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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.04.2019

DELIVERED ON : 04.06.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P.(MD).Nos.4874 & 9123 of 2019 and
W.M.P.(MD)Nos.3880 & 3881 & 7112 of 2019

W.P.(MD)No.4874 of 2019

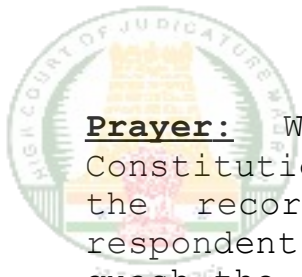
A.Mohammed Ali Jinnah

... Petitioner

Vs.

1. The District Collector,
Tirunelveli.
2. The Sub Divisional Magistrate/Deputy Collector,
Tirunelveli.
3. The Special Officer/Block Development Officer,
Thalaiyuthu Panchayat,
Manur Panchayat Union,
Tirunelveli District.
4. The Tamil Nadu Thowheed Jamath,
Thalaiyuthu, through its President,
Tirunelveli District.
5. Mohideen Andavar Jamath,
Tirunelveli District.
6. Abubukkar Siddik Jamath,
Thalaiyuthu through its President,
Tirunelveli District.
7. Masjidur Rahman Sunnathul,
Valjama Ath Jumma Pallivasal Thalaiyuthu,
Rep. through its President,
Tirunelveli District.
8. Masjid Bilal Jamath,
Ganesh Nagar, Thalaiyuthu,

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of the second respondent in Pa.Mu.(A5)M.C.6616/2018(147) dated 02.01.2019 and quash the same.

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For Petitioner : Mr.H.Arumugam

For R-1to R-4 : Mr.Chellapandian,
Additional Advocate General,
assisted by,
Mr.K.Mu.Muthu,
Additional Government Pleader.

For R-6 : Mr.M.Thirunavukkarasu

For R-5,R-7&R-8 : Mr.S.M.A.Jinnah

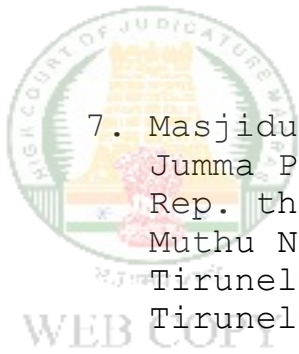
W.P.(MD)No.9123 of 2019

Abubukkar Siddiq Jamath,
Thalaiyutu, through its President,
9/G-10, Siddque Nagar,
Thalaiyuthu, Manur Taluk,
Tirunelveli District.

... Petitioner

Vs.

1. The District Collector,
Tirunelveli District, Tirunelveli.
2. The Sub Divisional Magistrate/Deputy Collector,
Tirunelveli.
3. The Tahsildar,
Manur Taluk,
Tirunelveli District.
4. The Special Officer/Block Development Officer,
Thalaiyuthu Panchayat,
Manur Panchayat Union,
Tirunelveli District.
5. The Tamil Nadu Thowheed Jamath,
Thalaiyuthu, through its President,
Tirunelveli District.
6. Mohideen Andavar Jamath,
Thalaiyuthu, through its President,
Tirunelveli District.



7. Masjidur Rahman Sunnathul Valjama Ath,
Jumma Pallivasal,
Rep. through its President,
Muthu Nagar, Sankar Nagar Town Panchyat,
Tirunelveli Taluk,
Tirunelveli District.

8. Majid Bilal Jamath,
Rep. by its President,
Ganesh Nagar, Sankar Nagar Town Panchayat,
Tirunelveli Taluk, Tirunelveli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in Pa.Mu.(A5)M.C.6616/2018(147) dated 02.01.2019 and quash the same and consequently forbear respondents 1 to 4 from making the burial ground in violation of the Tamil Nadu Village and Panchayat (Provision of Burial and Burning Grounds) Rules, 1999.

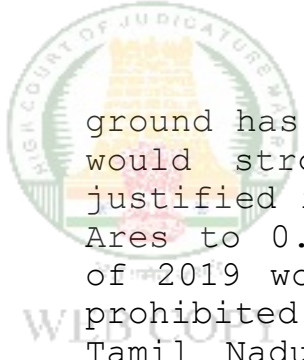
For Petitioner : Mr.M.Thirunavukkarasu
For R-1to R-4 : Mr.Chellapandian,
Additional Advocate General,
assisted by,
Mr.K.Mu.Muthu,
Additional Government Pleader.
For R-5 to R-8 : Mr.S.M.A.Jinnah

* * *

C O M M O N O R D E R

In both these Writ petitions, the proceedings dated 02.01.2019 issued by the Sub Divisional Magistrate/Deputy Collector, Tirunelveli, is under challenge. The subject matter pertains to the extent of the common Muslim burial ground in survey No.415/2 in Thalaiyuthu Village, Manur Taluk, Tirunelveli District. It is not in dispute that the common Muslim burial ground is located in the said survey number. The only issue is regarding its extent. The survey number measures total extent of 0.59.5 Ares. By the impugned proceedings, it has been ordered that 0.31.0 Ares in the said survey number would be used as a common burial ground.

