

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM

THE HONOURABLE MR.JUSTICE.T.RAJA

W.P.No.22604 of 2016
and
W.M.P.No.19284 of 2016

K.G.Shanmugam

... Petitioner

Vs.

1. The Executive Officer,
Nangavalli Town Panchayat,
Nangavalli, Mettur Taluk,
Salem District.
2. The Chairman,
Nangavalli Town Panchayat,
Nangavalli, Mettur Taluk,
Salem District.
3. The Sub Collector,
Mettur.

(R3 is suo motu impleaded as per order
dated 11.07.2016 in W.P.No.22604 of 2016)

.... Respondents

Prayer.: Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus forbearing the respondents and their subordinates from interfering in any manner in the land in S.No.227/1 of Samattiyur Village, Nangavalli Town Panchayat, Mettur Taluk, Salem District for construction of Composition of Solid-Waste Management Project in the burial ground, consequently, direct the respondents to identify the alternative land for the aforesaid project in Nangavalli Town Panchayat.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking a mandamus, forbearing the respondents and their subordinates from interfering in any manner in the land in S.No.227/1 of Samattiyur Village, Nangavalli Town Panchayat, Mettur Taluk, Salem District for construction of Composition of Solid-Waste Management Project in the burial ground and to direct the respondents to identify the alternative land for the aforesaid project in Nangavalli Town Panchayat.

2. Learned counsel appearing for the petitioner would submit that the petitioner is the 8th Ward Member in the respondent Town Panchayat and he was elected as Ward Member in the Local body election held in the month of October, 2011 and the second respondent is the said Town Panchayat. There are totally 15 ward members, elected by people for doing service to the public and society. On 14.06.2016, the 1st respondent along with other officials came to the land in S.No.227/1 of Samattiyur Village and informed that the Composition of Solid-Waste Management Project was going to be started in S.No.227/1 of Samattiyur Village. The said land in S.No.227/1 is classified as "Burial Ground" and is being used as burial ground by the 7th, 8th and 9th wards' people of Nangavalli Town Panchayat. It is further submitted that there was no discussion about the Composition of Solid-Waste Management Project in S.No.227/1 in the panchayat meeting and they have no knowledge about the same. Hence, the ward members made objections to the respondents on 15.06.2016. Even the petitioner and other ward members have given a representation to the respondents dated 21.06.2016 and the same is pending without any progress till date. But, on 23.06.2016, the respondents and revenue officials came to the said burial ground and was trying to survey the land in S.No.227/1 for the construction of the Composition of Solid-Waste Management project. The majority members of Panchayat have not given their approval for the aforesaid work and therefore, it cannot be implemented. Moreover, there was a law and order situation in the locality and a peace committee was convened by the Revenue officials and police department and the people said that the proposed Composition of Solid-Waste Management project should not be in the burial ground and requested that it should be only in the Government Poramboke Land, which is adjoining the burial ground and far away from residential area. But the respondents wanted to implement the same in the burial ground in S.No.227/1, without following the procedures contemplated under the Tamil Nadu District Municipalities Act, 1920 and Rules of procedure of Town Panchayats. However, no work has been commenced, as there is no approval as on date and the said funds have to be allotted for

the welfare of the people in respect of all Wards of Town Panchayat. Therefore, the project should be implemented in Government Poramboke land and there are several lands available in the Town Panchayat. Hence, the petitioner has come forward with the present writ petition for protecting the burial ground.

3. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for respondents.

