

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.11.2018

CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.29216 of 2018
and
W.M.P.Nos.34141 and 34143 of 2018

1.R.Shanmugam
2.M.Anandhakumar

... Petitioner

vs.

1.The District Collector,
Office of District Collector,
Tiruppur District,
Tiruppur.

2.The Commissioner,
Tiruppur Corporation,
Tiruppur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus, forbearing the 2nd respondent from constructing a building for dumping and segregation of waste in S.F.No.53/3 in Nallur Village, Tiruppur District which is earmarked for the purpose of burning and burial ground by considering petitioners' representation dated 08.10.2018.

For Petitioner : Mr.N.Ponraj

For R1 : Mr.Kamalesh Kannan

For R2 : Ms.P.Shanthi

ORDER
(Order of the Court was made by S.MANIKUMAR, J)

In Nallur village, there is a burial ground in S.F. No.53/3 measuring 1.20 Acres. From time memorial, people of Nallur village use the said burial ground. Commissioner, Tiruppur Corporation, Tiruppur, has proposed to construct a building for dumping waste, objections seemed to have been made by the public of Nallur village. Petitioner has sent a representation dated 08.10.2018.

2. Contending inter alia that the respondents have not considered the representation of the petitioner dated 08.10.2018, but have taken action to construct the building, instant writ petition has been filed by the petitioner for a mandamus, directing the Commissioner, Tiruppur Corporation, Tiruppur/respondent No.2.

3. On the above averments, Mr.N.Ponraj, learned counsel for the petitioner made submissions.

4. Mr.S.Kamalesh Kannan, learned Government Advocate, representing the District Collector, Tiruppur District, Tirupur, namely the second respondent, submitted that when an identical prayer was sought for in W.P. No.28924/2017, objecting to the construction of the building in burial ground for dumping waste, the Hon'ble First Bench of this court, disposed of the said writ petition.

5. Ms.P.Shanthi, learned counsel, takes notice for the second respondent, namely, Commissioner, Tiruppur Corporation, Tiruppur.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. At the outset, nowhere in the supporting affidavit, the petitioner has substantiated his right to file a public interest litigation as against the proposed construction of a building for dumping waste. Order of the Hon'ble First Bench passed in W.P. No.28924 of 2017 dated 31.07.2018, is reproduced hereunder.

"In this writ petition, purportedly by way of public interest, the petitioner has sought orders of this Court restraining the respondents from altering the nature, course and use of the land comprised in S.Nos.126/1E measuring 2.37.5 hectares at Thimri Village, Arcot Taluk, Vellore District, listed as 'Mayana Pattai' and used as a burial and cremation ground. This writ petition has been prompted by a proposal to set up a Dump Yard and a Solid Waste Management Plant.

2. In the affidavit in support of the writ petition, it is contended that many of the deceased ancestors and family members of the petitioner are lying buried in the burial ground, where the Dump Yard and the Solid Waste Management Plant are being set up.

3. It is alleged that on 20.10.2017, the second respondent had deputed staff to mark the land in question and on 21.10.2017, had brought in bull dozer and other equipment to demolish the existing

structures including tombs in an area measuring about 1 acre and commenced levelling the area for construction.

4. It has further been alleged that in the process of demolition and levelling of the Mayana land, the tombs were broken and human skulls and skeletons were unearthed and exhumed. With the help inter alia of bulldozers, remnants of tombs and skeletal remains of the dead were pushed aside to corners.

5. Learned counsel appearing on behalf of the petitioner submitted that these gory facts have not been controverted by the respondents in their counter-affidavit.

6. On the other hand, learned counsel appearing on behalf of the second respondent points out that the Director of Town Panchayat, Chennai, had, by D.O. Letter No.15785/2011/E4 dated 08.11.2012, instructed five town panchayats to identify land for setting up a dumping yard and/or compost yard for dumping waste collected from the town limits for the effective implementation of Solid Waste Management Scheme.

7. It is stated that the Government had sanctioned Rs.44.90 lakhs for the civil works during the financial year 2015-16. From out of 5.86 acres of land comprised in the plot in question, two acres were identified. Admittedly, the land is classified as Mayanam Pattai. However, the proposed site where the Dump Yard/Solid Waste Management plant is proposed to be set up is, according to the respondents, a vacant place. It is not used for burial or cremation purposes.

8. It is also contended on behalf of the respondents that the available burial ground area is adequate to meet the needs of the local people. On behalf of the second respondent, a sketch map has also been produced which indicates that only a small part of the huge plot, measuring 1.2 acres is going to be used for the Dump Yard / Solid Waste Management Plant. Even though in the affidavit it is stated that two acres are going to be utilised for the Solid Waste Management Plant/Dump Yard, it is submitted by learned counsel appearing on behalf of the second respondent that the requirement is for 1.2 acres on one side of the land, which will not affect any existing tomb or grave in any manner whatsoever.

