



WEB COPY



W.P.No. 34790 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No. 34790 of 2019

and

W.M.P.Nos.35549 to 35552 of 2019

1.K. Selvam

2.N.Sengottaiyan

... Petitioners

Versus

1. The Government of Tamil Nadu

Represented by its Secretary

Revenue Department

Fort St. George

Chennai.

2. The District Collector

Erode.

3. The Revenue Divisional Officer

Modakurichi, Erode-638 104.

4. The Tahsildar

Modakurichi, Erode-638 104.

5. The Block Development Officer

Kaspapettai Village Panchayat

Modakurichi, Erode-638 104.



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6. Chenniappan
7. K.S. Sivanandam
8. T.Shanmugam
9. C.Sundaraj
10. M. Chinnasamy
11. P. Palanisamy
12. V.Satheeshkumar
13. Mani
14. Anandh
15. Eswaran
16. N.Sundaramoorthy
17. K.Chidambaram

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in proceedings in Na.Ka.No.22612/2019/U1, dated 11.11.2019 on the file of the second respondent and quash the same as illegal, incompetent, unconstitutional.

For Petitioners : Mr.V.Raghavachari
For RR 1 to 5 : Mr.G. Krishna Raja
Additional Government Pleader
For RR 10 to 16 : Mr.N.Manokaran
Advocate Commissioner : Mr.A.M.Kamalanath



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ORDER

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The writ petition is filed challenging the order passed by the second respondent/District Collector, Erode, in Na.Ka.No.22612/2019/U1, dated 11.11.2019 and quash the same as illegal, incompetent and unconstitutional.

2. The case of the petitioner is that the property in Survey No.300/4B belongs to him and he has been in possession and enjoyment of the same. The property is situated adjacent to the Panchayat Road in S.A.No. 301/1. The Kaspapettai Village Panchayat comprises of various hamlets and there is total population of 6000 people in the village and there are three burial grounds. There were some disputes that arose between a section of villagers with regard to one more additional burial ground in the village. Therefore, the village people have attempted to convert the portion of land into burial ground, which was reserved for extension of the Panchayat Road comprised in Survey No. 301/1, and a section of people had attempted to bury the dead bodies and the same was effectively prevented by the petitioner herein and the adjacent land owners. Therefore, the petitioners made a representation to the respondents 2 to 5 on 03.10.2019,



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objecting the usage of the Panchayat Road in Survey No.301/1 as burial ground, but the same was not considered by the second respondent.

Thereafter, the petitioners filed a W.P.No.5686 of 2019 requesting to forbear the respondents therein from granting permission or converting Survey No.301, M.S.Mangalam Village, Modakurichi Taluk, Erode, which is classified as road in Revenue Records as burial ground, the said W.P.No.5686 of 2019 was disposed of on 26.06.2019, directing the respondents to take a decision on the issue regarding the conversion of the said area into a burial ground, within a period of eight weeks from the date of receipt of a copy of that order. In the meanwhile, the second respondent/District Collector has re-classified the land into burial ground. But, however, the second respondent has no power to re-classify the aforesaid lands. Hence, the petitioners have come forward with the present writ petition under Article 226 of the Constitution of India.

3. Learned counsel appearing for the petitioner submitted that the burial ground, which has come up, is of recent origin, which was not in the said place earlier in point of time. Further, to ascertain the existence of



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burial ground in the said place, an Advocate Commissioner was appointed, who, on inspection and interaction with the residents of the said area, had submitted his report in which he has categorically stated that the burial ground was not in existence before and has come up recently. Further, it is the submission of the learned counsel for the petitioner that the burial ground is adjacent to agricultural lands, which itself would clearly reveal that it is of recent origin, as no prudent person would continue agricultural activity in the vicinity of the burial ground. However, without appreciating the aforesaid facts the impugned order has been passed, which is unsustainable and, accordingly, prays for quashment of the said order.

4. Mr.N.Manokaran, learned counsel appearing for the respondents 10 to 16 submitted that, already, the Division Bench of this Court passed an order in W.P.No.5686 of 2019 on 26.06.2019 directing the the District Collector to take a decision regarding the conversion of Cart Track into burial ground. It is further submitted that the District Collector, after hearing the petitioner as well as the respondents and taking into consideration the fact that the land has been used as burial ground for a long



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time, though the land is categorised as cart track, has consciously taken the decision to change the classification of the land and provide it as a burial ground. However, certain persons with ulterior motive have filed the present petition, which deserves to be dismissed.

5. Considering the facts and circumstances of the case and on perusal of the entire records, it is seen that the issue that arise in the present case relates to Survey No.301/1, situated adjacent to Kaspapettai Village Panchayat Road, Modakurichi, Erode, is classified as "Pathai", however, the Revenue Officials converted the said land as "burial ground". Survey No.301/1 relates to Cart Track Poramboke, which has been used for the said purpose and was admitted by the petitioner during the enquiry conducted by the District Administration. Though the fact remains that the entire Survey No.301/1 is classified as Cart Track Poramboke and has been utilized as such without re-classification of the land, the District Collector has wrongly passed the impugned order based on the direction issued by this Court in W.P.No.5686 of 2019, dated 26.06.2019 from one usage to another usage. It is also not disputed that Advocate Commissioner was appointed, who has



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given a report stating that the burial ground is of recent origin. Such being the case, the impugned order passed by the second respondent/The District Collector herein, in Na.Ka.No.22612/2019/U1, dated 11.11.2019 is unsustainable and the same is hereby set aside as it has been passed a total non-application of mind. However, liberty is granted to the private respondents to work out their remedies in the manner known to law with regard to re-classification of the aforesaid land. However, if any application is made by the private respondents before the Competent Authority for re-classification of the aforesaid land, the same shall be considered, after providing an opportunity of hearing to the petitioners as well as the Villagers.

6. For the foregoing reasons, the impugned order passed by the second respondent/District Collector, in Na.Ka.No.22612/2019/U1, dated 11.11.2019 is hereby quashed and accordingly, the Writ Petition is allowed. No costs.

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Index : Yes/No
Speaking/Non Speaking Order:Yes/No
msm



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M.DHANDAPANI, J.

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