

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.25433 of 2018
and
W.M.P.No.29595 of 2018

R.Senthilkumar

... Petitioner

Vs.

- 1.The District Collector,
Tiruppur District, Tiruppur.
- 2.The District Rural Development Officer,
Collectorate, Tiruppur, Tiruppur District.
- 3.The Sub Collector,
Dharapuram, Tiruppur District.
- 4.The Tahsildar,
Kangayam Taluk, Kangayam,
Tiruppur District.
- 5.The Block Development Officer,
Village Panchayat, Kangayam,
Tiruppur District.
- 6.The Special Officer,
Nathakadaiyur Village Panchayat,
Nathakadaiyur - 638 108,
Kangayam Taluk,
Tiruppur District.
- 7.The Revenue Inspector (Land),
Nathakadaiyur - 638 108,
Kangayam Taluk,
Tiruppur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to consider and pass orders on merits by disposing the written representation made by the petitioner on 03.03.2018 within a stipulated time as this Hon'ble Court fixes.

For Petitioner : Mr.C.Prakasam
For Respondents: Mr.J.Pothiraj,
Special Government Pleader
for R1 to R4 and R7

Mr.Kamalesh Kannan for R5

O R D E R

(Order of the Court was made by R.SUBRAMANIAN, J.)

Complaining that the respondents have allowed encroachment over the land classified as Odai and that they are constructing buildings within the prohibited distance from a burial ground, the petitioner had made representations to the Authorities seeking interference.

2. When the writ petition came up for hearing, we had directed Mr.J.Pothiraj, learned Special Government Pleader to take notice and get instructions.

3. Pursuant to the same the Tahsildar, Kangayam Taluk had originally filed a counter affidavit on 20.10.2018. Since, the said counter affidavit did not deal with the claim of the petitioner relating to the constructions that were being put up within the prohibited distance i.e., 90 metres from a burial ground or burning ghat, we had directed the Tahsildar, Kangayam Taluk to appear in person along with connected records today. A supplementary counter affidavit has been filed by the Tahsildar today, the Tahsildar is also present in person along with the connected records.

4. A perusal of the counter affidavit that was filed on 20.10.2018 would show that there is a odai on ground in S.Nos.374, 378 and 381/1 of Nathakadaiyur Village, Kangayam Taluk. The existence of the odai is admitted in the counter affidavit filed by the Tahsildar on 20th October 2018. It is however claimed that the revenue record do not disclose the existence of such a odai in subject survey numbers.

5. It is the further claim of the Tahsildar/ 4th respondent that water flows through the odai only during the rainy season. It is also stated that necessary steps were taken to prevent encroachments over the said odai. As regards the construction of an agricultural extension centre and a residence-cum-office of the Surveyor, the counter affidavit filed today discloses that these buildings are within the prohibited distance viz., 90 metres radius from the burial ground or a burning ghat.

6. Mr.J.Pothiraj, learned Special Government Pleader would draw our attention to Rule 4(4) of the Tamil Nadu Panchayat

Building Rules, 1997 which enables construction of buildings not intended for human habitation within the prohibited distance with the previous approval of the Executive Authority. He would further submit that the Executive Authority has passed a resolution on 26.07.2017 for transfer of a portion of subject land to the agricultural department for construction of Agricultural Extension Centre and another resolution on 19.02.2018 for construction of Office-cum-Residential Quarters for the Surveyor.

7. Rule 4 sub-Rule 4 of the Tamil Nadu Panchayat Building Rules, 1997 reads as follows:-

"(4) No site which is situated within a distance of ninety metres from a place used as a burning or burial place or ground shall be used for constitution of any building, without the previous approval of the Executive Authority and no building intended for human habitation shall be build within ninety metres of such burning or burial place or ground, unless such burning or burial place or ground was closed for burning or burial of corpses remained so closed for a period of not less than five years, as ascertained from the record maintained by the Village Panchayat:

Provided that no existing building situated within ninety metres from any burning or burial place or ground shall be reconstructed or added to without the previous approval of the Executive Authority. "

8. A close reading of the above Rule would show that no building can be constructed within 90 metres of an existing burial ground or a burning ghat without the previous approval of the Executive Authority. The second part of the Rule provides that no building intended for human habitation shall be constructed within 90 metres of such burning or burial place or ground unless such burning or burial ground was closed for a period of not less than 5 years prior to such construction.

