

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2022

DATE OF DECISION : 24.06.2022

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.718 OF 2013

1.The State of Tamil Nadu
Rep. by its Secretary
Department of Rural Development
Fort St.George
Chennai 600 009

2.The Executive Officer
Mookanur Panchayat
Dharmapuri

...Appellants / 1st & 2nd Respondents

Vs

Lakshmi
W/o Nagaraj

...Respondent / Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order dated 27.09.2012 made in W.P.No.22868 of 2008.

Prayer in W.P.No.22868 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying a Writ of Certiorarified Mandamus, calling for the records in the impugned notice dated 08.09.2008 on the file of the 2nd respondent and quash the same as illegal and direct the 2nd respondent not to interfere in the private right of the petitioner to construct the Samadhi of his son in her own land.

For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader

For Respondent : Mr.R.Sankarasubbu

JUDGMENT

T.RAJA, J.

The present appeal has been brought by the State challenging the correctness of the impugned order dated 27.09.2012 passed in Writ Petition No.22868 of 2008.

2. Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellants argued that when the respondent, in memory of her son Naveen alias Naveen Prasad - a naxalite, who succumbed to the bullet injuries on 19.04.2008 in an encounter, attempted to construct a memorial pillar/samadhi in her private land, the second appellant, having received information about the construction of the said memorial pillar, issued the notice dated 8.9.2008 impugned in the writ petition calling upon her to stop the construction, as the respondent has no right to erect a pillar even in a private land without the permission of the Government. Arguing further, the learned Special Government Pleader, taking support from the report dated 22.05.2008 filed by the Inspector of Police, NSD Wing, Dharmapuri, submitted that the respondent's son, Naveen alias Naveen Prasad, at the age of 18, joined the maoist organisation and in the year 2002, a case was registered against him in Mathikonpalayam Police Station Crime No.30 of 2002 for the offence under Sections 307, 397 IPC and Section 25(1)(a) of the Arms Act and thereafter, he came out on bail. He was also absconding since then. Further he was involved in Uthangarai Police Station Crime Nos.1004, 1005, 1006 of 2002 and Kallavi Police Station Crime No.434 of 2002 for the offence under Sections 147, 148, 332, 307, 120-B IPC read with Section 25(1)(a) of the Indian Arms Act and also for the offence under Sections 4 & 5 of the Explosive Substances Act and again for the offence under Section 3(2)(b), 3(3), 3(5) and 4(b) of the Prevention of Terrorism Act. Besides, he was also involved in Periyakulam Police Station Crime No.232 of 2007 for the offence under Sections 147, 148, 120-B, 214, 124A of IPC read with Section 25(1)(b) of the Indian Arms Act and Sections 4 & 5 of the Explosive Substances Act. Finally, he was encountered by the STF 'Q' Branch and Dindigul District Police and in this regard, a case in Kodaikanal Police Station Crime No.111 of 2008 was also registered for the offence under Sections 147, 148, 307 IPC read with Sections 25(1) & 27 of the Indian Arms Act and Sections 3,4,5 of the Amendment Act, 1908 and Section 174 Cr.P.C.

3. Further, the dead body of the said Naveen was taken to Government Hospital, Kodaikanal on 19.4.2008 and a post-mortem was conducted on 20.04.2008. In the meanwhile, the respondent along with her Advocate-Haribabu, the Secretary of the Centre for Protection of Civil Liberties along with a few relatives went to Kodaikanal and they came to Dharmapuri at about 8.00 A.M. on 21.04.2008. Finally the dead body reached Dharmapuri around 8.00 A.M., where the POTA accused Padma, Reetamari, Ramani, Anandhi, Balan, Sakthivel, Vinayagam, Durai Palanisamy, Natham Raja, Sathishkumar were present and they received the body. Thereafter, the PDYA members Elagiri Raman, Munusamy (barber), Krishnan Sesampatti, K.C.Selvam, Kondampatti Palani

and others took the body to Mookkanoor in a procession. Finally the body reached Mookkanoor at 10.00 A.M., raising slogans against the Government and carrying banners praising the deceased maoist. Even the cadres did not allow any police officer in the procession. Finally they buried the body in the land situated in Survey No.217/1 belonging to one Thimman, from whom the respondent's family purchased the one cent of land. The learned Special Government Pleader appearing for the appellants submitted that when the respondent's son belongs to Communist Party of India (Maoist) that was a banned organisation under the Unlawful Activities (Prevention) Act, 1967, the President of Mookanur Panchayat has refused permission to raise any memorial pillar, for the reason that no dead body can be buried in the midst of the agricultural land which is against the provisions of the Tamil Nadu Panchayats Act, 1994 as well as without the permission of the statutory authorities. As the respondent was trying to install a statue/memorial pillar for her deceased son without permission, the notice dated 8.9.2008 was issued to stall her illegal act, because as per the provisions of the Tamil Nadu Panchayat Act, burial or cremation has to be done at the specified place and not at any place as the respondent or relatives of the deceased wanted.

