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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.4960 of 2015
and
M.P.Nos.1 & 2 of 2015

Thangavel

Vs.

... Petitioner

1. The District Collector,
Salem,
Salem District.
2. The Tahsildar,
Omalur, Salem District.
3. The District Revenue Officer,
Salem,
Salem District.
4. The Village Administrative Officer,
Sikkanampatti Village,
Omalur Taluk,
Salem District.
5. The District Superintendent of Police
Nethimedu
Salem District
6. Palani
7. Palanivel

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the proceeding in Na.Ka.No.199/2015/(A6) dated 23.01.2015 passed by the 2nd respondent, quash the same.

For Petitioner : Mr.M.Elango

For R1 to R5 : Mr.K.M.D.Muhilan
Government Advocate



For R6 : Mr.G.Surya Narayanan

For R7 : Not Ready in Notice

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O R D E R
(Through Video Conferencing)

The order passed by the 2nd respondent is sought to be quashed in the present writ petition.

2.The grievance of the petitioner is that the 6th respondent, Mr.Palani, filed W.P.No.28831 of 2014 to exhume the buried dead body of the petitioner's mother in S.No.51/8A and bury it in the Burial Ground in Sikkanampatti Village. This Court passed final orders directing the respondents 1 to 5 therein to put the petitioner on notice and first give the petitioner a chance to exhume the body and to bury it in the approved Burial Ground or on his failure to do so, the respondents 1 to 5 may do it themselves, and it will be open to the petitioner to come to this Court, if there is any difficulty. Pursuant to the orders passed by this Court, the competent authorities issued notice to exhume the body and the said notice is under challenge in the present writ petition.

3.It is brought to the notice of this Court that a civil suit is pending between the parties. However, in such circumstances, burial of body can never be done by either of the parties. Once the land is in dispute, as rightly pointed out, the dead body is to be buried in a common Burial Ground in order to avoid unnecessary issues between the parties in respect of the title of a particular land. Undoubtedly, the High Court cannot decide the ownership or title in respect of the property in question in a writ petition under Article 226 of the Constitution of India. However, by burying the body in a particular disputed land, no one can take undue advantage of the situation or by stating that the land belongs to them.

4.In view of the peculiar circumstances raised, this Court has to consider the facts and the present status as stated by the Tahsildar, Omalur, which would be relevant for the purpose of disposal of the writ petition. In Para No.9 of the counter affidavit, the Tahsildar, has stated as follows :

"9.This respondent submits that after passing of the order, the 2nd respondent issued notice in Na.Ka. 199/2015 (B6) dated 23.1.2015 directing the petitioner to exhume his mother's body from the patta land of the 6th respondent and to bury it in approved burial ground. After issuing of the said notice by the 2nd



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respondent, the petitioner has filed the above writ petition as if his mother's body was not buried in the patta land of the 6th respondent in S.No.51/8A and he had buried the same in S.No.51/8C. To find out the exact place where the dead body was buried, the lands in s.No.51 was measured. As per the plan submitted by the surveyor, it is correctly enlightened that the petitioner's mother's dead body was buried in S.No.51/8A to the extent of 0.30.0 hectares covered under Patta No.523, which belongs to the 6th respondent. In the field map for S.No.51 the place where the petitioner's mother's dead body was buried is correctly identified. Hence the notice issued by the 2nd respondent is correct."

5.The Tahsildar states that the petitioner's mother dead body was buried in S.No.51/8A and the extent is 0.30.0 Hectare covered under Patta No.523, which belongs to the 6th respondent, Mr.Palani. In the field map for S.No.51, the place where the petitioner's mother's dead body was buried is correctly identified and therefore, the 2nd respondent issued notice to the writ petitioner for exhuming the dead body and to bury the same in the common Burial Ground.

6.This being the factum ascertained by the Tahsildar, Omalur, this Court is of the considered opinion that, in order to maintain peace and practicability, the dead body buried is to be exhumed, and regarding the title of the property, the respective parties are at liberty to resolve the same through the competent Civil Court of Law, as a civil suit has already been instituted. Contrarily, if the dead body is allowed to remain in the said disputed place, either of the parties will create unnecessary issues and such a situation is to be avoided in the interest of the parties.

7.In view of the facts and circumstances, the respondents 1 to 5 are directed to exhume the dead body of the petitioner's mother, which was buried in S.No.51/8A, within a period of two weeks from the date of receipt of a copy of this order and bury the said dead body in the common Burial Ground. The petitioner is directed to co-operate for exhuming the dead body and to bury the same in the common Burial Ground and the expenses for such re-burial must be recovered from the petitioner by the competent authorities.

8.With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.



9. It is made clear that the re-burial of the dead body cannot be a ground for the purpose of defending the civil suit between the parties.

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Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector
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Salem District.
2. The Tahsildar
Omalur, Salem District
3. The District Revenue Officer
Salem
Salem District
4. The Village Administrative Officer
Sikkanampatti Village
Omalur Taluk
Salem District
5. The District Superintendent of Police
Nethimedu
Salem District

+1CC to Mr.G.Suryanarayanan, Advocate, Sr.No.56521

+1CC to Mr.Government Pleader, Sr.No.56657

W.P.No.4960 of 2015

GPL (CO)

K.RK. (10.11.2021)