

Court No. - 52

Case :- WRIT - C No. - 43375 of 2017

Petitioner :- Shree Ganpati Buildtech Pvt. Ltd.

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shiv Kumar Singh, Kunal Ravi Singh

Counsel for Respondent :- C.S.C., Manu Singh

Hon'ble Saurabh Srivastava, J.

1. Heard Sri S.K. Singh, learned counsel for petitioner and Sri Raj Kumar Singh, learned Standing counsel appearing on behalf of respondent no. 1 to 4.

2. Present petition has been filed seeking following reliefs:

"I. Issue a writ, order or direction in the nature of mandamus commanding the respondent Additional District Magistrate/ District Magistrate to act upon their own letter dated 04.03.2015 and proceed further considering the report of Chief Medical Officer of the District dated 01.12.2014, for exchange/closure of the burial ground located at Vijahari Tehsil Sasni District Mahamaya Nagar measuring an area of 0.104 hectare in Gata no. 118, Khata no. 314, within a reasonable period.

II. Issue a writ, order or direction in the nature of mandamus commanding the respondents to shift/close the burial ground from the present location to the alternative location provided by the Gaon Sabha or alternatively by the petitioner within a time bound manner.

III. Issue a writ, order or direction in the nature of mandamus commanding the respondents to declare the present burial ground as a public park after its shifting to alternative location which may be under the title of the State Government and can be maintained as such."

3. It is the case of the petitioner that within the vicinity of village Vijhari, Tehsil Sasni, District Hathras, plot no. 118 area 0.104 hectare has already been reserved for burial of the dead bodies of children having faith in hindu religion. By the passage of time the surrounding area of plot no. 118 has been developed into *abadi* and so many residential accommodation has been raised by different persons wherein petitioner is one of them having permanent house in the same area that is at the village Vijhari, Tehsil Sasni, District Hathras. The matter regarding burial of the dead bodies of children is also available at plot no. 206 of the same village which is also reserved as a burial ground for hindu community but the same is not surrounded with *abadi*.

4. It has been submitted by learned counsel for the petitioner that after spot inspection carried out by concerned authorities an specific report has been submitted by Chief Medical Officer, District Hathras that if the plot no. 118 situated at village Vijhari, Tehsil Sasni, District Hathras may be utilised as a burial ground the same shall adversely affect the health of the resident residing nearby.

Letter dated 01.12.2014/11.12.2014 issued by Chief Medical Officer, Hathras is appended along with petition available at page no. 38 and the reference has been made under para 10 of the writ petition regarding importance of the letter dated 01.12.2014.

5. Learned counsel for petitioner took reliance of **Section 221 of U.P. Kshettra Panchayats and Zila Panchayats Act, 1961** which is reproduced herebelow:

"221. Power in respect of burial and burning ground.-(1) The [Zila Panchayat] may, by public notice, order or burial or burning ground which is certified by the civil surgeon or Swasthya Adhikari to be dangerous, or likely to be dangerous, to the health of persons living in the neighbourhood to be closed from a date to be specified in the notice, and shall, in such case, if no suitable place for burial or burning exists within a reasonable distance, provide a fitting place for the purpose.

(2) Private burial places in such burial grounds may be excepted from the notice, subject to such conditions as the [Zila Panchayat] may impose in this behalf:

Provided that the limits of such burial places are sufficiently defined and that they shall be used only for burial of members of the family of the owners thereof.

(3) No new burial or burning grounds whether public or private, shall be made or formed without the permission in writing of the [Zila Panchayat].

(4) No person shall, except with the permission of the [Zila Panchayat] in writing, bury or burn, or cause to be buried or burnt, a corpse in a burial or burning ground closed under sub-section (1) or made or formed in contravention of the provision of sub-section (3).

(5) Should a person bury or burn, or cause or permit to be buried or burnt, a corpse contrary to the provisions of this section, he shall be liable upon conviction to a fine which may extend to fifty rupees."

6. The power vest with the concerned Zila Panchayat or Kshettra Panchayats for closing any site reserved under the revenue records as a burial ground after certification issued by Civil Surgeon or Swasthya Adhikari. In the instant matter, crystal clear certificate has been issued by Chief Medical Officer, District Hathras but the same has not been complied with by the responding authorities specifically respondent no. 2, 3 and 4, which rises cause of action in favour of the petitioner to prefer the instant petition.

7. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up by learned counsel for petitioner on the ground which has been narrated and mentioned while filing the counter affidavit on behalf of respondent no. 2 to 4 wherein the specific denial has been made in reference to para 18 of the petition and the same is available as para 17 of the counter affidavit wherein reply to para 17, 18 of writ mentioned as need no comment however in reply it has been submitted that the land in dispute coming under Section 132 of U.P.Z.A & L.R. Act, 1950 now under Section 77 of U.P. Revenue Code, 2006 cannot be given in exchange in any manner.

8. By bare perusal of the contents mentioned in the counter affidavit, it is crystal clear that there is hardly any denial made by administrative authorities of District Hathras with regard to certificate issued by Chief Medical Officer which has been made part of the petition as Annexure no. 11 and the same has not been denied specifically.

9. While apprising instructions dated 12.12.2023 issued by Sub Divisional Officer, Tehsil Sasni, District Hathras which has been apprised by learned Standing counsel and the same has been taken on record, it has been mentioned that a latest report has been sought from present Chief Medical Officer on dated 12.12.2023 that is only a day before wherein it is mentioned that there is hardly any apprehension of adverse impact over the health of the common residents of the same vicinity where the burial ground is still available.

10. Statements mentioned under instructions cannot be relied upon since no substantial documents have been appended along with the instructions which might be in nature for recording the statements of common resident of the vicinity that what actual problem they people are facing because of use of land specifically reserved for the burial ground covered by the several residential accommodations but just to fulfill the formality a report has been submitted and the same has been mentioned while apprising the instructions issued by respondent no. 4.

11. In view of the aforementioned facts and circumstances, respondent no. 2 (Collector/District Magistrate, Hathras) is hereby directed to take decision in accordance with the letter dated 01.12.2014 issued by Chief Medical Officer, Hathras by way of closure of burial ground situated at plot no. 118 which is surrounded by several residential accommodation and with densely populated residential area now virtually covered with *abadi*, specifically when the other plot no. 206 situated in the same village has already been reserved as burial ground for dead bodies pertains to children having faith in hindu religion.

12. The above mentioned exercise shall be carried out by respondent no. 2 by way of issuing suitable direction in pursuance to observation made above to concerned authority as expeditiously as possible preferably within a period of eight weeks from the date of production of certified copy of this order.

13. Writ petition stands ***disposed of*** accordingly.

Order Date :- 13.12.2023

Shaswat