4. Continuing his arguments, the learned Special Government Pleader appearing for the appellants stated that the conclusions reached by the learned single Judge that the pillar in question is not proposed to be located in a public place; that there would be a compound wall covering the place and the public would have no access as a matter of right and in the absence of any statutory prescription prohibiting the construction of memorial pillar in a private land, it cannot be said that the Panchayat has got a right to stop the construction, are all without any substance. Moreover, the approach adopted by the learned single Judge holding that a statue can be erected in a private place without the permission of the Government, is highly unjustified, more particularly, when the deceased, son of the respondent, died in an encounter, allowing them to raise a memorial pillar in commemoration of the cause for which he died, is impermissible, for the reason that the son of the respondent belonged to a banned organization. Secondly, the body was buried in the midst of the agricultural land against the provisions of the Tamil Nadu Panchayats Act. Therefore, no permission can be granted to construct a memorial pillar for the deceased naxalite, because permitting a monument/memorial pillar idealizing the naxalite principles would have a negative influence on the adolescent minds. But these crucial aspects have been completely overlooked by the learned single Judge. Concluding his arguments, he has also requested this Court to peruse the detailed report placed in a sealed cover by the Superintendent of Police, 'Q' Branch CID. Hence, by allowing

the appeal, the order passed by the learned single Judge is liable to be set aside, he pleaded.

5. Mr.R.Sankarasubbu, learned counsel appearing for the respondent/writ petitioner submitted that the deceased Naveen alias Naveen Prasad was fighting for the cause of rural poor against exploitation of mankind. But he was encountered by the Kodaikanal police. In view thereof, the respondent filed a petition under Section 482 Cr.P.C., to register a murder case against the erring policemen in CrI.O.P.No.12394 of 2008 before this Court. Thereafter, the writ petitioner's son's body was buried in her own place situated at her village. Subsequently, the family members decided to erect a samadhi or a tomb in the said burial place for the deceased. After arranging sufficient financial support, started constructing a samadhi in her own land which is situated far off from the public road and the entire villagers supported such motto and no one in the village has got any ill-feeling against her son, because he was the son of the soil. Therefore, it is her fundamental right to establish a memorial for her son Naveen. Only to uphold and preserve his ideologies, the said memorial/samadhi is being constructed in the one cent of land that was purchased by the respondent. Therefore, the Executive Officer, Mookanur Panchayat, the second appellant ought not to have issued the notice dated 8.9.2008 restraining the respondent from constructing the samadhi for her son. When the respondent has got inherent right to construct the samadhi for her son, it cannot be restrained by anybody and the contention made by the appellants before this Court that for constructing the samadhi or tomb on a private land, the family members should obtain permission from the competent authority is not applicable to the present case. Therefore the impugned notice issued by the second appellant is violative of Article 21 of the Constitution of India, because the faith of the respondent cannot be restrained by the second appellant. When the impugned order is arbitrary and illegal, the same was set aside by the learned single Judge. Since no fresh case has been made out by the appellants, the appeal is liable to be dismissed, he pleaded.

6. Heard both sides.

7. The son of the respondent, who was branded as a naxalite from the banned CPI (Maoist) organisation, died in an encounter on 19.04.2008 at Kodaikanal Hills at the hands of the STF 'Q' Branch and Dindigul District Police and in this regard, a case in Kodaikanal Police Station Crime No.111 of 2008 was also registered for the offence under Sections 147, 148, 307 IPC read with Sections 25(1) & 27 of the Indian Arms Act and Sections 3,4,5 of the Amendment Act, 1908 and Section 174 Cr.P.C. One of the documents filed by the Inspector of Police,

