

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

W.P.No.27630 of 2019
and W.M.P.No.27149 of 2019

G.R.Rajkumar

.. Petitioner

Vs.

1.The District Collector,
Tiruvallur.

2.The Revenue Divisional officer,
Tiruvallur.

3.The Tahsildar,
Tiruvallur Taluk,
Tiruvallur.

4.The Commissioner,
Thiruvallur Municipality,
Tiruvallur.

5.The Inspector of Police
Thiruvallur Town Police Station,
Tiruvallur

6.M/s.Aditya Housing, a Partnership firm, rep by its Partner
A.Guruprasath s/o. of A. Venkattrathinam
No.15, Sai villa, VI Cross Street,
Kumaran Nagar, Chennai - 600 082.

7.M/s.Aditya Housing, a Partnership firm, rep by its Partner
B. Prabhakaran, s/o. of Bakthavatchalam,
Door No.287, No 54 "Z Block",
V Avenue, Anna Nagar, Chennai - 600 040.

8.Manoharan

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India, praying for issue a Writ of Mandamus
directing the 3rd and 4th Respondents, to restore the burial

ground and the concrete Platform meant for performing death rites and rituals (Saangia Media) in Pungathur village, falling within Survey Nos.514 part and 515 part of Pungathur Revenue Village, lying adjacent to S. No. 516 lands, demolished and effaced by the Respondents 6 to 8, enabling the general Public in Ward Nos.17, 18 and 19 of Thiruvallur Municipality to bury the dead persons, as hitherto done for over 100 years.

For Petitioner : Mr.R.Selvakumar

For Respondents: Mr.G.K.Muthukumar (RR1 to 3 & 5)
Special Government Pleader
: Mr.P.Srinivas (R4)
: No appearance (RR6 to 8)

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

This is the Public Interest Litigation filed by the petitioner seeking a direction to the respondents 3 and 4 to restore the burial ground, which is stated to be in use from time immemorial.

2. In the counter affidavit filed by the 4th respondent the following statement has been made:-

"3. It is submitted that the land in T.S.No.1/7, Ward B, Block 12, of an extent of 1200 square meters in Pungathur village are lands that are classified as Sarkar Poromboke Mayanam, Vaikkal and Paathai Poromboke and they are vested with the respondent municipality. 4. There was a cremation platform in the same and it was being used for performing final rites such as the 13th day and 18th ceremonies of the deceased persons. Previously the land was being used for cremation purposes and after the constructions of the Modern Gasifier Crematorium in Thalangancheri, in the year 2014, the land in T.S.No.1/7 was no longer used for cremations and it was solely used only for ceremonies post the cremation. Nevertheless the said lands are mean for communal use and do not belong to any particular community or group of people.

5. Further after the completion of the Gasifier Crematorium in Thalangancherri, it has been notified in the various cremation grounds including T.S.No.1/7 that no cremation will be allowed in the said old cremation grounds.

... ..
... ..

10. With regard to the averments of the petitioner as if the Burial of Dead Bodies was taking place in the said lands in T.S.No.1/7 it is submitted that there is a specific bar on such burials and the cremation can be done only in the Gasifier Crematorium and not in other places in the Thiruvallur Town. There is no provision or rules as stated by the petitioner in Para 13 of the affidavit that the residents of the three wards namely 17, 18 and 19 can bury the dead body only in this Burial ground. As already stated above, after the formation of the Thalangancherri Crematorium, all the other cremation grounds in Thiruvallur have been discontinued."

3. Thus, from the above it is clear that the 4th respondent has taken a stand that after the establishment of the crematorium, the old burial ground is not being used. Subsequently, it has been stated in paragraphs 7 and 8 of the counter affidavit that the encroachments by private persons have been removed and an FIR has been registered in Crime No.391 of 2019 on the file of Tiruvallur Town Police Station for the alleged offence under Sections 297 and 427 of IPC.

4. The learned standing counsel for the 4th respondent submitted that the work of erection of fencing is contemplated at a cost of Rs.9,00,000/- and approval is pending with the Municipal Council for the aforesaid purpose.

5. In view of the above, we are not inclined to allow the writ petition as prayed for. Insofar as the encroachment is concerned, the statement made in paragraphs 6 to 8 of the counter affidavit is taken on record. The 4th respondent shall see to it that no private person encroaches the public land in T.S.No.1/7 of Pungathur Village. The work of erection of fencing as mentioned in paragraphs 6 to 8 of the counter affidavit will have to be completed after getting appropriate approval from the Municipal Council within a period of four months from the date of receipt of a copy of this order.

6. As far as the usage of the old land, even after construction of Modern Gasifier Crematorium for the purpose of ceremonies is concerned, it is for the 4th respondent to take a call on that. Therefore, the 4th respondent is directed to take a decision in this regard, particularly, on the question of performing ceremony and indulging in burial as against cremation. Action taken in this regard will have to be intimated to the petitioner within a period of six weeks thereafter.

This writ petition stands dismissed, however, with the above directions. No costs. Consequently, connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

raa/kmk

To

- 1.The District Collector,
Tiruvallur.
- 2.The Revenue Divisional officer,
Tiruvallur.
- 3.The Tahsildar,
Tiruvallur Taluk,
Tiruvallur.
- 4.The Commissioner,
Thiruvallur Municipality,
Tiruvallur.
- 5.The Inspector of Police
Thiruvallur Town Police Station,
Tiruvallur.

+1cc to Mr. R.Selvakumar, Advocate SR 25554

W.P.No.27630 of 2019

PP (CO)
VS 27.08.2020

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