

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.13897/2020 & WMP.No.17267/2020

Kudieruppor Samooga Nala Sangam Uthandi
represented by its President
Mr.M.Kuppusamy
No.1/193, Bajanai Koil Street
Uthandi, Chennai 600 119. Petitioner

Versus

- 1.The Commissioner
Corporation of Chennai
Rippon Building
Chennai 600 003.
- 2.The District Collector
Kancheepuram District,
Collector's Office
Kancheepuram - 631 501.
- 3.The Panchayat President
Uthandi Village Panchayat
Uthandi, Chennai 600 119.

4.Mrs.Mallika Bhan ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of prohibition, prohibiting the respondents from closing the crematorium bearing Survey Nos.3/2b and 2/2b of Uthandi Village, Sholinganallur Taluk, Kancheepuram District and more fully described in the petition schedule, which has been under use for over 100 years by the residents of Uthandi Village either by themselves or under the guise of orders of this Court passed in WP.No.15476 of 2018 dated 21.11.2019.

For Petitioner :	Mr.K.G.Vasudevan
For R1 :	Mr.R.Gopinath, Standing counsel
For RR2&3 :	Mr.R.Vijayakumar, AGP

ORDER

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Mr. R. Gopinath, learned Standing counsel accepts notice on behalf of the 1st respondent and Mr. R. Vijayakumar, learned Additional Government Pleader accepts notice on behalf of respondents 2 and 3.
- (3) The petitioner claims to be the President of the Association, viz., Kudierupor Samooga Nala Sangam, and the deponent of the affidavit also claims to be one of the old residents of Uthandi Village which was earlier with Kanchipuram District, now within the Chennai City Municipal Corporation. According to the petitioner, M/s. VGP Housing Private Limited has developed a layout and in the said layout, a crematorium/burial ground is located on a land which forms part of a larger extent of land comprised in S.No. 3/2B and 2/2B and the total extent of land was measuring 135 Acres.
- (4) M/s. VGP Housing Private Limited had purchased some extent of land from the original owner Mr. V. Subramania Pillai and developed a layout and set apart a portion of the land in the above said survey number for the purpose of crematorium and it was measuring 2.80 acres. It is also stated by the petitioner that subsequently a partition came into being among the legal heirs of Subramania Pillai and the provisions of the Tamil Nadu Land Reforms [Fixation of Ceiling on Land] Act, also came to be invoked and it is the case of the petitioner that though the original owner, viz., Subramania Pillai had in possession, all the excess lands beyond the permissible limit, the layout proposal submitted by M/s. VGP Housing Private Limited has been approved, by ignoring the provisions of the said Act and therefore, it cannot be valid in the eye of law.
- (5) The learned counsel for the petitioner would submit that the 4th respondent herein, on an earlier occasion, filed WP.No. 15476/2008 against the Panchayat President of Uthandi Village, The Collector of Kanchipuram District and the Commissioner, Corporation of Chennai, praying for issuance of a writ of mandamus, directing the respondents to remove the cremation shed put up among the residential plots in the approved layout, viz., VGP Golden Beach, Uthandi, East Coast Road and to provide the villagers of Uthandi, a cremation ground to bury or to burn the dead bodies at least 90 meters away from the approved layout. The said writ petition, after contest, came to be allowed with the following directions:-
''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 dated of receipt of the copy of this order. No costs. Consequently, the connected miscellaneous petition in MP.No.1 of 2008 is also closed."

- (6) The primordial grievance expressed by the petitioner is that despite a positive direction given to the Greater Corporation of Chennai to find out and to provide suitable alternative place for burial/cremation of dead bodies, the 1st respondent is yet to take a call and taking advantage of the same, steps are being taken to prevent the cremation/burial of the dead bodies in the said Survey Number and that apart, emergent steps are also being taken to obliterate the said burial/cremation ground and prays for appropriate orders.
- (7) Mr.R.Gopinath, learned Standing counsel appearing for the 1st respondent submit that the order came to be passed only during the end of the year 2019 and on account of the onset and spread of COVID-19 pandemic virus, there is some difficulty in identifying and locating the alternative land for the provision of burial/cremation ground of dead bodies and the said exercise would be carried out as expeditiously as possible.
- (8) The Court heard the submissions of Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondents 2 and 3.
- (9) A perusal of the final order dated 21.11.2019 made in WP.No.15476 of 2008 [Mrs.Mallika Bhan V. The Panchayat President, Uthandi Village Panchayat, Uthandi, Chennai and 2 others], would reveal that some of the residents of the Uthandi Panchayat in their respective capacity, had also filed suit in OS.No.611 of 1997 on the file of the Court of Principal District Munsif at Alandur against the owners of the layout, praying for a declaration, declaring their communal right over

the burial ground and also for an injunction restraining the defendants therein from preventing the users of the burial ground along with pathway and the said suit, after contest, came to be dismissed vide judgment and decree dated 12.04.2016.

(10)The learned counsel for the petitioner though would submit that an appeal has been filed against the said judgment and decree, the details of the same have not been given neither in the affidavit nor in the typed set of documents and in paragraph No.6 of the order passed in WP.No.15476 of 2008, it was observed that ''challenging the said judgment and decree, no appeal has been made and the said judgment and decree has become final.''

(11)If at all any appeal said to have been filed and it is pending, the petitioner Association is at liberty to work out their remedy in the pending litigation in accordance with law.

(12)In the light of the findings recorded in WP.No.15476 of 2008 by a Single Bench of this Court, vide order dated 21.11.2019 and in the absence of any further challenge to the said order, the prayer sought for by the petitioner in this writ petition, in the considered opinion of the Court, lacks merits and substance.

(13)In the result, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(14)Call on 24.11.2020 and the 1st respondent is directed to file a Status Report as to the compliance of the order dated 21.11.2019 made in WP.No.15476 of 2008.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

2.The District Collector,
Kancheepuram District,
Collector's Office,
Kancheepuram - 631 501.

3.The Panchayat President,
Uthandi Village Panchayat,
Uthandi, Chennai 600 119.

+1cc to Mr.Gopinath, Advocate Sr.33446

+1cc to Mr.Vasudevan, Advocate Sr.33562

WP.No.13897/2020

mg[col]
srg 21/10/2020



WEB COPY