NSD Wing, Dharmapuri in the writ appeal paper book would show that the son of the respondent, at the age of 18, is said to have joined the above maoist organisation. Thereafter, in the year 2002, when he involved himself in unlawful activities, a case in Crime No.30 of 2002 was registered by the Mathikonpalayam Police Station for the offence under Sections 307, 397 IPC and Section 25(1)(a) of the Arms Act and thereafter, he came out on bail and was also absconding since then. It is also seen that the son of the respondent was involved in the Uthangarai Police Station Crime Nos.1004, 1005, 1006 of 2002 and Kallavi Police Station Crime No.434 of 2002 for the offence under Sections 147, 148, 332, 307, 120-B IPC read with Section 25(1)(a) of the Indian Arms Act and also for the offence under Sections 4 & 5 of the Explosive Substances Act and again for the offence under Section 3(2)(b), 3(3), 3(5) and 4(b) of the Prevention of Terrorism Act. Besides, he was also involved in Periyakulam Police Station Crime No.232 of 2007 for the offence under Sections 147, 148, 120-B, 214, 124A of IPC read with Section 25(1)(b) of the Indian Arms Act and Sections 4 & 5 of the Explosive Substances Act. Thereafter, the body of the deceased Naveen alias Naveen Prasad was taken to Government Hospital, Kodaikanal on 19.04.2008. After conducting post-mortem, the body was handed over to the family members of the respondent. Subsequently, they also buried the body in the land covered in Survey No.217/1 belonging to one Thimman, which is said to have been purchased by the respondent's family.

8. It may not be out of context to mention herein that under Section 116 of the Tamil Nadu Panchayats Act, 1994, the village panchayat is duty bound to provide burial and burning grounds subject to the Rules made thereunder. Therefore, in exercise of the powers conferred by Section 116 and clause (xxxi) of sub-section (2) of Section 242 of the Tamil Nadu Panchayats Act, 1994, the Government of Tamil Nadu in G.O.(Ms.)No.213, Rural Development (C4) dated 05.10.1999 have framed the Tamil Nadu Village Panchayats (Provision of Burial and Burial Grounds) Rules, 1999. Under Rule 5 of the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999, which reads as follows,

"5. Conditions for opening of burial and burning ground.- (1) No new place for burying or burning the dead, whether private or public, shall be opened, formed, constructed or used, unless a licence has been obtained from the Village Panchayat on application.

(2) Such application for a licence shall be accompanied by the plan of the place for which licence is required showing the locality, boundary and extent thereof, the name of the owner or person or community interested

therein, the system of management and such further particulars as the Village Panchayat may require.

(3) The Village Panchayat to which an application is made may-

(a) grant or, if there is valid reason to be recorded in writing, refuse to grant a licence, or

(b) postpone the grant of a licence until the objection, if any to the site has been cleared or any particulars called for by it have been furnished.

(4) The Assistant Director (Panchayats) may cancel or modify any order passed by a Panchayat under sub-rule (3) :

Provided that no order either on application or suo motu prejudicial to the appellant shall be passed without giving reasonable opportunity of being heard to the appellant under this sub-rule or sub-rule (3)."

the respondent should have obtained a licence from the competent authority even if the corpse of her son is sought to be buried in the land purchased by her. Further, Rule 7 of the above Rules also states that 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. However, in the case on hand, no document has been produced by the respondent before us to show that she had obtained such a licence from the competent authority, except the copy of the sale deed for having purchased the land from one Thimman, that too, on 07.05.2008. These aspects have been completely overlooked by the learned single Judge.

9. Moreover, a perusal of the report submitted in a sealed cover by the Superintendent of Police, 'Q' Branch CID through the learned Special Government Pleader shows that during the 11th death anniversary of Naveen on 19.04.2019, the father of the deceased tied a banner paying tributes to all the maoists. In our considered opinion, when the deceased Naveen belonged to a banned organisation, no memorial pillar or tomb either in a private place or government poramboke land can be permitted to be raised without prior permission of the competent authority. If any memorial pillar/samadhi is allowed to come up for a person belonging to a banned organisation under the Unlawful Activities (Prevention) Act, 1967, as objected by the appellants, not only the cadres of the banned organisation may take an opportunity to organize meetings to propagate their ideologies impacting the law and order situation, but also the possibility of collection of funds by the cadres for the

memorial coercing the landlords/businessmen for donation etc., cannot also be ruled out. Besides, the Crl.O.P.No.12394 of 2008 filed by the respondent seeking CBI investigation on the death of her son has also been dismissed by this Court vide order dated 24.08.2015 as devoid of merits.

10. For the aforementioned reasons, the impugned order is set aside and the writ appeal stands allowed. Consequently, M.P.No.1 of 2013 stands closed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1.The Secretary to Government
Department of Rural Development
Fort St.George
Chennai 600 009

2.The Executive Officer
Mookanur Panchayat
Dharmapuri

+1cc to M/s.R.Sankarasubbu, Advocate Sr.No.39185

W.A.No.718 of 2013

RR(CO)
RVM(22/07/2022)