

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.37116 of 2004

S.K.Syed Mohammed Sherif

... Petitioner

vs.

1. The Tamil Nadu Wakf Board,
rep. By its Secretary,
7/4, 9th Cross Street,
Indira Nagar, Chennai - 20.
 2. The District Collector,
Erode District.
 3. The Tahsildar,
Gobi Taluk, Erode District.
 4. The Government of Tamil Nadu,
rep. By Secretary,
Revenue Department,
Fort St. George, Chennai.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to update the revenue records pertaining to the property bearing Re-survey No.42/59 (Gobi Taluk), an extent of 0.28 acres, Re-survey No.43/1, an extent of 0.15 acres in Savandappur Village, Gobi Taluk, Erode District and an extent of 1.94 acres in Re-Survey No.517, Athani Village within Savandappur Panchayat Limits, Bhayani Taluk, Erode District and Old Survey No.42/1, in all, aggregating an extent of 2.37 acres as Muslim Burial Ground and consequently forbearing the respondents from in any manner altering the nature of property or assigning the property to third parties.

For Petitioner : Mr.N.A.Nissar Aganed
For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondents to update the revenue records pertaining to the property bearing Re-survey No.42/59 (Gobi

Taluk), an extent of 0.28 acres, Re-survey No.43/1, an extent of 0.15 acres in Savandappur Village, Gobi Taluk, Erode District and an extent of 1.94 acres in Re-Survey No.517, Athani Village within Savandappur Panchayat Limits, Bhavani Taluk, Erode District and Old Survey No.42/1, in all, aggregating an extent of 2.37 acres as Muslim Burial Ground and consequently forbearing the respondents from in any manner altering the nature of property or assigning the property to third parties.

2. According to the petitioner, he is the Mutawalli of Savandappur Muslim Burial Ground situated at Savandappur Village, Gobi Taluk, Erode District. It is his case that the property in question, measuring an extent of 2.37 acres is being used as a Burial Ground for Muslims for more than 200 years and as such is registered with the Wakf Board vide No.160/84. Since there were certain encroachments, the 1st respondent vide proceedings in Rc.10664/A5/CBE/72, dated 11.05.1975 to the Collector, Coimbatore, sought eviction of the encroachers and issue patta in favour of the Mutawalli. The Land Revenue Inspector, Cuddalore, vide his proceedings dated 12.06.2002 and 11.02.2003, had also informed that the above property is being used as a Burial Ground by the Muslims and that it is registered with the 1st respondent as Wakf property bearing No.160/84 and recommended that the Revenue records could be mutated as Muslim Burial Ground.

3. The respondents filed counter affidavit and stated that a Notification was published on 01.11.2004 calling for objections, if any, from the public to assign 0.01.0 hectares of land in S.F.No.42/59 Natham Poramboke of Savandappur Village. It is further stated that the land in S.F.No.42/59 measuring a total extent of 0.11.1 hectares is a low lying land with encroachments of haystack and cattle shed and no graveyard is found in that piece of land and that S.F.No.43/1 measuring a total extent of 0.113.0 hectares is a Salai poramboke and no encroachment or graveyard is found in the said land and that the total extent of 39.41.5 hectares of land in S.F.No.517 is Bhavani river.

4. It is the case of the respondents that Bhavani river is a national heritage and the claim of the Muslim people to convert 1.94 acres of River Bank as Muslim Burial ground and declare as Wakf property, cannot be considered. According to the respondents, no graveyards are found in S.F.No.42/59 or 43/1 in Savandapur Village, Gobichettipalayam Taluk. But, in S.F.No.517 of Athani Village (Classification of the field is Bhavani River), Bhavani Taluk, there are many graves of Muslims, Christians and Hindus found on the Banks of Bhavani River. As per the recent Government Order, action could not be taken to assign River Banks to any third parties or Associations or individuals.

5. It is further stated in the counter affidavit that the Muslim Burial Ground is situated in S.F.No.517, Bhavani River poramboke in Athani Village, Bhavani Taluk and that Natham lands are reserved exclusively for the use of Villagers and the same cannot be assigned to a particular religious institution. Hence, it is the case of the respondents that if the request of the petitioner is considered, other community people, will also approach the Court with a similar request.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Learned counsel for the petitioner contended that if the Burial Ground used by Muslims is assigned to any third parties, the petitioner and the entire Muslim Jamath would be greatly prejudiced. According to the learned counsel, the property in question is a Wakf property and it cannot be altered in any manner.

8. Per contra, learned Government Advocate appearing for the respondents contended that the petitioner is trying to usurp the Banks of Bhavani River and that there are encroachments by the local people, the Government is taking steps to remove the same. It is his further contention that the petitioner, instead of approaching the Civil forum, has filed the present Writ Petition stating that the revenue records have got to be updated, when admittedly, the property does not belong to the Wakf Board or the petitioner.

9. To substantiate his claim, learned counsel for the petitioner has relied on two decisions of the Hon'ble Apex Court, one in the case of Sayyed Ali and others vs. A.P.Wakf Board, Hyderabad and others, (1998 (2) SCC 642) and another in the case of Madanuri Sri Rama Chandra Murthy vs. Syed Jalal, (2017 AIR (SC) 2653).

