronounced, A-1 breathed her last and therefore, the appeal against her acquittal came to be dismissed as abated. It

is to be remembered at this juncture that the said person had already had the benefit acquittal operating in her favour and in the light of the judgment in ***B.K.Kapur v. State of Tamil Nadu and another [(2001) 7 SCC 231]***, the stigma of conviction against her got erased/wiped out, which have not been set aside by the Hon'ble Apex Court on merits for the reason that before the orders could be pronounced, she died. Therefore, it cannot be said that Selvi J.Jayalalitha is a convicted person and as such, there is stigma of conviction attached to her.

24. An important question arises for consideration in this writ petition is whether memorial can be erected in honour and memory of the former Chief Minister of Tamil Nadu, namely Selvi J.Jayalalitha by spending public money/at the cost of public exchequer ?

25. It is also to be remembered at this juncture that after the Hon'ble Apex Court had reversed the order of acquittal, the State of Karnataka and others had filed Review Petitions as to the recovery of fine of Rs.100 Crores from the estate from all the accused while they were convicted and all the Review Petitions were came to be dismissed and so also Curative Petitions.

26. It appears from the counter affidavit of the third respondent that all necessary clearances appear to have been obtained for the construction of memorial and no specific challenge has been made as to the grant of such clearances by the concerned concerned.

27. In the decision in *Sh. Jilubhai Nanbhai Khachar etc. v. State of Gujarat and another [Appeal (Civil) No.2211-15 of 1984 dated 20.07.1994]*, relied on by the learned Advocate General, the Constitutionality of the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982 came up for consideration. It was observed in the said decision that,

“Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by the Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the Court to determine whether a particular purpose is a public purpose or not. But every public purpose does not fall under Article 300A nor every

exercise of eminent domain an acquisition or taking possession under Article 300A. Generally Speaking preservation of public health or prevention of damage to life and property are considered to be public purposes.”

(emphasis supplied)

28. The learned Advocate General by placing reliance upon the said decision, would submit that the counter affidavit of the third respondent contains detailed reasons as to the purpose for which, the memorial sought to be constructed in honour and memory of late Selvi J.Jayalalitha, former Chief Minister of Tamil Nadu and in the event of the memorial come into being, contributions made by her for the welfare of the people and for the development of the State, would be made known to everybody and since it is for public purpose, the policy decision taken by the State Government to erect such a memorial cannot be faulted with.

29. The Government of Uttar Pradesh, headed by the then Chief Minister, Ms.Mayawati took a decision to construct memorial in the breadth and length of the State of Uttar Pradesh, in honour of Mr.Kanshi Ram, President of Bahujan Samaj Party. The said decision was put to challenge before the High Court of Allahabad, Lucknow Bench in W.P.No.3576 (M/B) of 2006 and initially, an interim order dated 04.04.2008 was passed by the said Court by directing the State Government to maintain Status Quo

and not to raise any construction at any place which had been notified. A Special Leave Petition in SLP(C)No.9489 of 2008 was filed against the said interlocutory order passed by the High Court of Allahabad and it was entertained and the interim order dated 04.04.2008 passed by the High Court of Allahabad was stayed by the Hon'ble Supreme Court. Transfer Petition (C)Nos.435-442 and 444 of 2008 have also been filed by the State of Uttar Pradesh for transfer of similar writ petitions, as the issues involved in the said petitions are similar to that of SLP(C)No.9489 of 2008. The Hon'ble Supreme Court of India, pending SLP as well as Transfer Petitions, had passed orders in I.A.Nos.65-66 of 2009 in T.P.(C)Nos.438 and 440 of 2008, by recording the undertaking given on behalf of the State of Uttar Pradesh that no further construction over the properties, which are the subject matter of the writ petitions pending before the Allahabad High Court, Lucknow Bench, Lucknow, would be made. However, it was brought to the knowledge of the Hon'ble Supreme Court that despite the said undertaking, construction activities proceeded and therefore, initiated **WEB COPY** Sua Motu Contempt Petition (C)No.326 of 2009 and also made the interim orders passed on 11.09.2009 in I.A.Nos.65-66 of 2009 in T.P.(C)Nos.437 and 440 of 2008 absolute. T.P.(C)Nos.435-442, 440 & 448 of 2008 Petitions along with Sua Motu Contempt Petition (C)No.326 of 2018 and SLP (C)No.9489 of 2008 came to be disposed of by a common order dated

09.02.2010 by the Hon'ble Supreme Court in and by which, the interim order dated 04.02.2008 passed by the Division Bench of Allahabad High Court in W.P.No.3576 (M/B) of 2006 came to be confirmed and also directed the State Government to carryout the works as mentioned in Annexure-I to the affidavit of the Acting Chief Secretary, Government of Uttar Pradesh and also directed the Chief Justice of Allahabad High Court to nominate a Bench to dispose of W.P.No.3576(M/B) of 2006 along with the other writ petitions. It is brought to the knowledge of this Court that the said writ petition is yet to be disposed of and is pending on the file of the High Court of Allahabad.

