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WA No.1636 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.07.2024	Delivered on 19.07.2024
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CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

Writ Appeal No.1636 of 2024

S.Seenivasa Rao

... Appellant

Vs.

1. The District Collector,
District Collector Office,
Krishnagiri.
2. The District Revenue Officer,
District Collector Office,
Krishnagiri.
3. The Assistant Director,
Survey and Land Records Department,
District Collector Office,
Krishnagiri.
4. The Sub Collector,
Sub Collector Office,
Hosur,
Krishnagiri District.
5. The Tahsildar,
Taluk Office, Shoolagiri,
Krishnagiri District.

6. Mohan

7. Sivaji

.. Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 23.08.2023 made in W.P. No.1647 of 2022.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.A.Selvendran
Special Government Pleader, for RR 1 to 5

Ms. R.Poornima, for R6

No Appearance - R7

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellant is aggrieved by the dismissal of his Writ Petition in which he sought for a relief of a Writ of certiorari Mandamus to quash the order of the second respondent dated 30.12.2021 and to rectify the errors that had crept in the Revenue Records in respect of land measuring 25 cents in Survey No.207/6 of Maruthandapalli Village, Shoolagiri Taluk, Krishnagiri District.

2. It is the claim of the appellant that the said land served as a

<https://www.mhc.tn.gov.in/> burial ground for the Maratha (Namadev) Community in the said Village



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and it was so declared by the Assistant Settlement Officer as early as on 04.11.1965. It is the contention of the petitioner that an extent of about 25 cents in Survey No.207/6 of Maruthandapalli Village, which formed part of Survey No.207/4 was used as a burial ground of the Namdev Community in the Village which consisted of 10 to 12 families. During the settlement proceedings that took place in the year 1965, the land in question was declared as a Ryotwari Land and Patta was granted in favour of one Rajagopal Naidu.

3. The said grant was opposed by the predecessor of the petitioner/appellant viz. Nanjunda Rao, who made a claim before the Director of Settlements in RP 169 of 1965 for reclassification of 50 cents of land in Survey No.207/4 on the eastern part as burial ground for the Namdev Community. The case was remitted to the Assistant Settlement Officer by the Director of Settlement by its order dated 14.07.1965. After remand, the Assistant Settlement Officer conducted an enquiry and after giving opportunity to the Pattadarar viz. Rajagopal Naidu, based on the records concluded that 25 cents of land in Survey No.207 /6 was used as a burial ground and the same was improperly included in the holding of the land owner as Ryoti land. Therefore, the said land was directed to be



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removed from the Patta granted to Rajagopal Naidu and treated as burial ground Promboke. It is admitted that this order has become final.

Thereafter, it appears that the sixth and seventh respondents encroached upon the land. Therefore, the petitioner/appellant made several representations to the Authorities concerned, since those representations remained unanswered, he moved this Court by way of a Writ Petition in WP No.3783 of 2018 seeking a Writ of Mandamus directing the respondents to consider his representation dated 23.01.2017 to maintain 25 cents of land in Survey No.207/6 as a burial ground.

4. When the above Writ Petition came up for hearing before this Court, the learned Special Government Pleader had produced a letter addressed to him by the Tahsildar, Shoolagiri, wherein it was observed that the land in Survey No.207/6 remained only as a burial ground and it was omitted to be included in the 'A' Register. The said letter also states that steps are being taken to classify the said land as burial ground through the Sub Collector, Hosur. Another order dated 22.02.2018 made by the Tahsildar, Shoolagiri was also placed before the Division Bench, wherein the Tahsildar, Shoolagiri has observed as follows:



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“இதன் அடிப்படையில் நிலஉடமை பதிவு
மேம்பாட்டுத்திட்டத்திற்கு முன்பும் நிலஉடமைபதிவு
மேம்பாட்டுத்திட்டத்தின் போதும் உள்ள
புலப்படத்தில் மேற்படி புலஎண் 207/6 விஸ் 0.25
ஏக்கர் நிலத்திற்கு அளவுகள் குறிக்கப்பட்டு
மாறுதல்கள் செய்யப்பட்டுள்ளது தெரியவருகிறது.
ஆனால் நிலஉடமைபதிவு மேம்பாட்டுத்திட்டத்தின்
போது கிராம “அ” பதிவேட்டில் மேற்படி புலஎண்
207/6 விஸ் 0.25 ஏக்கர் நிலம் மயானம் என
தாக்கல் செய்யப்படாமல் விடுப்பட்டுள்ளது கிராம
“அ” பதிவேட்டினை பரிசீலனை செய்ததில்
தெரியவருகிறது.

