

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1610 of 2017
and CMP No.21033 of 2017

1. T.Srinivasan
2. M.Devanathan
3. M.Chinnaraj
4. B.B.Senthil
5. A.Sarangapani
6. R.K.Durairaj
7. D.Srinivasan
8. R.Yuvaraj
9. S.Kala
10. V.Velu
11. V.Eganathan
12. S.Subramani

.... Appellants

versus

1. The District Collector,
Villupuram District,
Villupuram.
2. The Commissioner,
Villupuram Municipal Corporation
Villupuram,
Villupuram District.

... Respondents

Appeal filed under clause 15 of letters patent against the order passed by this Court dated 10.04.2017 passed in W.P.No.34382 of 2016.

W.P.No.34382 of 2016:

Writ Petition filed under Article 226 of the constitution of India praying for issuance of a Writ of Mandamus directing the respondents herein to declare that the open plot in Villupuram Town Ward No.4 Viratti Kuppam Road situated in Survey No.341/1 measuring about 1 Acre and 15 cents bounded by Murugan Layout in the East Baba Nagar in the West Fathima Beevi layout in the South and the Main Road in the North is not a burial ground.

For Appellant : Mr.G.Karthikeyan
For Respondents : Mr.V.Anandhamurthy
Additional Government Pleader for R1

Mr.P.Srinivas for R2

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this Intra Court Appeal is to the order of the learned Single Judge made in WP No.34382 of 2016 dated 10.04.2017.

2. The prayer in the Writ Petition is as follows:

"For Issuance of a Writ of Mandamus directing the respondents herein to declare that the open plot in Villupuram Town, Ward No.4, Virattikuppam Road situated in Survey No.341/1 measuring about 1 acre and 15 cents, bounded by Murugan Layout in the East, Baba Nagar in the West, Fathima Beevi Layout in the South and the Main Road in the North is not a burial ground."

3. According to the appellants, the land in question was lying vacant and all of a sudden during the year 2016, Muslims in the area started burying their dead in the said land. Claiming that the said land in Survey No.341/1 of Villupuram Town was never used as a burial ground as on date, it is surrounded by several residential colonies and the user of the said land of a burial ground would lead to severe health hazards for the residence of the locality, the appellants have come forward with the Writ Petition praying for a Mandamus as stated above.

4. The said Writ Petition was dismissed by the learned Single Judge holding that the land in question was earmarked as a burial ground even as per the Sale Deed dated 14.12.1938 and as per the said sale deed, the land has to be used only as a cemetery for the Muslim Community. The learned Single Judge has also referred to the revenue records, wherein the land is classified as a burial ground. The learned Single Judge also concluded that a Mandamus as prayed for by the appellants cannot be issued by this Court. On the above conclusions, the Writ Petition was dismissed.

5. Aggrieved the petitioner in the Writ Petition have come forward with this Intra Court Appeal.

6. We have heard Mr.G.Karthikeyan, learned counsel appearing for the appellants and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the 1st respondent and Mr.P.Srinivas, learned counsel appearing for the 2nd respondent.

7. The 2nd respondent has filed a counter, wherein, it is stated that the appellants are all occupants of unapproved layouts and have put up construction of their houses without proper planning permission. Apart from the above, it is stated that the land in question was acquired by the Government in the year 1937 award Award dated 23.03.1937. The said 1.15 acres of land was acquired by the purpose of providing the Burial Ground for Muslims, known as Kabarsthaan. As per the entries in the Village "A" Register, it is shown that the land in question was handed over to the Municipality, for the purpose of using it as a burial ground for Muslims and the same is exempted from the levy of land revenue on the condition that it is retained as a Burial Ground for Muslims (Kabarsthaan).

8. Mr.P.Srinivas, has also produced Xerox copy of the "A" Register, wherein, the land measuring about 1 acre 15 cents in Survey No.341/1 has been described as "முனிசிபல் முகமதியர் பரியல் கிரவுண்ட்". In the remarks column, it is also stated that in the said land, which was transferred to the Municipality by the proceedings of the Revenue Divisional Officer dated 14.12.1938, on condition that it should be retained as a burial ground for Muslims. It is also stated in the remarks column that if the land is used for any other purpose the exemption granted from payment of Land Revenue will be withdrawn and Land Revenue will be collected from the Municipality. The above entries in the Village "A" Register would conclusively establish that the land in question has been classified as a Muslim Burial Ground and as such, the same cannot now be declared as not a burial ground, as sought for by the appellants. The very prayer in the Writ Petition is misconceived.

9. Mr.Karthikeyan, learned counsel appearing for the appellants, would however, contend that it is open to the Municipality to prohibit burial in any place which is classified as a burial ground, if it is found that the same will affect the general public health, under Section 283 of the District Municipalities Act, 1920. We are not pronouncing on the power of

the Municipality to classify the land as a burial ground or to withdraw such classification, in as much as, the said question is not in issue before us.

10. In fine, the Intra Court Appeal is dismissed, confirming the order of the learned Single Judge. However, in the circumstances of the case, we do not make any order as to costs. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-V)

*** Corrected order to be issued;**

Sd/- Sub Assistant Registrar

Dated: 11.06.2018

True Copy

Sub-Assistant Registrar

jv
To

1. The District Collector,
Villupuram District,
Villupuram.

To be substituted to the
order already despatched
on 25.05.2018

2. The Commissioner,
Villupuram Municipal Corporation
Villupuram,
Villupuram District.

+1 CC to Mr.G.Karthikeyan, Advocate sr 30845.

+1 CC to Mr.P. Srinivas, Advocate sr 31392.

सत्यमेव जयते

W.A.No.1610 of 2017
and CMP No.21033 of 2017
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KAN(CO)
SP(15/05/2018)
SP(11/06/2018)