30. The counter affidavit of the third respondent dated 26.10.2018 would disclose that in honour and memory of six former Chief Ministers of Tamil Nadu, memorials have been constructed and two memorials in honour of Late C.N.Annadurai and Late M.G.Ramachandran came to be constructed at Marina Beach, Kamarajar Salai, Chennai. The counter affidavit of the third respondent would also disclose that necessary clearances have been obtained to erect memorial in honour and memory of former Chief Minister of Tamil Nadu late J.Jayalalitha, behind Dr.M.G.R. Memorial at Marina Beach, Kamarajar Salai, Chennai, where her mortal remains buried. The counter affidavit of the third respondent would also

disclose that the Government of Tamil Nadu has set up 68 Memorials, 4 Arangams, 5 Commemoration Pillars and 1 Monument and maintain and preserve them properly.

31. According to the writ petitioner, for the cost of construction of memorial of Selvi J.Jayalalitha, an amount of Rs.50.80 Crores of public money is being spent for that purpose.

32. It has become a practice rather a norm to build memorials in honour and memory of former Chief Ministers and leaders of this Country and public money had been spent for that purpose and the justification is that memorials/statutes would remind the public about the contribution made by them towards the development of the State/Country.

33. It is pertinent to note at this juncture that public money can be spent for construction of hospitals, school, colleges, implementation of developmental projects and provision of basic facilities/amenities to the citizens, in honour and memory of great leaders and it would be an ever lasting memory in the mind of the citizens/people. However, it is for the Government concerned to take a call and this Court cannot issue any positive direction to do so.

34. The primordial ground on which the petitioner sought to halt the construction of memorial is that since the order of acquittal passed by the Karnataka High Court had been reversed by the Hon'ble Supreme Court in Criminal Appeals, the first respondent in the said appeals, namely Selvi J.Jayalalitha became a convict and as such, memorial in honour of a convicted person cannot be constructed.

35. This Court in the earlier paragraphs has found that before pronouncement of the orders by the Hon'ble Supreme Court in Criminal Appeals, the first respondent in the appeals, namely Selvi J.Jayalalitha died and therefore, the appeals preferred against her got abated and as such, it cannot be said that she became a convict. The petitioner did not make a challenge to the sanction of funds and the clearances accorded/obtained for construction of the said memorial and even otherwise, this Court is of the considered view that the grounds urged by the petitioner lack merit for the above cited reasons.

36. In the result, this *Writ Petition stands dismissed*. No costs. The State Government may endeavour to take a call / formulate a policy decision in future, to go for construction of hospitals, schools, colleges and provision of basic amenities/facilities to benefit the public/citizens, in honour and

memory of great leaders. Consequently, connected miscellaneous petition is also dismissed.

[M.S.N., J.] [P.R.M., J.]
23.01.2019

Index : Yes / No

Internet : Yes / No

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To

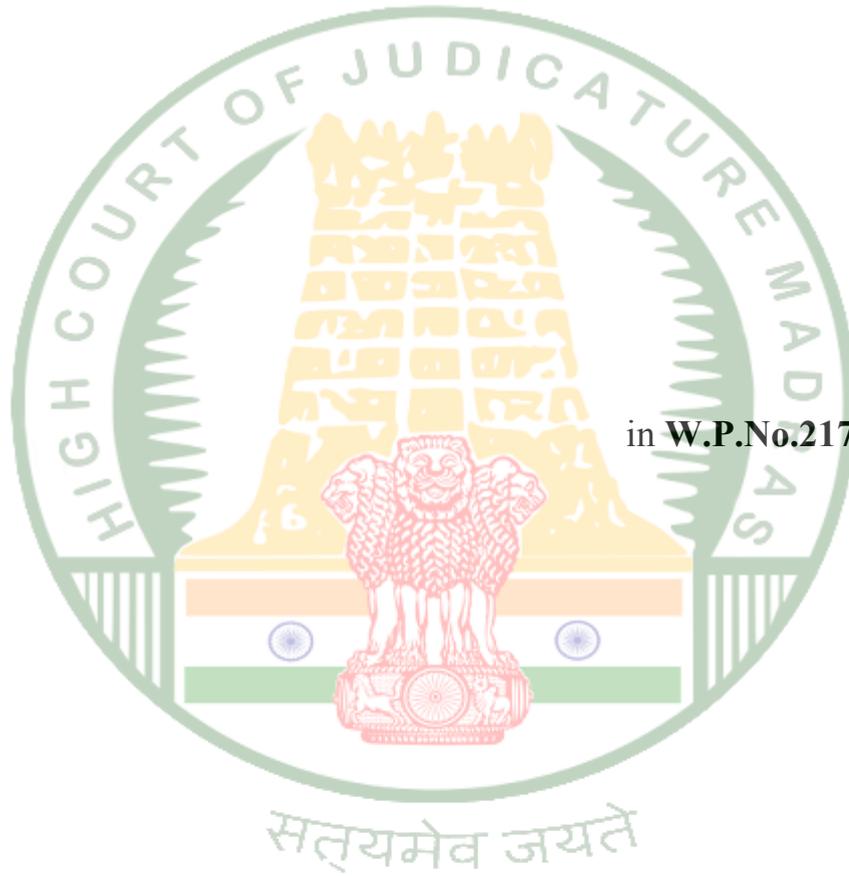
1. The Chief Secretary,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
2. The Secretary,
Revenue and Finance,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
3. The Principal Secretary to Government,
Tamil Development and Information Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
4. The Secretary,
Public Works Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.



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M.SATHYANARAYANAN, J.,
and
P.RAJAMANICKAM, J.

jvm



Order
in **W.P.No.21701 of 2018**

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23.01.2019