மேற்படி புலத்தினை தணிக்கை மற்றும்
நிலஅளவை செய்யப்பட்டதில் மேற்படி நிலத்திற்கு
அருகில் உள்ள பட்டாதாரர் திரு.மோகன்
(வகையறாக்கள்) ஆக்கிரமிப்பு செய்து விவசாயம்
செய்து வருவது தெரியவந்தது. மேற்படி
நிலத்தினை நிலஅளவை செய்து நான்கு புறமும்
கற்கள் நட்டு மனுதாரருக்கு
அத்துகாட்டப்பட்டுவிட்டது. மனுதாரரும் தனது
வாக்குமீலத்தில் தனது மனுவின் மீது



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நடவடிக்கை மேற்கொள்ளப்பட்டுவிட்டது என
தெரிவித்துள்ளார். மேலும் கிராம “அ” பதிவேட்டில்
விடுப்பட்டுள்ள மருதாண்டப்பள்ளி கிராம புலஎண்
207/6 விஸ் 0.25 ஏக்கர் நிலத்தினை மயானம்
என தாக்கல் செய்ய ஓசூர் சாா-ஆட்சியர் அவர்கள்
மூலமாக கிருஷ்ணகிரி மாவட்ட வருவாய் அலுவலர்
அவர்களுக்கு முன்மொழிகள் அனுப்ப நடவடிக்கை
மேற்கொள்ளப்பட்டு வருகிறது என இதன்மூலம்
மனுதாரருக்கு தெரிவிக்கப்படுகிறது.”

When the Writ Petition came up for hearing on 23.02.2018 these proceedings were placed before the First Division Bench of this Court and hence the Writ Petition was disposed of observing as follows:

“From the letter bearing Na.Ka.565/2018/A2 dated 23.02.2018 of the Tahsildar, Shoolagiri, addressed to the Government Pleader, it appears that the grievances of the petitioner have been redressed. Let a copy of the letter be taken on record.

Writ Petition is dismissed as infructuous as the

<https://www.mhc.tn.gov.in/judis> *grievances of the petitioner have been redressed.”*



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5. Complaining that despite the said orders of the Division Bench no action has been taken to classify the land as burial ground and earmark it, the petitioner filed another Writ Petition in WP No.14067 of 2021 which came to be disposed of on 08.07.2021. A direction was issued to the second respondent viz. the District Revenue Officer, Krishnagiri to consider the representation of the petitioner and pass orders there on. It is pursuant to the said direction, the second respondent had passed the order impugned in the Writ Petition on 30.12.2021.

6. The second respondent concluded that though there was an order of the Settlement Officer on 14.11.1965 and the Village Administrative Officer had filed a Report stating that the Namdev Community has been using the land in Survey No.207/6 as a burial ground and the encroachers viz. the respondents 6 and 7 in the Writ Petition have been objecting to the same. The second respondent also referred to the Rules framed under the Panchayat Act regarding provision of burial grounds to conclude that since there are houses within 90 meters from the burial ground from Survey No.207/6, it cannot be used



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as a burial ground. On the said conclusion, the District Revenue officer rejected the claim. Hence the Writ Petition.

7. The learned Single Judge concluded that provision of burial ground in the subject property will create law and order problems in the locality. Therefore, according to the Writ Court, the Authorities were justified in rejecting the claim of the petitioner. Hence this Appeal.

8. We have heard Mr.R.Bharath Kumar, learned counsel appearing for the appellant, Mr.A.Selvendran. learned Special Government Pleader appearing for respondents 1 to 5 and Mrs.R.Poornima, learned counsel appearing for the sixth respondent.

9. Mr.R.Bharath Kumar, learned counsel appearing for the appellant would contend that as early as 1965 that is on 14.11.1965, the Settlement Officer has found that an area of 25 cents in Survey No.207/6 was used as a burial ground and that conclusion is based on the evidence of C.W.2 the Settlement Deputy Tahsildar, Branch Settlement Office at Salem. The Settlement Officer has conducted a full-fledged enquiry



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examined various exhibits that were marked and has arrived at the conclusion that an extent of 25 cents of land was wrongly included as Ryotwari land in the holding of Rajagopal Naidu and the said land was used as burial ground by the Namdev Community and there was a direction to reclassify it and show it as burial ground Promboke. This order was implemented and there were burials made by the Community.

