

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/11/2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.SIVAGNANAM

W.P.No.29129 of 2014

1. Jayanthi Shanmuga Sundaram

2. Suganthi Ramasamy

...Petitioners

(both represented by the registered
Power of Attorney Agent
Mr.R.Suresh)

Vs

1. State of Tamil nadu
rep. By its District Magistrate
and the District Collector
Salem District.

2. The Commissioner of Police
Salem City
Salem.

3. The Commissioner
Salem City Municipal Corporation
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to stop forthwith and prevent any illegal cremation and other illegal activities and encroachments in and upon the petitioners land measuring an extent of 2.44 acres comprised in S.No.27/2C2 in Bodinaickenpatti Village, situated along and abutting the Suramangalam Main Road (Salem Junction to Salem market) within the Salem District, Salem Registration Sub-Dist, Salem City, Tamil Nadu which will enable the petitioners to retrieve the said lands free from any kind of alienation or encumbrance or encroachment and to give protection for securing their property and thus prevent any acts of illegality committed therein by the respondents, their men or agents or servants.

For petitioner ...Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

For respondents .. Mr.R.Lakshmi Narayanan
Additional Government Pleader
for R.R.1 and 2.

M/s.K.Bhuvaneswari
for R.3.

O R D E R

With the consent of the learned counsel appearing for the parties, this writ petition is taken up for final disposal.

2. Heard Mr.Jayesh B.Dolia for M/s.Aiyar and Dolia for the petitioner, Mr.R.Lakshmi Narayanan, learned Additional Government Pleader for the respondents 1 and 2 and Ms.K.Bhuvaneshwari for the third respondent.

3. This writ petition has been filed praying to direct the respondents to stop forthwith and prevent any illegal cremation and other illegal activities and encroachments in and upon the petitioners land measuring an extent of 22.44 acres comprised in S.No.27/2C2 in Bodinaickenpatti Village, situated along and abutting the Suramangalam Main Road (Salem Junction to Salem market) within the Salem District, Salem Registration Sub-Dist, Salem City, Tamil Nadu which will enable the petitioners to retrieve the said lands free from any king of alienation or encumbrance or encroachment and to give protection for securing their property and thus prevent any acts of illegality committed therein by the respondents, their men or agents or servants.

4. It may not be very necessary to go into the factual details of the instant case on account of the stand taken by the third respondent Corporation in its counter affidavit, virtually conceding to the prayer sought for.

5. The petitioner has raised a complaint about the illegal burial of dead bodies in his land and also with regard to a large raw sewage channel cutting across the petitioners land, etc.

6. In the counter affidavit filed by the third respondent Corporation it has been stated that the respondents have neither consented nor approved the act of cremating dead bodies near the open shed situated on the south western portion of the petitioners land and they will abide and obey by the orders passed by this Court in this respect.

7. Further, it is stated in the counter affidavit that the petitioners are free to have their main road access without any hindrance. It would be worthwhile to take note of the averments made in paragraph 11 of the counter affidavit which reads as follows:-

"... The Storm Water Drainage work on the alleged southern side of the petitioners land was stopped forthwith. Alternate grading will be done and the storm water will be carried to the west and linked to existing drain along NH.7. A separate direct road way to the sewage treatment plant from the suramangalam main road on Government/Corporation Land without using the petitioners land will be formed. The existing raw sewage channel on the north eastern and south eastern portion will be closed and carried through a proposed pucca drain and culvert to be constructed on the

eastern side of the Sewage Treatment Plant. In co-operation with the 1st and 2nd respondents any illegal cremation will be prohibited, stopped immediately and the open shed structure being used on the south eastern portion of the land will be removed immediately and action will be taken against anyone attempting to carry out such illegal disposal of the dead. Due to the neglected conditions of the petitioners land without proper securing like boundary walls etc., such oversights if any might have happened."

8. In the light of the stand taken by the third respondent, it would be sufficient to direct the third respondent to comply with what they have stated in their counter affidavit within a time frame, since the counter affidavit does not stipulated within what time they will carry out those works except by stating that they will do it immediately.