4. Although a detailed counter affidavit has been filed by the first respondent in this petition, this Court by order dated 29.06.2016, has passed an order of interim injunction. The grievance of the petitioner shows that the land covered in S.No.227/1 is classified as burial ground and the said burial ground is used by the 7th, 8th and 9th wards' people of Town Panchayat. While so, the decision taken to construct the Composition of Solid-Waste Management Project in the said land is totally illegal and impermissible. The reason is that when the land covered in S.No.227/1 was ear-marked for burial ground and the same has been used for the said purpose, if the said land is interfered with for construction of Composition of Solid and waste Management project, then the people, who are using the burial ground in S.No.227/1, will be put to great prejudice, although, the land which is used as burial ground in S.No.227/1 and adjacent land which is ear-marked for construction of Composition of Solid-waste Management project may belong to same S.No.227/1. But, however, the "Pathaiporamboke" which is also lying in the same S.No.227/1, is not used as burial ground. Therefore, the Nangavalli Town Panchayat council, vide its Resolution No.17(3) dated 03.03.2014, granted permission to take further action to implement the scheme in this "Pathaiporamboke", in Sammattiyur Village in 7th Ward of Nangavalli Town Panchayat. The petitioner, who is the 8th Ward Member belonging to opposite party, opposed the execution of work due to political vendetta with his party and the petitioner objected in the said statement that he has been elected as independent candidate. He would further submit that the petitioner, being one of the elected members of the Town Panchayat Council had given permission to the work after taking part in the council meeting and a resolution was passed in Resolution No.103 (13) on 31.12.2012 for making a request to the District Collector for allotment of particular land for implementation of the scheme. When the construction project was approved, the petitioner, who had given consent followed by a Resolution for allotment of the land for implementation of above project in the same S.No.227/1, cannot be allowed to challenge the same. Therefore, the writ petition is liable to be dismissed.

5. He would further submit that after filing of the counter affidavit by the first respondent, this court has suo motu impleaded the Sub Collector, Mettur Dam as third respondent for his report. Pursuant to that, he has also filed his report stating that the land in S.No.227/1 to a total extent of 1.51.0 Hectare, is located in Salem District, Mettur Taluk Nangavalli Town Panchayat, Nangavalli village and classified as "Pathai Poramboke" as per revenue records. The Nangavalli Town Panchayat has already requested 1 Acre of land for solid waste management project. After field verification by the Tahsildar and Sub Collector, Mettur land transfer proposal was submitted to Collector, Salem. Out of total extent of 1.51.0 Hectare in S.No.227/1, an extent of 0.40.5 Hectare was classified for solid waste management project in Nangavalli Town Panchayat and the said land was subdivided as S.No.227/5 and no objection was received from either public or local body. The District Revenue Officer, Salem also inspected the above land. In the meanwhile, the petitioner has filed the present writ petition. The said report further shows that the land available in S.No.227/1 can accommodate both solid waste management project and burial ground by giving a new subdivision in order to create enough space for burial purpose.

6. In this context, it is relevant to extract the relevant portions of the report, which read as follows:

"The Town Panchayat of Nangavalli not utilized the above land S.No.227/5 Extent 0.40.5 classified as solid waste management project. After land transfer proceedings issued by the District Collector, Salem, the Nangavalli Village, Samattiyur public encroached a small portion of land in east side of S.No.227/1 and S.No.227/5 for burial of dead bodies. Recently Nangavalli Town Panchayat started the above project in S.No.227/5. Even though the encroached land was not classified as Burial Ground in Revenue records, the public raised objection for the above project. In the mean time Thiru.K.G.Shanmugam, 8th Ward Councilor, Nangavalli Town Panchayat, filed a writ petition No.22604/2016 in the Hon'ble High court of Judicature at Madras.

In the light of above facts, it is hereby represented that enough land is available in S.No.227/1 to accommodate both solid waste management project and burial ground. Since burial already took place in a little extent on the East side of the S.No.227/5, that part may be left

out from the Solid Waste Management project. Hence, a new subdivision may be affected in the S.No.227/5 afresh in order to create enough space for burial purpose. The rest can be conveniently and without any disturbance be used for solid waste management project. Nangavalli Town Panchayat being a growing town panchayat urgently needs a Solid Waste management project. The presently identified land is totally suitable for the project and relocation to other places will be difficult and time consuming. "

7. In the light of the above, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. The report of the Sub Collector, Mettur Dam, Salem District dated 16.07.2016 shall form part of the record. The respondents shall proceed with the construction of the composition of solid and waste management project in S.No.227/1, without disturbing the space for burial purpose.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd
To

1. The Executive Officer,
Nangavalli Town Panchayat,
Nangavalli, Mettur Taluk,
Salem District.
2. The Chairman,
Nangavalli Town Panchayat,
Nangavalli, Mettur Taluk,
Salem District.
3. The Sub Collector,
Mettur.

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.2381
+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.2148

W.P.No.22604 of 2016
and WMP.No.19284 of 2016

KJ(CO)
CA(12/04/2017)