



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT
DATE : 03.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

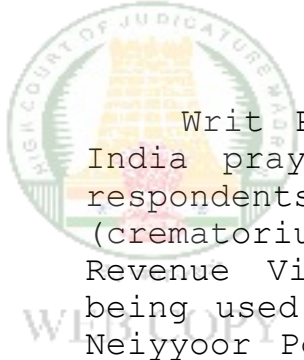
W.P. (MD) NO. 11490 OF 2019

A.Murugan

.. Petitioner

- Vs -

1. The District Collector
Kanyakumari District
at Nagercoil.
2. The Addl. Collector
(Development)/Project Director
District Rural Development Authority
Nagercoil, Kanyakumari District.
3. The Sub Collector
Padmanabhapuram Divisional
Thuckalay, Kanyakumari District.
4. The Revenue Development Officer
Padmanabhapuram Divisional
Thuckalay, Kanyakumari District.
5. The Tahsildar
Kalkulak Taluk, Thuckalay
Kanyakumari District.
6. The Block Development Officer
Thuckalay Panchayat Union
Thuckalay, Kanyakumari District.
7. The Asst. Executive Engineer
(Rural Development)
Nagercoil, Kanyakumari District.
8. The Deputy Superintendent of Police
Colachel, Kanyakumari District.
9. N.Haridoss



Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing respondents 1 and 6 to provide concrete roof for the burning ground (crematorium) situated at Saralvillai in S. No.36/5, Aathivilai Revenue Village, Kalkulam Taluk, Kanyakumari District, which is being used by the Viswakarma Community people of Alancode Village, Neiyoor Post, Kanyakumari District and to put up a compound wall around the said burning ground within the time stipulated by this Hon'ble Court.

For Petitioner : Mr. S.Balamurugan

For Respondents : Mr. A.K.Baskarapandian, Spl. GP
for RR-1 to 5, 7 & 8
Ms.S.Srimathy, Spl. G.P. for R-6

ORDER

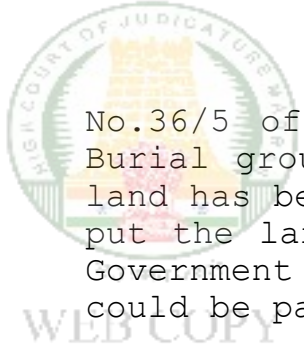
(Order of the Court was made by M.Sathyarayanan, J.)

By consent the writ petition itself is taken up for final disposal.

2. Mr.A.K.Baskarapandian, learned Spl. Government Pleader takes notice for respondents 1 to 5, 7 and 8 and Ms.S.Srimathy, learned Spl. Government Pleader takes notice for R-6.

3. Learned counsel appearing for the petitioner drew the attention of this Court to the affidavit filed in support of the writ petition as well as the typed set of documents and submits that originally Nelson, Rama, Balraj, Kumar, Mahendran (R-10) and Sriiba filed suit in O.S. No.59/2016 for permanent injunction restraining the defendants, viz., Athivalai Panchayat represented by its President and Viswakarma Community represented by its President from making any attempts to burn bodies in the suit land admeasuring an extent of 7 ½ cents. It is the claim of the plaintiff in the said suit that the land admeasuring an extent of 7 ½ cents belong to the above said 2nd defendant and during May, 2016, he made an attempt to bury the body of a person, who resided within 7 Kms., from the suit property. The plaintiffs are the residents of the nearby locality and their residences are about 90 mtrs., from the said place and alleging inconvenience and nuisance and in view of the attempts made by the defendant to use the said land as burial ground, filed the said suit and pending disposal of the same, interlocutory application No.310/16 was filed on the file of the Principal District Munsif Court, Eraniel, Kanyakumari, praying for ad-interim injunction.

4. It is the further submission of the learned counsel for the petitioner that the ad-interim application bearing No.310/2016 was dismissed on 24.10.16 by the said court, observing among other things, that as per Exs.B-1 and B-2, the suit property in survey



No.36/5 of Alangode belong to Alangode Aasari community (Nilavial Burial ground) and the said documents would also disclose the suit land has been donated to the Government and steps are being taken to put the land to proper use. The said court also observed that the Government has not been made as a party and, therefore, no order could be passed and, therefore, dismissed the said application.

5. Learned counsel appearing for the petitioner further submitted that no appeal has been preferred against the said order passed in the interlocutory application and the suit itself came to be dismissed for default and, subsequently, the 9th respondent filed a suit in O.S. No.93/14 on the file of the District Munsif, Eraniel against the Collector of Kanyakumari District, praying for permanent injunction restraining the defendant from setting up any crematorium in the plaint schedule property ad-measuring an extent of 2 cents in resurvey No.36/5 of Eraniel Village. Pending disposal of the suit, interlocutory application was taken out, but no interim orders have been passed and attempts are being made to protect the land by putting up a compound wall. Despite the absence of interim order, objections have been raised and in this regard, the 6th respondent has also sent a communication dated 7.3.19 in Na.Ka. No.A11/3663/2018-2 praying for proper protection and despite the same, the 8th respondent has not taken any action based on the said communication sent by the 6th respondent and, therefore, the present writ petition has been filed for appropriate orders.

6. Per contra, learned counsel appearing for the official respondents submitted that the suit land is being used as a burial ground and that tender has also been floated for the purpose of putting up a compound wall around the said land situate in resurvey No.36/5 and on 7.3.19 when the contractor went there to commence work, neighbours obstructed the same and in this regard, complaint has also been lodged with the 8th respondent and appropriate direction will be issued to the 8th respondent to act on the communication dated 7.3.19, addressed by the 6th respondent.

7. This Court has carefully considered the arguments advanced by the learned counsel for the petitioner as also the learned counsel appearing for the official respondents.

8. A perusal of the materials placed before this Court in the typed set of documents would prima facie disclose that the land in resurvey No.36/5 has been donated to the Government for the purpose of putting up a burial ground and that tender has also been floated to put up a compound wall around the said burial ground and that the contractor, who has been entrusted with the work went to the spot on 7.3.19 to execute the said work, but he was obstructed by the neighbours and a complaint in that regard has been lodged on the file of the 8th respondent. It also appears that though the said communication has emanated from the 6th respondent as early as on 7.3.19 to the 8th respondent, no action appears to have been taken by the 8th respondent.



9. In the light of the submissions made by the learned counsel appearing for the official respondents, this Court directs the 8th respondent to act on the complaint/communication of the 6th respondent dated 7.3.19 made in Na.Ka. No.A11/3663/2018-2 and take appropriate and necessary action in accordance with law and if necessary provide adequate police protection for putting up the compound wall around the land in question. The above said exercise shall be carried out within a period of two weeks from the date of receipt of a copy of this order.

10. This writ petition stands disposed of with the aforesaid observations and directions. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar(CS-)

GLN

To

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at Nagercoil.
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8. The Deputy Superintendent of Police
Colachel, Kanyakumari District.

+1CC to M/s.S.BALAMURUGAN, Advocate (SR-66737[F] dated 03/06/2019)

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ES/13.06.2019/5P/10C