9. The learned counsel appearing for the third respondent submitted that reasonable time may be granted to comply with the undertaking given in their counter affidavit.

10. Accordingly, the writ petition is disposed of as follows:-

(i) The third respondent is directed to provide a separate road way from the Suramangalam main road on Government/Corporation land without using the petitioners land, within a period of three months, from the date of receipt of a copy of this order.

(ii) The existing raw sewage channel on the north eastern and south eastern portion shall be closed by the third respondent through a proposed pucca drain and culvert to be constructed on the eastern side of the Sewage Treatment Plant, within a period of two months, from the date of receipt of a copy of this order.

(iii) The third respondent with the assistance of the respondents 1 and 2 shall take effective steps for prohibiting illegal cremation/burial in the land in question and remove the shed like structure on the south eastern portion of the land, within a period of four weeks, from the date of receipt of a copy of this order.

No costs. Consequently, the connected Miscellaneous Petition is closed.
Mvs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

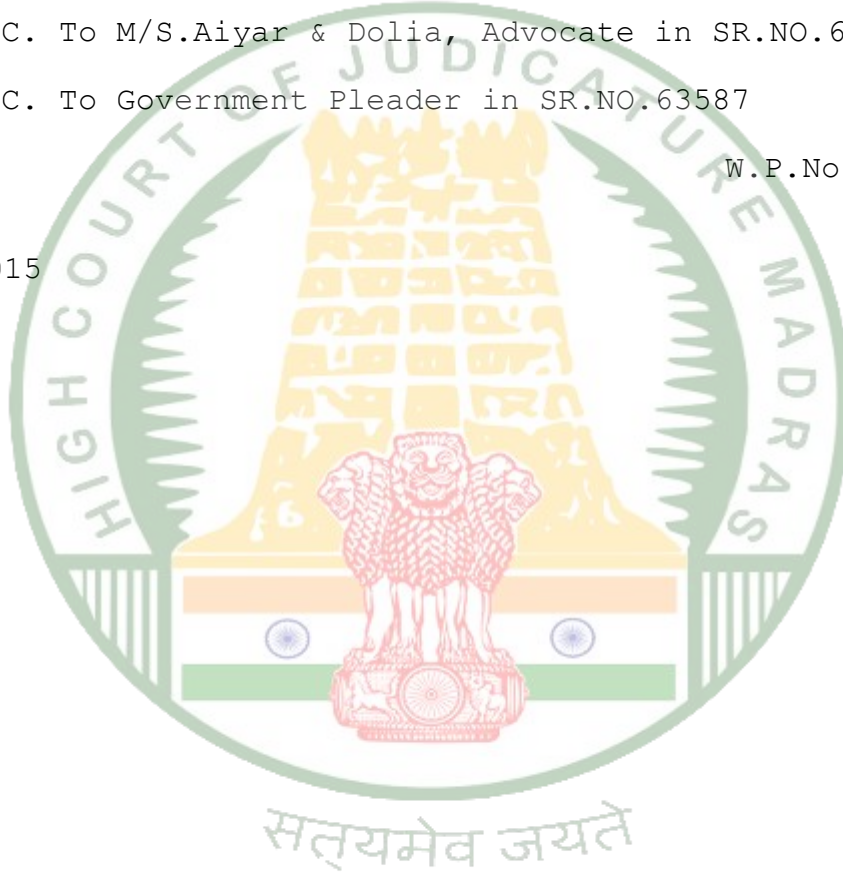
1. The District Magistrate and the District Collector
State of Tamil nadu
Salem District.
2. The Commissioner of Police
Salem City
Salem.
3. The Commissioner
Salem City Municipal Corporation
Salem.

+1 C.C. To M/S.Aiyar & Dolia, Advocate in SR.NO.63318

+1 C.C. To Government Pleader in SR.NO.63587

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SAI(CO)
sd : 11/12/2015



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