10. The learned counsel would also draw our attention to the Report of the Tahsildar, Shoolagiri, dated 23.02.2018 wherein he has very clearly stated that before and during the UDR that was carried out between 1980 and 1984, an extent of 25 cents in Survey No.207/6 was shown as burial ground and the same was however omitted to be included in the 'A' Register of the Village. It was also pointed out that the Tahsildar has marked the boundaries of the said 25 cents, laid boundary stones and reported the matter to the Sub Collector. Therefore, the fact that the area was used as a burial ground was acknowledged by the Authorities as late as February 2018.

11. The learned counsel would also invite our attention to the



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statement of the Village Administrative Officer, Maruthandapalli, wherein he has very specifically stated that after 2015 dead body of a person belonging to Namdev Community was buried in the disputed land. He would also point out that the Tahsildar, Hosur had in his Report specifically observed that the extent of Survey No.207/4 has always been shown as 2.66 acres and the extent of Survey No.207/6 has been shown as 0.25 acres. This 0.25 acres in Survey No.207/6 was even according to the Tahsildar omitted to be shown as Mayanam in the Village 'A' Register.

12. The learned counsel would further contend that ignoring all these Reports, the Revenue Divisional Officer had chosen to invoke the Rules that were put in place in the year 1999 viz. the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999 to conclude that this land cannot be classified as burial ground since houses are situate within the distance of 15 metres and Patta has been granted to the encroachers.

13. The learned counsel would submit that the grievance of the



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petitioner is that in the light of the declaration made by the Settlement Officer as early as on 1965 and in the light of the fact that all the Revenue Authorities have affirmed that this land is being used as a burial ground by the Namdev Community, the grant of Patta in favour of Muniappa Naidu itself is wrong has been completely over looked by the District Revenue officer as wells as the learned Single Judge. He would also rely upon the judgment of a Full Bench of this Court in ***Jagadheeswari v. B.BabuNaidu***, made in ***WA No.1037 of 2023 dated 20.07.2023***, where the Full Bench while answering the question as to whether burials can take place at a place other than the designated land more particularly when designated land exists in the Village.

14. Contending contra, Mr.A.Selvendran, learned Special Government Pleader appearing for respondents 1 to 5 would contend that the District Revenue officer has taken note of the entire facts and has to come to the conclusion that since this land was not used as a burial ground and is under cultivation by some private individuals, the same cannot be directed to be classified as a burial ground at this distant point of time.



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15. Mrs.R.Poornima, learned counsel appearing for the sixth respondent would submit patta has been granted to them and therefore, they are the owners of the property and hence the order of the District Revenue officer should be sustained.

16. We have considered the rival submissions.

17. The following facts are admitted:

1.The land in question was classified as a burial ground by the Settlement Officer as early as on 14.11.1965 after a proper enquiry that order has become final;

2.The land measuring about 25 cents in Survey No.207/6 has been used as a burial ground by the Namdev Community and dead have been buried there even as late as 2015;

3.The Tahsildar, Shoolagiri, had accepted the fact that about 12 families belonging to Namdev Community have been living in Shoolagiri for 120 years and the dead of the Community are buried in Survey No.207/4 in an extent of 25 cents in Survey No.207/4 which was sub divided as



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Survey No.207/6 by the Settlement Officer on 14.11.1965;

4.Though Patta for an extent of 2 acres 91 cents in Survey No.207/4 was granted to one Rajagopal Naidu, the same was subsequently limited to an extent of 2 acres and 66 cents after reclassifying 25 cents as burial ground;

5.Before and after the UDR Scheme, the FMB of the Village shows that the Survey No.207/6 measuring 25 cents is treated as Mayanam, however the same was not reflected in the 'A' Register; and

6. The private respondents have encroached upon the said property and are doing cultivation.

These facts are also reflected in the proceedings of the Tahsildar, Shoolagiri dated 23.02.2018. Therefore, we have to now decide as to whether the District Revenue Officer was justified in rejecting the claim of the appellant.

18. The 1999 Rules mandates that the Local Authority must make a provision for burial and burning grounds in every Village Panchayat.

Rule 7 also prohibits burial and burning of any corpse at a place which is



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not notified as a burial and burning ground, if it is situate within 90 metres of a dwelling place or a source of drinking water supply.

Rule 7(1) reads as follows:

7. Place for burial and burning grounds.- (1)

No person shall bury or burn or cause to be buried or burnt any corpse in any place within ninety metres of a dwelling place or source of drinking water-supply other than a place licenced as a burial and burning ground.

19. The District Revenue Officer has taken this Rule as an absolute prohibition against burial and burning of a corpse within 90 metres of a dwelling place or a source of drinking water supply. This is actually a misreading of the Rule by the District Revenue Officer. What is prohibited is burning and burial in any place which is situate within 90 metres of a dwelling place or a source of drinking water supply other than a place licensed as a burial or burning ground.