9. This Court exercising jurisdiction under Article 226 of the Constitution of India does not decide hotly disputed facts as to whether, in fact, the respondent authorities are encroaching into a part of the land which is used for burial of the

dead. Suffice it to mention that the photographs annexed show the existence of some tombs and graves and also show some construction, but the photographs do not indicate that any construction is being made on the tombs and graves or the tombs and graves are being disturbed by reason of the construction.

10. The construction of a Solid Waste Management Plant and/or a Dump Yard is undoubtedly a public purpose. In a public interest litigation, we are not inclined to interfere with the establishment of a Dump Yard/Solid Waste Management Plant, for the benefit of the locality. However, we make it absolutely clear that the respondents shall not desecrate or disturb the existing tombs and/or graves. Furthermore, the waste dumped in the Dump Yard shall be properly treated to ensure that it does not cause nuisance in the area. The Dump Yard shall be cordoned off with high walls, so that it is not easily visible from outside. Adequate measures shall be taken to ensure that no foul smell emanates and the Dump Yard is treated and disinfected to prevent spread of diseases.

11. The interference of this Court is not warranted, since the proposed project is one of public interest. It is, however, made absolutely clear that the Solid Waste Management Plant/Dump Yard shall be within the demarcated part of the land and no graves / tombs shall be disturbed.

The writ petition is, accordingly, disposed of. The sketch map produced in Court be taken on record. No costs. Consequently, W.M.P.No.31141 of 2017 is closed.

8. On the facts and circumstances of the case, order made in W.P. No.28924 of 2017 dated 31.07.2018, is squarely applicable, to the case on hand.

In the light of the above, writ petition filed for a mandamus cannot be granted. Accordingly, instant writ petition is disposed of. However, it is made clear that the Solid Waste Management Plant/Dump Yard shall be within the demarcated part of the land and no graves/tombs shall be disturbed. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asr

To

1.The District Collector,
Office of District Collector,
Tiruppur District,
Tiiruppur.

2.The Commissioner,
Tiruppur Corporation,
Tiruppur.

+lcc to Mr.P.Shanthi, Advocate, S.R.No.75769

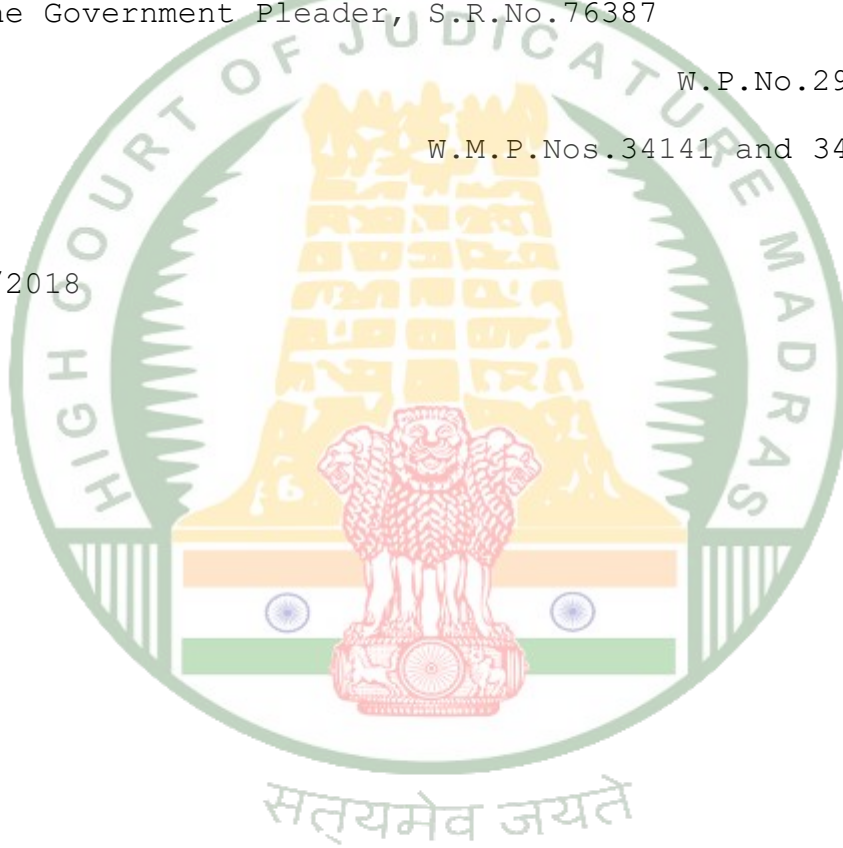
+lcc to the Government Pleader, S.R.No.76387

W.P.No.29216 of 2018
and

W.M.P.Nos.34141 and 34143 of 2018

KJ(CO)

rrs 10/12/2018



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