

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26/6/2019

C O R A M

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

Writ Petition No.5686 of 2019

C. Chenniyappan ... Petitioner

Vs

1. The District Collector
Erode District, Erode.
2. The Revenue Divisional officer
Erode District
Erode.
3. The Tahsildar
Modakurichi Taluk
Erode District.
4. The Assistant Director of Panchayats
Erode District Collectorate
Erode.
5. The Revenue Inspector
Avalpoondari Firka
Modakurichi Taluk
Erode District.
6. The Village Administrative Officer
Kaspapettai Village, A Block
Modakurichi Taluk
Erode District.
7. The Inspector of Police
Taluk Police Station
Rangampalayam
Erode District.

... Respondents

Prayer Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus forbearing the respondents from granting permission or passing order to use the land in S.F.No.301, M.S.Mangalam village, Modakurichi Taluk, Erode District, which is ear-marked for road purpose as burial ground.

For petitioner

... Mr.E.P.Seniyangiri

For respondents

... Mr.E.Manoharan
Additional Government Pleader

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Resident of Kaspapettai, Modakurichi Taluk, Erode District, has filed the instant public interest litigation, to restrain the respondents, from granting permission or passing order, to use the land, in S.F.No.301, M.S.Mangalam village, Modakurichi Taluk, Erode District, which is ear-marked, as road to be used, as a burial ground.

2. Petitioner contends that the abovesaid S.F.No.301 M.S.Mangalam village, Modakurichi Taluk, Erode District, is classified, as Government poramboke land, in the revenue records. It is contended that the Field Measurement Book, pertaining to the said survey number discloses the existence of a Cart track converted into a pucca road, providing public transportation. This road connects Kaspapettai village and other areas like Jeeva Nagar, Poolapalayam, and Vavikattuvalasu.

3. It is further stated that this road is being used by the people, residing in nearby villages but some persons are burying dead bodies along side the road and encroached the road. It is also stated that the Tahsildar of Modakurichi Taluk has issued instructions, preventing the use of the road, as a burial ground. It is stated that a Peace Committee Meeting was organised, wherein, it was resolved and it was accepted to use a small portion (North of the road), as a burial ground.

4. It is stated that on 10/2/2019, one Paramasivam died. The dead body of Mr.Paramasivam was brought to S.No.301. It is stated that due to the objection of the Villagers, relatives of the dead person were requested to take the body, to the electric crematorium in Erode, but the relatives of the deceased raised a dispute and this resulted in burying the body, in S.F.No.301.

5. Petitioner further states that residents of the area have requested for a bus stop in S.No.301, M.S.Mangalam Government poramboke land. Bible College, Children Home, Anandham Nagar, comprised of 40 houses are located just about 50 feet away from the place where bodies are being buried. Petitioner states that area cannot be used as a burial ground.

6. On notice, in this writ petition, Tahsildar, Modakurichi Taluk, Erode District, third respondent has filed a counter. A perusal of the counter affidavit would show that in Re-Survey Registry (RSR) of Kaspapettai 'A' village, Modakurichi Taluk of Erode District, Field No.301 has been classified, as

Sarkar poramboke and is used as Vandipathai (Cart Track). It is stated in the counter that a small portion of the land is being used as a burial ground. It is further stated that despite best efforts to find alternate land near the village to be used as a burial ground, no suitable land was found. It is further stated that land bearing S.F.No.301/1, Kaspapettai 'A' Village, Modakurichi Taluk, Erode District, admeasuring 0.37.5 hectares, only a small triangular portion in the south-east side is being used as a burial ground.

7. It is further stated in the counter that the triangular portion of south east side corner of the road is not causing any hindrance to the road users and there is no suitable burial ground except the existing portion of land to bury the dead. It is stated that if the portion is not utilised as a burial ground, public would have to go to the electric crematorium ground, in Perudurai or Erode, which is at a distance of 16 kms and 15 kms respectively from the village. Since the said area is being used as a burial ground, for a long time, the revenue Department is considering to convert the existing portion, as a burial ground, in the survey register.

8. Heard Mr.E.P.Senniayangiri, learned counsel for the petitioner and Mr.E.Manoharan, learned Additional Government Pleader for the respondents.

