

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.35954 of 2016

K.Murugesan

.. Petitioner

-vs-

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Deputy Director,
Town and Country Planning,
Vedhachalam Nagar,
Chengalpattu-603 001.

3.The Tahsildar,
Sriperumbudur Taluk Office,
Sriperumbudur,
Kancheepuram District.

4.The Inspector of Police,
Oragadam Police Station,
Sriperumbudur Taluk,
Kancheepuram District.

5.The Village President,
Vattambakkam Village, Panchayath,
Panapakkam Village,
Sriperumbudur Taluk,
Kancheepuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to maintain and keep the character and classification of the land in Survey No.47/10 of Panapakkam Village, Sriperumbudur Taluk, Kancheepuram District as Burial Ground / Grave Yard.

For Petitioner :: Mr.R.Munuswamy

For Respondents :: Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Mandamus directing the respondents to maintain and keep the character and classification of the land in Survey No.47/10 of Panapakkam Village, Sriperumbudur Taluk, Kancheepuram District as Burial Ground / Graveyard.

2.It is stated by the petitioner in the affidavit filed in support of this writ petition that the construction of graveyard for Panapakkam Village in the land in S.No.47/10 categorised as 'Mayanam Land' has been sanctioned by the Government, but the said land in S.No.47/10 has been encroached by a third party in collusion with the fifth respondent and got it approved as a house site along with the adjoining lands. He states that just opposite to the petitioner's property, a vacant land comprised in S.No.47/7 is categorised as 'Channel Poramboke'. While the petitioner was proceeding with the construction of residential apartment in his property in S.No.47/7, the villagers of Panapakkam Village started burying bodies of dead persons in the land in the said survey number with the active support of the fifth respondent, and consequently he came to know that the dead bodies are buried on the advice of the fifth respondent.

3.It is also admitted by the petitioner in the affidavit that he filed a writ petition in W.P.No.29004 of 2014 before this Court and it was in respect of S.No.47/7 categorised as channel poramboke. In the present writ petition, the petitioner wants the respondents to consider his representation wherein he has stated that burial ground is available in S.No.47/10.

4.The learned Special Government Pleader appearing for the respondents submitted that even in the counter filed in the earlier writ petition in W.P.No.29004 of 2014, the existence of burial ground has been clearly stated.

5.Heard the learned counsel on either side and perused the materials available on record.

6.Whether the burial ground is in S.No.47/7 or 47/10, the existence of the burial ground has been clearly stated in the counter filed on behalf of the Government in the earlier writ petition in W.P.No.29004 of 2014. Therefore, there is no question of making any further representation, to be considered

by the respondents, when already there is a writ petition pending. Therefore, whatever points which the petitioner wants to agitate can be raised only in W.P.No.29004 of 2014 and not in the present writ petition.

7. In fact, when this writ petition was admitted, this Court directed the learned counsel for the petitioner to withdraw this writ petition and the matter was directed to be posted today under the caption "for withdrawal". But the learned counsel for the petitioner has not withdrawn this writ petition and has invited an order from this Court. Therefore, it is just and necessary to clearly state that what cannot be considered cannot be directed to be considered. In this regard it would be appropriate to refer to the decision of a Division Bench of this Court in the case of (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, wherein the Division Bench of this Court held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on Paragraph Nos.18 to 210 of the decision of the Hon'ble Supreme Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Paragraph Nos.18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation.

When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

8. Thus, it is evident from the decision of the Hon'ble Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. It is also evident that there is no strait-jacket formula to be adopted by the Court in simply issuing a direction to consider one's representation without examining the consequences if such a direction is issued.

9. In this case on hand, the direction as sought for by the petitioner, if issued, will result in adverse and serious consequences, especially when there is a pendency of writ petition relating to the subject involved in the present writ petition, and there is a counter in the earlier writ petition clearly stating the existence and location of the burial ground in a particular survey number. Therefore, the question of making further representation and coming to the Court for issuance of another direction thereby inviting an order from this Court, is not at all permissible. The petitioner can very well raise his plea in the earlier writ petition that is pending.

10. In view of all the reasons stated above, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM

To

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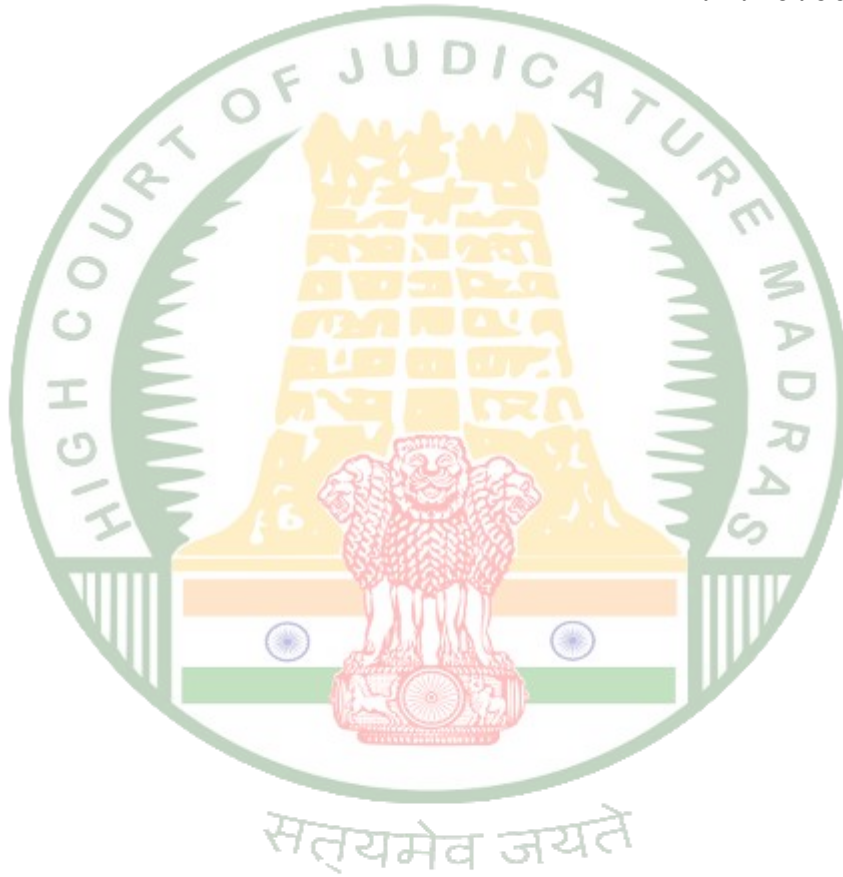
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Sriperumbudur Taluk, Kancheepuram District.

+1cc to Mr.R.Munuswamy, Advocate, S.R.No.59908
+1cc to the Government Pleader, S.R.No.60171

RJ(CO)
BB(29/12/2016)

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