

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 15476 of 2008

and

M.P. 1 of 2008

Mrs.Mallika Bhan

... Petitioner

Vs.

1. The Panchayat President,
Uthandi Village Panchayat,
Uthandi, Chennai.
2. The District Collector,
Kancheepuram District,
Collectors Office,
Kancheepuram-631 501.
3. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 002.

R3 impleaded as per order dated
07.11.2017 in W.M.P. 6993/2017

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to remove the cremation shed put up amidst the residential plots in the approved layout V.G.P. Golden Beach, Uthandi, East Coast Road and to provide the villagers of Uthandi a cremation ground to bury or to burn the dead at least 90 meters away from the government approved layout.

For Petitioner : Mr.R.Viduthalai, Senior Adv.
Ms.A.V.Bharathi

For Respondents: Mr.V.R.Thangavelu for R1

Mr.I.Sathish,
Addl. Govt. Pleader for R2

Mr.S.Saravanan for R3

O R D E R

This Writ Petition has been filed seeking a direction to the respondents to remove the cremation shed put up in an approved layout in V.G.P. Golden Beach, Uthandi, Chennai.

2. According to the petitioner, V.G.P. Golden Beach is an approved residential layout comprising more than 70 residential plots situated on the eastern side of East Coast Road, Uthandi. The layout was approved in the year 1975, and the petitioner has purchased the house site in the year 1981. There are lot of residential houses come up in that area, and it is fully developed. Earlier, some of the villagers converted a portion of residential layout as a cremation ground, and also unlawfully put up a temporary cremation shed there. They have also created a pathway through the approved layout from East Coast Road to reach the cremation centre, and using the said land as cremation as well as burial ground without getting any proper approval from the concerned local body or from the concerned authorities.

3. According to the petitioner, under Sec.63 of the Tamil Nadu Panchayat Act, read with Rule 18(6) of Tamil Nadu Panchayat Building Rules, only the 3rd respondent panchayat has to open, maintain a burial ground, and should make a provision for burial of the dead bodies. But, the 1st respondent did not open and maintain the burial ground, whereas, permitted some of the villagers to carry on burial as well as cremation in that area. Even though number of representations were given to the concerned authorities, no action has been taken. Hence, the present Writ Petition has been filed.

4. Pending Writ Petition, the Uthandi Panchayat has been merged with Chennai Corporation. Now, the said area comes under the jurisdiction of Corporation of Chennai. Hence, the Corporation is made as a party respondent in this Writ Petition.

5. The 3rd respondent Corporation of Chennai has filed a counter affidavit stating that, Uthandi panchayat was merged with the Corporation with effect from 25.10.2011. The administration of Uthandi Panchayat has been taken over by Greater Chennai Corporation. Earlier, a layout approval was granted by the erstwhile Uthandi Panchayat, and the disputed site has been used as a burial ground for the past 25 years. After merger, the Corporation has not taken any improvements and development works in the above said burial ground.

6. Mr.R.Viduthalai, learned Senior Counsel appearing for petitioner submitted that, the approved layout owned by a private party. An illegal cremation and burial is going on

without obtaining any proper license from the concerned local body. Earlier, some of the residents of Uthandi Panchayat, in a representative capacity, have filed a suit in O.S.No.611 of 1997 on the file of Principal District Munsif, Alandur, against the owners of the layout seeking a declaration to declare their communal right over the burial ground, and also an injunction restraining the defendants therein from preventing the users of burial ground along with pathway. The above Suit, after trial, came to be dismissed by a judgment and decree dated 12.04.2016 holding that the residents of Uthandi Panchayat cannot claim any communal right over the cremation ground. Challenging the judgment and decree, no appeal has been filed, and the said judgment and decree has become final. Even though the residents are illegally using the plot in an approved layout as a burial ground, which is causing numerous disturbances and health hazards to the residents of above locality.

7. Mr.S.Saravanan, learned counsel appearing for the 3rd respondent Corporation would submit that, earlier, the layout has been approved by the Uthandi Panchayat, and after merger, the disputed site comes under the jurisdiction of Chennai Corporation. Under Sec. 319 of Chennai City Municipal Corporation Act, (hereinafter called as 'CCMC Act'), before opening of burial and cremation ground, a proper license should be obtained. But, as on date, no license has been obtained by anybody for the above burial ground.

8. I have heard and considered the rival submissions made by the learned counsel appearing for petitioner as well as the learned counsel appearing for respondents 1 to 3 and perused the materials available on record carefully.

9. The cremation as well as the burial ground is situated in an approved layout. Earlier, a suit filed by the villagers of Uthandi claiming right over the burial ground as well as consequential injunction was dismissed rejecting the villagers claim to declare their communal rights over the burial ground. Sec.319 of CCMC Act, requires a license for disposal of dead bodies. Further, Sec.321 of CCMC Act prohibits anybody from burying, burning or otherwise disposing of any corpse in a place, which is not registered, and licensed as per Sec.319 of CCMC Act. That apart, a bye-law was also framed by the Greater Chennai Corporation, wherein under Clause 3 of the bye-law, no person is permitted to bury or burn corpse except the place demarcated for that purpose or authorised by the Corporation. Now, the learned counsel appearing for Corporation of Chennai submitted that, no such license has been granted to anybody to carry out burial or cremation of dead bodies in the above area. In the above circumstances, burial or cremation of bodies in any place without obtaining license from the corporation cannot be permitted. In a similar circumstances, a

Division Bench of this Court in W.P. No.11645/2017 dated 12.03.2018 has held that the bodies cannot be buried or cremated without the consent of Chennai Corporation.

10. Considering the facts and circumstances of the case, this Court is of the view that, burial as well as the cremation of dead bodies in the above layout is in violation of the provisions of CCMC Act. In the said circumstances, the 3rd respondent Corporation is directed to take suitable action to stop burial or cremation of dead bodies in the above said place. Further, considering the fact that, the villagers are using the place for burial and cremation for quiet long time, the 3rd respondent Corporation is directed to provide a suitable alternative place for burial and cremation of dead bodies, if it is not already available. Accordingly, this Writ Petition stands allowed, and the 3rd respondent Corporation is directed to take action within a period of twelve weeks from the date of receipt of the copy of this order. No costs. Consequently, the connected Miscellaneous Petition in M.P. 1 of 2008 is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpp
To

1. The Panchayat President,
Uthandi Village Panchayat,
Uthandi, Chennai.
2. The District Collector,
Kancheepuram District,
Collectors Office,
Kancheepuram-631 501.
3. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 002.

+2cc to Mr.A.V.Bharathi, Advocate SR.97674,96958
+1cc to Mr.S.Saravanan, Advocate SR.97257
+1cc to the Government Pleader SR.98076

W.P. 15476 of 2008
and
M.P. 1 of 2008

SR(CO)
CB(31/01/2020)