10. In the case of Sayyed Ali (cited supra), the Apex Court has held that "once a Wakf is always a wakf and grant of patta in favour of Mokhasadar under the Inams Act does not, in any manner, nullify the earlier dedication made of the property constituting the same as Wakf. After a Wakf has been created, it continues to be so for all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta in favour of Mokhasadar does not affect the original character of the wakf property."

11. In the case of Madanuri Sri Ramachandramurthy (cited supra), the Apex Court has held that the Survey Commissioner was duty bound to conduct the survey of Wakfs in the State and after making such enquiry, as he might consider necessary, would submit his report in respect of Wakfs existing in the State to

the State Government with necessary particulars. Whereas, under 1995 Act, the Wakf Board, after examining the Report, forwards it back to Government within a period of six months for publication in the Official Gazette in the State. Pursuant thereto, the State will publish the Gazette Notification.

12. On a perusal of the pleadings, it is seen that there was a Notification by the Wakf Board vide No.160/84. As there is no communication from the Wakf Board, the records have not been updated. But the Revenue extract produced in S.No.0.11.10 clearly shows that the land is a vacant Natham land meant for burial ground for Muslims. Whether a Natham land can be taken as a Burial Ground for Muslims is a moot question to be considered by the authorities concerned.

13. According to the learned counsel for the petitioner, the petitioner has got documents to show that the property in question belongs to the Wakf and their intention is not to encroach Bhavani River. It is his case that the extent of property belonging to the Wakf may be identified and published in the Gazette and on scrutinizing the documents produced by them, a land can be identified as Burial Ground for Muslims. According to the learned Government Advocate, if any documents are produced to that effect, the same will be considered by the respondents and a land can be identified as Burial Ground for Muslims. He further submitted that the intention of the respondents is not to deprive the Wakf of any of their properties, however, the property put to public usage cannot be parted with.

14. In view of the above and having regard to the facts and circumstances of the case, this Court directs the petitioner to approach the authority concerned or any one of the respondents herein, who is empowered to decide the issue in question, with necessary documents, within a period of one month from the date of receipt of a copy of this order and after scrutinizing the records, the authority concerned shall take a decision within a period of two months thereafter, after affording an opportunity of hearing to the petitioner and other persons, who are likely to be affected.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected W.P.M.P.No.44557 of 2004 is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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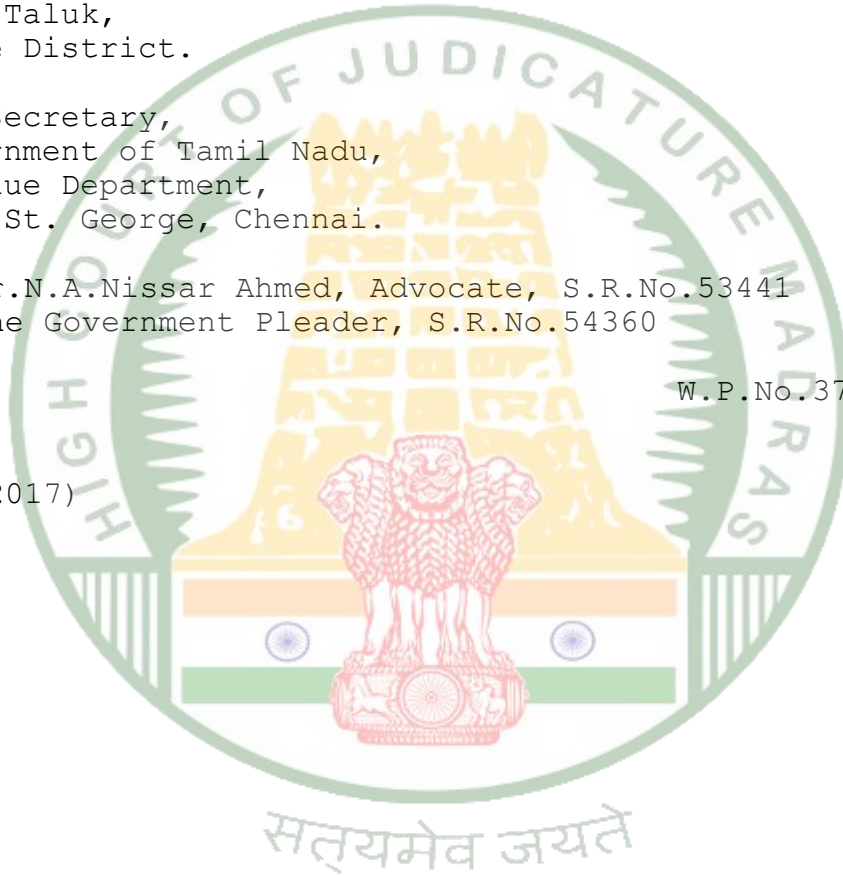
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+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.53441

+1cc to the Government Pleader, S.R.No.54360

W.P.No.37116 of 2004

GN(29/08/2017)



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