



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.06.2019
Pronounced on	28.11.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. Nos. 2048 and 3319 of 2019
and

W.M.P. Nos. 2300, 2301, 3593, 3595, 16073 and 16329 of 2019

C. Ponnan ... Petitioner in W.P. No. 2048 of 2019

C. Venkatachalam ... Petitioner in W.P. No. 3319 of 2019

-vs-

1. The District Collector
Villupuram District
Villupuram.

2. The Revenue Divisional Officer
Sub Collector
Tindivanam
Villupuram District.

3. The Revenue Tahsildar
Melmalayanoor
Villupuram District.

... First to Third Respondents in both W.P.s

4. The Block Development Officer
Panchayat Union
Melmalayanoor
Villupuram District.

... Fourth Respondent in W.P. No. 2048 of 2019

Common Prayer:- Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorari, calling for the records in relation to order dated 11.09.2018 in Na.Ka. A7/33807/2017 from the file of First Respondent and quash the same.



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For Petitioner : Mr. G. Kadhiresan (in WP No.3319/19)
: Mr.V.Bhiman in WP No.2048/19

For Respondents: Mr. R. Venkatesh
Government Advocate
(For R1 to R3 in both W.P.s)

Mr. K.S. Suresh
Government Advocate
(For R4 in W.P. No. 2048 of 2019)

C O M M O N O R D E R

Heard Mr. G. Kadhiresan and Mr. V. Bhiman, Learned Counsel for their respective Petitioners, Mr. R. Venkatesh, Learned Government Advocate appearing for the First to Third Respondents and Mr. K.S. Suresh, Learned Government Advocate appearing for the Fourth Respondent in W.P. No. 2048 of 2019 and perused the materials placed on record, apart from the pleadings of the parties.

2. On receipt of the representations from the Muslim community for allocation of land for burial ground, reports had been called from the Revenue Authorities. In that regard, the Revenue Tahsildar, Melmalayanoor in his report dated 07.09.2018, the Sub-Collector, Tindivanam in his letter dated 08.09.2018 and the District Revenue Officer in Note dated 08.09.2018, had examined the issue and recommended that the land in Survey No. 316/5 of an extent of 0.18.00 ares may be sub-divided as follows:-

Survey No.	Extent	Classified
316/5	0.10.00 ares	Government Dry Poramboke Land
316/8	0.08.00 ares	Muslim Burial Ground

The Village Administrative Officer made a publication on 20.08.2018 by affixing the notice in that land and in the locality, which has been acknowledged by the villagers, and he had reported that no objection had been made from the villagers for allotting the land for the purpose of burial of people belonging to Muslim community, which was confirmed during enquiry by the Sub-Collector. It had also been found that the passage for the burial ground could be through Survey No. 313/2, which was also a Government poramboke land, besides that in Survey No.316/4, which has been clarified as 'vari poramboke'. Considering the same, the District Collector, Villupuram, by proceeding in Na.Ka. No. B7/33807/2017 issued the order dated 11.09.2018 allocating the extent of 0.08.0 ares by creating Survey No. 316/8 for the purpose of burial of people belonging to Muslim community.



3. The Petitioners, who are brothers, have separately filed these Writ Petitions claiming that they were in occupation of the land in Survey No. 316/5 in Melmalayanoor Village and challenged its allotment for the purpose of burial for the Muslim community. In support of that claim, reliance is placed on the judgment decree dated 25.07.2018 passed by the District Munsif Court, Gingee, in the suit in O.S. No. 158 of 2011 that had been instituted by the Petitioner in W.P. No. 2048 of 2019 for permanent injunction for protecting his possession of that property. On a reading of that judgment, it is evident that the suit had been dismissed after contest as against the District Collector, Villupuram and the Tahsildar, Melmalayanoor Village and that the relief of injunction granted was confined only against one Veerasamy, who was the First Defendant in that suit and had remained exparte, which obviously does not restrain the power of the Respondents in these Writ Petitions to deal with that property, belonging to the Government. Though it is complained by the Petitioners that they had objected to the allotment of the land as Muslim Burial Ground, neither any materials have been placed before this Court in support thereof, nor they have proved any right, title or interest to the property and as such, the same cannot be countenanced.

4. The Hon'ble Supreme Court of India in General Manager, Electrical Rengali Hydro Electric Product, Orissa -vs- Sri Giridhari Sahu (Judgment dated 12.09.2019 in Civil Appeal No. 8071 of 2010), after referring to earlier decisions, has succinctly explained the scope of the certiorari jurisdiction of the High Courts as follows:-

"29. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court. It will not reappreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter off bounds for the writ court.



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This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath v. Ahmed Ishaque (AIR 1955 SC 233), as to what constitutes an error apparent on the face of the records, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down M/s. Perry and Co. Ltd. v. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and others (AIR 1970 SC 1334)."

Inasmuch as no infirmity has been shown in the decision making process of the Respondents viz-a-viz the parameters laid down for interference in the exercise of discretionary powers of judicial review under Article 226 of the Constitution, this Court does not find any justifiable reason to interfere with the impugned order allotting the land in Survey No. 316/8 in Melmalayanoor Village for the purpose of burial of people belonging to the Muslim community.

5. In fine, the Writ Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

maya/vjt

To

1. The District Collector
Villupuram District
Villupuram.

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4. The Block Development Officer
Panchayat Union
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Villupuram District.

+2cc to Mr.V.Bhiman, Advocate SR.No.53894, 99305

+1cc to Government Pleader SR.No.99948

W.P. Nos. 2048 and 3319 of 2019

SV(CO)
GMY(09/01/2020)