



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.662 of 2014

and M.P.(MD).Nos.1 and 2 of 2014

WEB COPY

M.Esakkia Pandian

.. Petitioner

Vs.

1.The District collector,
Tirunelveli District.Tirunelveli.

2.The Revenue Divisional Officer,
Cheranmahadevi,Tirunelveli District.

3.The Tahsildar,
Radhapuram Taluk,
Tirunelveli District.

4.The Inspector of Police,
Thisayanvilai Police Station,
Tirunelveli District.

5.Sundar (died)

6.Subha

7.Minor Kaviya Lakshmi

8.Minor Nithiyasri

9.Senthamarai

.. Respondents

(Respondents 6 to 9 were impleaded as the legal heirs of the deceased fifth respondent as per the order, dated 06.03.2017, in W.M.P.(MD).No.11001 of 2016. R7 and R8 represented through their mother R6)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the Respondents No.1 to 5 to remove the dead body of the deceased Shanmugamsundaram Nadar, who has been buried in Survey No.50/1A2, Muthumothanmozhi Village, Thisayanvilai, Tirunelveli District and further direct the Respondent No.1 to take necessary action as against the 5th Respondent pursuant to the Petitioner's representation dated 30.12.2013.

For Petitioner : Mr.S.Palani Velayutham

For Respondents:1) Mr.C.Ramar for R1 to R4

Additional Government Pleader

2) Mr.H.Arumugam, for R5

ORDER

This writ petition is filed only for issuance of Writ of Mandamus, directing the Respondents No.1 to 5 to remove the dead body of the deceased Shanmugamsundaram Nadar, who has been buried in



Survey No.50/1A2, Muthumothanmozhi Village, Thisayanvilai, Tirunelveli District and further direct the Respondent No.1 to take necessary action as against the 5th Respondent pursuant to the Petitioner's representation dated 30.12.2013.

2.It is the case of the petitioner that the property measuring an extend of 30 cents in S.No.50/1A2 belongs to the petitioner by virtue of a registered sale deed, dated 29.09.1997. It is further stated that 5th respondent encroached into the land and buried the deceased by name Shanmugasundaram. Though the petitioner registered a complaint before the police, he states that no action has been taken by the respondents. It is in the said circumstances, the petitioner submitted a representation, dated 31.12.2013, to remove the encroachment and to prevent such recurrence of burial of dead bodies in his land.

3.In the counter affidavit filed by the third respondent, it is stated that pursuant to the complaint, the fourth respondent summoned the petitioner as well as the fifth respondent and conducted enquiry. It is further stated that since the fifth respondent and the petitioner claim right over the property in S.No.50/1A2, the parties were advised to go before civil court to establish their right having regard to the claim and counter claim in relation to S.No.50/1A2.

4.It is also stated that on the basis of the report of third and fourth respondent, dated 04.01.2014 and 06.01.2014 respectively, an order has been passed under Section 145 of Cr.P.C. on 05.02.2014 to prevent breach of peace. It is also stated that the order passed on 05.02.2014 is in force and that by the order, the parties are restrained from using the disputed property in S.No.50/1A2 till any one of the parties obtain a valid decree from competent civil court by establishing their ownership over the disputed property.

5.Having regard to the statement of facts given by the third respondent, this Court is not inclined to entertain this writ petition. Hence, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. However, liberty is given to the petitioner to approach the civil court to establish his title and then to approach the revenue officials to get patta and to ensure that no further encroachments can be allowed or permitted by strangers. Thereafter, the official respondents are expected to pass orders in terms with the verdict of civil court in case any of the petitioner or fifth respondent get a decree in their favour.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The District collector,
Tirunelveli District, Tirunelveli.
- 2.The Revenue Divisional Officer,
Cheranmahadevi, Tirunelveli District.
- 3.The Tahsildar,
Radhapuram Taluk, Tirunelveli District.
- 4.The Inspector of Police,
Thisayanvilai Police Station,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-103281[F] dated 04/12/2019)
+1 CC to M/s.H.ARUMUGAM, Advocate (SR-103313[F] dated 04/12/2019)
+1 CC to M/s.S.PALANIVELAYUTHAM, Advocate (SR-103363[F] dated
04/12/2019)

W.P. (MD).No.662 of 2014
03.12.2019

SMA/19/12/19/3P/8C