9. It is not in dispute that the area in question is even today used as a burial ground by the people in the locality. Therefore, construction of a building for human habitation is banned within the prohibited distance of 90 metres. As seen from the counter affidavit filed today, both the buildings viz., Agricultural Extension Centre and the Surveyors Office-cum-Residential Quarters are situate within the prohibited distance. Of course, the Executive Authority has granted permission for construction of such buildings as required under the first part of the Rule. However, the Residential Quarters of the Surveyor cannot be put up within the prohibited distance, even with the permission of the Executive Authority. This is the effect of the

second part of the Rule extracted above.

10. In view of the same the writ petition is disposed of with the following directions:-

1. The Authorities shall not put up any residential construction including the Quarters for the Surveyor within the prohibited distance of 90 metres.

2. The Authorities shall maintain the existing odai as on ground, as it is free, of any encroachment either by the Authorities themselves or by others.

3. As regard the complaint of the petitioner that the burial ground is being used as a dump yard, we record the submission of the learned Special Government Pleader as well as the statement in the counter affidavit that the same has been cleared. The dumping of the waste is unauthorized and the same has been cleared. We direct the Authorities to ensure there is no unauthorized dumping of garbage in the subject land in future.

In the circumstances we make no order as to costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

dsa

To

1. The District Collector,
Tiruppur District, Tiruppur.

2. The District Rural Development Officer,
Collectorate, Tiruppur, Tiruppur District.

3. The Sub Collector,
Dharapuram, Tiruppur District.

4. The Tahsildar,
Kangayam Taluk, Kangayam,
Tiruppur District.

5. The Block Development Officer,
Village Panchayat, Kangayam,
Tiruppur District.

6.The Special Officer,
Nathakadaiyur Village Panchayat,
Nathakadaiyur - 638 108,
Kangayam Taluk,
Tiruppur District.

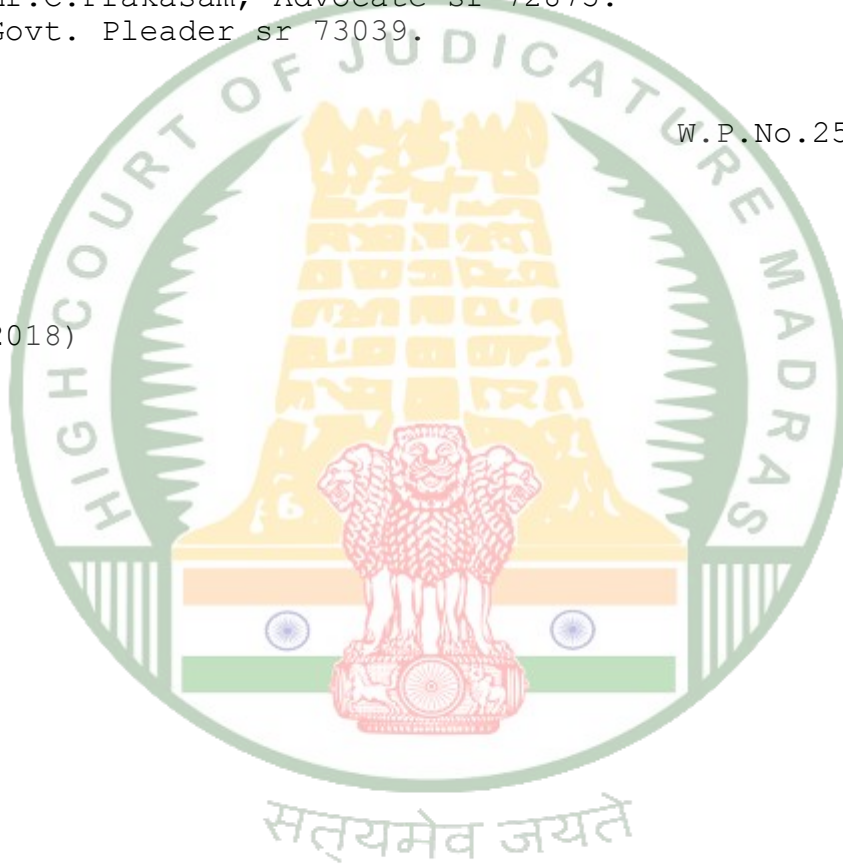
7.The Revenue Inspector (Land),
Nathakadaiyur - 638 108,
Kangayam Taluk,
Tiruppur District.

+1 CC to Mr.C.Prakasam, Advocate sr 72875.

+1 CC to Govt. Pleader sr 73039.

W.P.No.25433 of 2018

VBA (CO)
SP(29/11/2018)



WEB COPY