

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.11645 of 2017

Thuraipakkam Muthanmai Paguthi
Kudiyurupor Nala Sangam,
rep. by its President S.Nagarajan,
1/311, Kulakkarai Street,
Chennai - 600 097. ... Petitioner

vs.

- 1.The Commissioner,
Greater Corporation of Chennai,
Rippon Building,
Chennai - 600 003.
- 2.The District Collector,
Kanchipuram District,
Kanchipuram.
- 3.The Revenue Divisional Officer,
Tambaram.
- 4.The Thasildar,
Sholinganallur Taluk,
Sholinganallur.
- 5.The Zonal Officer,
Greater Corporation of Chennai,
15th Zone,
Sholinganallur,
Chennai - 600 119.
- 6.The Inspector of Police,
J-9, Thuraipakkam Police Station,
Thuraipakkam,
Chennai.
- 7.M.Balasubramanian
- 8.Chennai Metropolitan Development Authority,
rep. by its Member Secretary,
Egmore, Chennai. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to remove the encroachments made by the 7th respondent in cremation ground situated in Survey No.406/80 at Thuraipakkam Village, Sholinganallur Taluk, Kanchipuram District now presently at Zone-15 in Greater Chennai Corporation.

For Petitioner : Mr.B.Jawahar

For Respondents : Mr.E.Manoharan
Addl. Government Pleader
for respondent Nos.2 to 4 & 6
Mr.K.Soundararajan
for respondent Nos.1 & 5
Mr.AR.L.Sundaresan
Senior Counsel
for M/s.AL.Gandhimathi
for respondent No.7
Mr.C.Johnson
for respondent No.8

ORDER

(Made by Ms.Indira Banerjee, Chief Justice)

In this writ petition, the petitioner has sought a writ of mandamus directing the official respondents to remove the encroachments made by the seventh respondent in the "cremation ground" situated in Survey No.406/80 at Thuraipakkam Village, Sholinganallur Taluk, Kanchipuram District.

2. It is the case of the petitioner that a cremation ground is situated in Survey No.406 at Thuraipakkam Revenue Village. The people in Thuraipakkam village have been using the said burial ground for nearly 100 years. It is the further case of the petitioner that many bodies have been buried in the cremation ground.

3. The Tahsildar, Sholinganallur Taluk as also the Zonal Officer of Zone-15, Greater Corporation of Chennai have filed counter-affidavits, wherefrom, it appears that Survey No.406/80 is patta land.

4. In the counter-affidavit of the seventh respondent, it is stated that the deponent, M.Balasubramanian, along with his brother and sister are owners of the properties comprised in

Survey Nos.406/78, 406/79 and 406/80, which are now in Ward No.193 of Chennai Corporation Division.

5. According to this deponent, 9 acres of land comprised in Survey No.406/3A had been purchased by his brother Manickam by way of a registered sale deed dated 1.11.1963, when he was a minor, another 9 acres of land comprised in Survey No.406/3A had been purchased by the seventh respondent by way of a registered sale deed dated 1.11.1963, when he had been a minor and 6.25 acres of land comprised in Survey No.406/3A had been purchased by his sister Karunambal Vanavarayar by way of a registered sale deed dated 1.11.1963, when she was a minor. The properties were purchased on behalf of the minors by their father and natural guardian, Dr.N.Mahalingam, from one Mrs.C.Parvathi Ammal and three others.

6. It, however, appears that when the areas, which were initially under a panchayat, were taken over and became part of the Chennai Corporation, some of these lands were shown as burial ground by the Chennai Corporation.

7. Learned counsel appearing for the Chennai Corporation submits that the land was not notified as burial ground. However, it was shown in the records as cremation ground after take over and certain bodies lie buried there.

8. There can be no question of burial of bodies in patta land without the consent of its owners. No further bodies shall be cremated or buried in the property in question. The part of the land where bodies have been buried for several years shall be demarcated and segregated from the rest of the land. The Corporation of Chennai shall inspect the area and investigate how many bodies are buried and the area over which bodies are actually buried if at all and to that extent the area of land shall be cordoned off and the rest of the land may be used by the owners thereof. So far as burial area is concerned, the Corporation of Chennai may take steps to acquire the land as per law. There can, therefore, be no question of directing removal of encroachment, since the owners cannot be said to be encroachers and they have every right to exercise ownership rights over their property.

9. The writ petition is, thus, disposed of. No costs. Consequently, WMP.Nos.12633 & 29740 of 2017 are closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

bbr

To:

- 1.The Commissioner,
Greater Corporation of Chennai,
Rippon Building,
Chennai - 600 003.
- 2.The District Collector,
Kanchipuram District,
Kanchipura.
- 3.The Revenue Divisional Officer,
Tambaram.
- 4.The Thasildar,
Sholinganallur Taluk,
Sholinganallur.
- 5.The Zonal Officer,
Greater Corporation of Chennai,
15th Zone,
Sholinganallur,
Chennai - 600 119.
- 6.The Inspector of Police,
J-9, Thuraipakkam Police Station,
Thuraipakkam,
Chennai.
- 7.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai.

+1cc to Mr.A.L.Gandhimathi, Advocate SR.No.18649
+1cc to Mr.C.Johnson, Advocate SR.No.18556
+1cc to Mr.B.Jawahar, Advocate SR.No.18917
+1cc to Government Pleader SR.No.18649

W.P.No.11645 of 2017

GN (04/04/2018)

WEB COPY