20. In the case on hand, there is enough and more material to show



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that the place in question was a burial ground even in the year 1965 and was being used as a burial ground till recently i.e. during the year 2015.

These facts are borne out by the Reports of the Officials themselves. Therefore, the District Revenue Officer was not right in concluding that since houses are situate within 50 meters, this place cannot be declared as a burial ground. The District Revenue Officer completely lost sight of the scope of enquiry before her. She was only required by this Court to decide on the representation of the petitioner to maintain a place which is already declared as a burial ground as a burial ground.

21. The petitioner was not seeking to declare a virgin area as a burial ground. From the order of the District Revenue Officer itself it could be seen that the Village Administrative Officer as well as the Tahsildar, Shoolagiri, have affirmed the fact that the land in question is being used as a burial ground and dead were buried there. Therefore, it is not some place which has not been declared as a burial ground. The learned Single Judge had opined that there might be law and order problem in the Village. That was not the case of any of the parties, if we are to up hold rights of encroachers on the ground that there may be law and order problem, that will set a very bad precedent.



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22. The District Revenue Officer has observed that the basis for the declaration made by the Settlement officer on 14.11.1965 is not seen from the order. This observation is on the face of it erroneous. A perusal of the order of the Settlement Officer shows that the Settlement officer had examined at least seven witnesses including two official witnesses marked at least four documents and has based on the evidence that was placed before him has come to the conclusion that the land in question viz. 25 cents in Survey No.207/6 is being used as a burial ground.

23. The Settlement officer has also examined the sale documents of the year 1957 to come to the conclusion that the land was always used as a burial ground by the Namdev Community people. We therefore find that the District Revenue Officer had not only travelled beyond the scope of the enquiry but has also misread and misunderstood the order of the Settlement Officer. An order of the Settlement officer made under the provisions of the Inam Abolition Act, is pursuant to a judicial power conferred on him to determine the character of the land. Such order is entitled to greater weight than ordinary official acts of the Revenue

<https://www.mhc.tn.gov.in/judicial-department>. Therefore, we are unable to agree with the conclusion of



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the District Revenue Officer that the order dated 14.11.1965 does not disclose the basis on which the declaration was made. In fact the Settlement Deputy Tahsildar, who was examined as C.W.2 before the Settlement Officer has deposed that there is enough and more evidence to show that the land was being used as a burial ground.

24. In the light of the above, we find that the conclusions of the District Revenue Officer are wholly unacceptable. We are unable to resist observing that the District Revenue Officer had chosen to help the encroachers by overriding the order of the Settlement Officer made in the year 1965. In the light of the statements of the Village Administrative Officer and the Tahsildar, Shoolagiri to the effect that the land was being used only as a burial ground till 2015, the District Revenue Officer was not right in concluding that the land was not being used as a burial ground.

25. We therefore **allow the Appeal**, set aside the orders of the learned Single Judge as well as the District Revenue Officer. We direct the District Administration to remove the encroachments in the land



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measuring about 25 cents in Survey No.207/6 of Maruthandapalli Village in Shoolagiri Taluk of Krishnagiri District, within a period of six months from the date of receipt of a copy of the order, fence the area and ensure that it is maintained as a burial ground in future.

26. Before parting with this case, we must point out that the official apathy is writ large on the facts demonstrated above. The entire litigation spanning over 59 years over a piece of land which was used as a burial ground has been necessitated because of the complete failure of the official machinery to keep the Revenue Records updated. We find that the failure on the part of the Revenue Authorities to implement the orders of the Settlement Tahsildar passed in the year 1965 have led to this long drawn litigation over a burial ground. We are sure that the souls of persons buried therein would have also suffered because of this prolonged litigation.

27. The petitioner has been moving heaven and earth at least for the past seven years in this Court not to say of the efforts made by him in knocking at the doors of the Revenue Authorities. We are therefore



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convinced that this is the case where the official respondents should be made to pay the cost of the petitioner. The State is therefore, directed to pay cost of Rs.1,00,000/- to the petitioner/appellant within a period of four weeks from today. If it is so advised or if it is so desired the State can recover the costs from the salary of the second respondent who passed the order impugned in the Writ Petition.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
19.07.2024

jv

Index: Yes

Internet: Yes

Speaking order

Neutral Citation: Yes



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To

1. The District Collector,
District Collector Office,
Krishnagiri.
2. The District Revenue Officer,
District Collector Office, Krishnagiri.
3. The Assistant Director,
Survey and Land Records Department,
District Collector Office,
Krishnagiri.
4. The Sub Collector,
Sub Collector Office,
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