2. This demarcation is questioned by the petitioners who would point out that survey No.415 was the subject matter in O.S.No.474 of 1994 on the file of the II Additional District Munsif Court, Tirunelveli. The plaintiff in the said suit was Mohideen Andavar Jumma Mosque, while the defendant was the State of Tamil Nadu. In the said suit, the sketch was submitted by the Tahsildar, Tirunelveli and it can be seen therefrom that the extent of burial

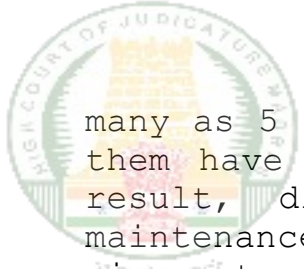


ground has been mentioned as 0.18.5 Ares. The petitioners' counsel would strongly contend that the authority was therefore not justified in expanding the extent of the burial ground from 0.18.5 Ares to 0.31.0 Ares. The petitioner's counsel in W.P.(MD)No.4874 of 2019 would also contend that his house is located within the prohibited distance. He would draw my attention to Rule 7 of the Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules 1999, which states as follows:-

"7. Place for burial and burning grounds
- (1) No person shall bury or burn or cause to be buried or burnt any corpse in any place within ninety metres of a dwelling place or source of drinking water-supply other than a place licenced as a burial and burning ground."

3. The petitioners' request is strongly opposed by some of the private respondents. The official respondents have also filed a detailed counter affidavit. After hearing the learned counsel on either side and the learned Additional Advocate General appearing for the official respondents, I am of the view that the order impugned in these Writ petitions does not warrant any interference. As already pointed out, a portion of survey No.415/2 has been used as a burial ground since time immemorial. The only dispute is regarding its extent. While the petitioners would claim that the extent of the burial ground is only 19 Ares, the authorities would claim that the extent of 0.31.0 Ares. Except the Rough Sketch drawn by the Tahsildar, Tirunelveli, which was marked in O.S.No.474 of 1994 on the file of the II Additional District Munsif Court, Tirunelveli, there is no other material to substantiate the petitioners' claim. It is not known as to what was the basis for arriving at a conclusion that the extent of the burial ground was only 19 Ares. In any event, the land has been classified only as a Government poramboke for several years. In this case, the authorities after hearing the stakeholders and to ensure public peace have come to the conclusion that 0.31.0 Ares out of the total extent of 0.59.5 Ares in survey No.415/2 could be earmarked as a common burial ground for various Muslim Jamaths, namely, respondents 4 to 8 of Thalaiyuthu Village. The petitioners' rights have not been infringed in any manner.

4. It appears that the petitioner in W.P.(MD)No.4874 of 2019 put up his residence only recently. Between the petitioner's house and the burial ground in question, there is a prayer hall and an Anganwadi. In any event the petitioner whose residence came up later in point of time cannot complain of violation of the distance rules. As rightly contended by the learned Additional Advocate General, the common burial ground has been in existence since more or less 35 years and therefore, it is not open to the petitioner to invoke the aforesaid rules which came into existence only in the year 1999. In W.P.(MD)No.4874 of 2019, there are as



many as 5 Jamaths who have been impleaded as respondents. Each of them have been claiming separate space for their members. As a result, disputes arose and they posed a serious threat to maintenance of public peace and tranquility. In these circumstances, the Executive Magistrate who is responsible for maintaining public peace, after taking into account all the relevant aspects and also ground reality chose to earmark 0.31.0 Ares for Kabarsthan. Since the petitioners' rights have not been infringed in any manner, I find that there are no merits in these Writ petitions. The impugned order in these Writ petitions does not warrant any interference.

5. These Writ petitions stand dismissed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

pmu

To

1. The District Collector,
Tirunelveli.
2. The Sub Divisional Magistrate/Deputy Collector,
Tirunelveli.
3. The Special Officer/Block Development Officer,
Thalaiyuthu Panchayat,
Manur Panchayat Union,
Tirunelveli District.
4. The Tamil Nadu Thowheed Jamath,
Thalaiyuthu, through its President,
Tirunelveli District.

+ 1 CC TO Mr.M.Thirunavukkarasu, ADVOCATE IN SR No.66870

+ 1 CC TO Mr.H.Arumugam, ADVOCATE IN SR No.67255

PRE-DELIVERY ORDER
MADE IN

W.P.(MD).Nos.4874 & 9123 of 2019 and
W.M.P.(MD)Nos.3880 & 3881 & 7112 of 2019