

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2017

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.27392 of 2016

V.B.R.Menon, Advocate

.. Petitioner

-VS-

1.The District Collector,
Kancheepuram District,
Collectorate, Kancheepuram 631 501.

2.The Tahsildar,
Pallavaram Taluk,
Pallavaram Municipal Office Complex,
Chromepet, Chennai 600 044.

3.The Executive Officer,
Public Works Department,
Water Resources Organisation,
Kodasthalaiyar Basin Division,
PWD Campus, J.N.Road,
Tiruvallur 602 001.

4.The Secretary to Government of Tamilnadu,
Revenue Department, Fort St. George,
Secretariat, Chennai 600 009.

5.The Secretary to Government of Tamilnadu,
Public Works Department, Fort St. George,
Secretariat, Chennai 600 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Impugned Order No.31028/2014/B2 dated 14.07.2016 and quash the same and consequently direct the 1st respondent to stop the illegal burial and cremation activities permanently and abate the public nuisances in S.No.456 of Kovur Village, Pallavaram Taluk, Kancheepuram District.

For Petitioner : Mr.V.B.R.Menon
Party-in-person

For Respondents : Mr.C.Manishankar
Addl. Adv. General, assisted by
Mr.T.N.Rajagopalan,
Spl.G.P.

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The challenge is laid by the petitioner to the impugned order dated 14.07.2016 and seeking consequential directions against the District Collector / first respondent to stop the illegal burial and cremation activities in S.No.456/1, Kovur Village, Pallavaram Taluk, Kancheepuram District.

2.In so far as the aforesaid relief is concerned, with the intervention of the learned Additional Advocate General, the matter has been resolved with the notice board being kept at the site directing prohibition of further burial / cremation. In order to protect

the margin lands from future encroachments / public nuisances, the excess channel margin land is to be developed as a park / garden with necessary fencing as required.

3.The second aspect raised in the petition is the threat to the petitioner's compound wall pursuant to the impugned order without determining the common boundary in accordance with law. It is the case of the petitioner that there is no encroachment as alleged and even were it to be presumed that there was an alleged encroachment, it is to the extent of 5 cents on a two acre land and thus, it would fall within the margin of error of survey upto 5% as permissible under the Survey Manual. In the facts of the case, it would amount to 2½%. Not only that, he has stated that he has himself got a GPS and ETS survey done and handed over the report to the first respondent, so that the first respondent can satisfy himself about those reports.

4.The aforesaid being the position, unless there was some reason to suspect the surveys, there would be no occasion for the first respondent to take any further action in this behalf.

5.The third-linked aspect to the second aspect is the issue of

easementary rights over a public road and the direction sought to be made vide the impugned order coupled with the eviction notice dated 22.11.2016 seeking removal of the road. In this behalf, the petitioner has relied upon the enjoyment certificate dated 06.11.1997 for usage of the road and an enquiry held by the Revenue Divisional Officer on 22.05.2002 regarding disturbances on the easmentary rights, which resulted in an order of permanent injunction dated 19.11.2010 by the Court of the District Munsif cum Judicial Magistrate, Sriperumpudur. The restoration of the road is also stated to have been the consequence of an order dated 22.11.2014 in W.P.No.31770 of 2014. This aspect is important in the context that otherwise the petitioner's land would become a land-locked area and thus, the road cannot be said to form an encroachment issue. The relevant documents in this behalf have already been handed over by the petitioner to the District Collector / first respondent for necessary examination.

6.In our view, thus a quietus can be put to all the three issues and the writ petition is, accordingly, allowed by quashing the impugned order dated 14.07.2016 in the aforesaid context. No costs.

7.We appreciate the role played by the learned Additional Advocate General for the endeavour to ensure that the issue is

amicably resolved.

(S.K.K., CJ.) (M.S., J.)
18.01.2017

Index : Yes/No
Website : Yes/No

sra

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The Hon'ble Chief Justice
and
M.Sundar, J.

(sra)

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<http://www.judis.nic.in>