

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.24773 of 2009
and
M.P. No. 1 of 2009

L. Basavalingaraju

...Petitioner

Vs.

1 . The District Collector
Krishnagiri

2. Tahsildar
Taluk Office, Hosur.

3. The Executive Officer
Special Grade Town Panchayat
Mathigiri

4. The Deputy Superintendent
of Police
Office of the DSP Denkanikotta Road
Hosur, Krishnagiri.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to remove the corpse from the property at Survey No.761/1, Midigarapalli Village, HCF Post, Hosur Taluk, Krishnagiri and to pass further orders.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.P. Sanjay Gandhi
Addl. Government Pleader for R1,2 & 4
Mr. A. Arumugam for R3

O R D E R

The prayer in the writ petition is for a Mandamus directing the respondents to remove the corpse from the property at Survey No.761/1, Midigarapalli Village, HCF Post, Hosur Taluk, Krishnagiri.

2. The case of the petitioner is that he is one of the co-owners of the land in Survey No.761/3, 4 and 8 of Midigarapalli Village, HCF Post, Hosur Taluk, Krishnagiri. It is comprised in patta No.1107. The petitioner further states that he has been in enjoyment of the property in Survey Nos.761/1 and 761/2. A burial ground for that area is located adjoining at the Survey No.761/7. The villagers consign the dead in Survey Nos.761/7 and 783.

3. Heard learned counsel for the respective parties.

4. Learned counsel appearing for the petitioner states that eventhough Survey No.761/1 belongs to the Government and earmarked, it is in possession and enjoyment of the petitioner as it lies adjacent to the other lands belonging to the petitioner and the co-owners at Survey No.761/3, 4 & 8. The land under Survey No.761/1 had been in the enjoyment of the petitioner and it is sought to be interfered by others, on the guise of entering into the burial ground, which is exactly located at Survey No.761/7. Further case, as submitted by the

learned counsel appearing for the petitioner is that some times mistakenly or wrongly, dead bodies are buried in the lands at Survey No.761/1, which was in the occupation and enjoyment of the petitioner. Therefore, under these circumstances, the petitioner had come out with the present writ petition, for the aforesaid prayer.

5. Per contra, learned counsel appearing for the third respondent submits, by quoting the counter filed by the third respondent that Survey No.761/7 is a burial ground, which was in the use of the people belonging to the Hindus of that area. In that Survey Number only a small extent was available, which was not enough to have the required burial ground for the village people. Therefore, based on the request of people belonging to Adi Dravidar and other schedule castes, the Revenue authorities permitted them to use the land at Survey No.761/1 as burial ground. After getting such permission, those people are using that land at Survey No.761/1 as their burial ground and in fact not the entire land at Survey No.761/1 is used as a burial ground but only a portion. The remaining land in Survey No.761/1, though belongs to the Government as poramboke, has been illegally encroached by one Mr.Nagaraj, who is none other than the brother of the present writ petitioner. Both of them are joint owners of the land at Survey No.761/3, 4 & 8.

6. The third respondent in his counter has further

stated that the petitioner's patta land in Survey No.761/3, 4 & 8 are not disturbed and the petitioner has no right to claim ownership of the land at Survey No.761/1 & 2. These lands either belong to the Government as poramboke land or used as burial ground under the third respondent Panchayat. When that be the position, the writ petition is totally misconceived and therefore learned counsel for the third respondent seeks that the writ petition has to be dismissed.

7. Learned Additional Government Pleader appearing for the respondents 1, 2 & 4 also makes a similar submission that the land in Survey No.761/1 is a Government land and a portion of which has been permitted to be used by the village people, especially people belonging to Adi Dravidar and other scheduled caste community, as a burial ground and the Government has every right to do the same for the welfare of the said people of the village. Since the petitioner has no right whatsoever in the land at Survey No.761/1, there is no room for any quarrel as has been claimed by the petitioner in the writ petition and therefore he also prays that the writ petition is misconceived and therefore is liable to be dismissed.

8. This Court has considered the rival claims submitted by the parties. It is an admitted case that Survey No.761/1 is a land belonging to the Government as Poramboke land. It is also the admitted fact that the land in Survey Nos. 761/3, 4 and

8 belongs to the petitioner and other co-owners and that has nothing to do with the land at Survey No.761/1. In this regard, the 'A' Register extract issued by the Tahsildar, Hosur has been produced by the learned counsel for the third respondent, wherein the ownership of the land at Survey No.761/1 has been clearly mentioned as Government Poramboke, measuring about 35.0 ares. A portion of the same has been permitted by the Revenue department, to be used as a burial ground, mainly for the people belonging to Adi Dravidar and other scheduled caste people. Whiles, the activities of burial of dead bodies cannot be interfered with, by anyone, including the writ petitioner.

9. By considering the above factual matrix as well as supporting documents filed by either parties, this Court has no hesitation to hold that the land at Survey No.761/1 at Midigarapalli Village, HCF Post, Hosur Taluk, Krishnagiri, is a Government poramboke and therefore the petitioner has no right whatsoever to claim any usage or possession of the said land. The petitioner also has not produced any document to show that they are in possession and enjoyment of the land at Survey No.761/1 and is recognised by any authorities, in the manner known to law. When this be the position, the claim made by the petitioner, as is sought for in the writ petition, by way of prayer, cannot be granted.

10. However, one of the grievance of the petitioner that would be agreeing is that the people who comes to bury a dead

body at Survey No.761/1 either mistakenly or wantonly may, encroach the adjoining land of the petitioner at Survey No.761/3, 4 & 8. In that eventuality, it is very difficult for the petitioner to protect the land and therefore such erroneous act of the village people can be corrected. I find some force in the plea of the writ petitioner. Naturally, since the burial ground is not demarcated or fenced, there may be a chance of usage by the private parties. Therefore, this Court is of the view that a direction could also be given to the respondents to demarcate and if possible make a fence of the land at burial ground in Survey No.761/7 as well as Survey No.761/1, for the purpose of burial ground it would protect the interest of other adjacent private owners of the respective properties including the petitioner. Needful, as directed above could be done by the authorities within a period of six months from the date of receipt of a copy of this order.

11. Hence, the Writ Petition is disposed of, with the following directions.

1. The prayer sought for in the writ petition is not capable of granting and therefore the writ petition is dismissed;
2. However, there shall be a direction to the respondents to demarcate and fence the burial ground area at Survey No.761/1 and 761/7 at Midigarapalli Village, HCF Post, Hosur Taluk, Krishnagiri; and
3. the needful shall be done within a period of six months

from the date of receipt of a copy of this order.

The Writ Petition is disposed of, accordingly.
Consequently, the connected M.P is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The District Collector
Krishnagiri

2. The Tahsildar
Taluk Office, Hosur.

3. The Executive Officer
Special Grade Town Panchayat
Mathigiri

4. The Deputy Superintendent
of Police
Office of the DSP Denkanikotta Road
Hosur, Krishnagiri.

+ 1 cc to Mr.Arumugam, Advocate SR.No.59395

+ 1 cc to Mr.V.Raghavachari, Advocate SR.No.60047.

RK(CO)
YJ(12/11/2016)

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