9. It is not disputed that the nearest burial ground from these villages is situated about 16 kilometres from the village. The counter affidavit of Tahsildar, shows that said area is being used as a burial ground for a long time and the Revenue Department is contemplating to convert the land as a burial ground. It is for the Collector to take a decision as to which land should be used as a burial ground. Material on record shows that the dispute is because of the differences between Poolampalayam and Kaspapettai villages. Resolution of the Peace Committee Meeting which took place on 26/7/2016, reads as under:

"As there is a difference of opinion between the general public of Poolapalayam, Kaspapettai, Chellappampalayam, Palimedu, Asokapuram, Vaikaatuvalasu, Transport Nagar, Rajeev Nagar, Silver City, Maruthi Nagar, Sakthi Nagar, Nehru Nagar, Anna Nagar, regarding using S.F.No.676/3 M.S.Mangalam "A" village, Avalpoondurai firka, Modakuruchi Taluk, Erode District as burial ground, soto find solution for the said problem today i.e., on 26/7/2016 at 11 am Peace Committee Meeting is conducted in the office of the Tahsildar, Modakuruchi & II Class Magistrate, in the compromise talk the following persons participated.

S.No.	"A" Party (Poolapalayam general public)	"B" Party (Kaspapettai General Public)
1	Selvaraj	Gunasekaran
2	Palanisamy	Deivasigamani
3	Isaac	Baluchamy
4	Azhagendiran	Karupannasamy
5	Raja	Sivanandam

The "A" party placed their argument that during rainy season if they continue to use S.F.No.676/3 as burial ground it would cause infections and diseases in the village since the place where the dead bodies are buried would be affected by the running water during the rainy season, further, while performing the ritual rights for the departed soul, public tranquility would be affected and they pleaded that neither the "A" party nor the "B" party shall use the said place as burial ground. They also demanded for alternative place as burial ground within 6 months.

"B" party informed the stand that the general public living in and around Kaspapettai does not have common burial ground. Therefore, they are using the said S.F.No.676/3 as burial ground. If the Government is ready to set up a general burial ground, they are ready to accept the same. They also record their request to set up burial ground as they are not willing to use S.F.no.66/3 as graveyard.

At the end of the meeting, the Tahsildar informed that fit place for burial ground will be examined and burial ground will be set up and till that process get completed, "A" party and "B" party can use the place located at S.F.No.676/3 as burial ground peacefully, the process of selecting the common area for burial ground will be done in accordance with the rules.

The said announcement of the Tahsildar has been accepted by both the parties unanimously. In support of the same "A" and "B" parties have signed.

In the aforementioned Peace Committee Meeting, Deputy Secretary (Training), Tamil Nadu Secretariat, Mr.Mathivanan, Sub-Inspector of Police, Erode Taluk Police Station, Zonal Deputy Tahsildar, Modakuruchi, Revenue Inspector, Avalpoonduraifirka, Village Administrative Officer, M.s.Mangalam A,B Villages, the President of Kaspapettai Village, are participated."

10. In view of the Peace Committee Meeting and in view of the fact that there is a proposal to convert the existing portion to burial ground, this Court is inclined to direct the respondents to take a decision on the issue regarding conversion of the said area into a burial ground at the earliest, in order to avoid further tension. Accordingly, the respondents are directed to take a decision on the issue regarding conversion of the said area into a burial ground, within a period of eight weeks, from the date of receipt of a copy of this order.

11. With the above direction, instant writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

Mvs.

To

1. The District Collector, Erode District, Erode.
2. The Revenue Divisional officer, Erode District, Erode.
3. The Tahsildar, Modakurichi Taluk, Erode District.
4. The Assistant Director of Panchayats
Erode District Collectorate, Erode.
5. The Revenue Inspector, Avalpoondari Firka
Modakurichi Taluk, Erode District.
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Kaspapettai Village, A Block, Modakurichi Taluk
Erode District.
7. The Inspector of Police, Taluk Police Station
Rangampalayam, Erode District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 53671

+1cc to the Government Pleader, S.R.No. 53037

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RGN(CO)
GN(29/07/2019)