



W.P(MD)No.11323 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.11323 of 2013

and

M.P(MD)Nos.1 & 2 of 2013

Balakangatharan

... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.
- 3.The Tahsildar,
Taluk Office, Padmanabhapuram,
Kalkulam Taluk,
Kanyakumari District.
- 4.The Panchayat President,
Vellichanthai 1st Grade Panchayat,
Vellichanthai,
Kanyakumari District.
- 5.Iyyappan Aasari

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Moo.Mu.Aa2/3484/2013, dated 29.05.2013, on the file of the second respondent and quash the same as illegal and consequently to direct the respondent Nos.1 to 4 to provide a common burning ground with proper access road for the people of the locality without disturbing the lands of the petitioner at Survey No.797/2A1 of Kadiyapattinam Village in Vellichanthai Village Panchayat, Kanyakumari District.

For Petitioner	: M/s.S.Vasanth for M/s.T.Lajapathi Roy
For R-1 to R-3	: M/s.M.Lingadurai Special Government Pleader
For R-4	: No appearance
For R-5	: Mr.S.Meenakshisundaram Senior Counsel for Mr.R.Manimaran

ORDER

The present Writ Petition has been filed challenging the order passed by the second respondent herein, under which, he has directed the writ petitioner and one another person by name, Nadesan, to open up a pathway, to reach the graveyard, located in Survey Nos.799/16 and 799/20.



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2. According to the learned Counsel for the petitioner, he is the owner of Survey No.797/2A1. The fifth respondent herein and some other persons started using his private property to reach the graveyard in Survey Nos.799/16 and 799/20. The adjacent owner by name, Nadesan, had already filed O.S.No.111 of 2010 on the file of the Additional District Munsif Court, Eranial and he has obtained a decree for permanent injunction as against three individuals, that they should not use his private patta land as a pathway to reach the graveyard.

3. The learned Counsel for the petitioner has further contended that in view of the insistence of the private respondents, a dispute arose and the private respondents approached the second respondent herein, seeking a right of pathway. The second respondent by way of the impugned order, dated 29.05.2013, after confirming that it is a private patta land has directed the parties to approach the civil Court for resolution of the dispute. Till civil Court decides the issue, the second respondent herein has directed the writ petitioner and the said Nadesan not to offer any resistance to the usage of their private patta land as a



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pathway to reach the graveyard. The second respondent has further directed the writ petitioner and the said Nadesan, not to block the pathway so as to reach the graveyard. He has further directed the complainants therein not to cause any disturbance while passing through the private patta land of the writ petitioner. This order is under challenge in the present writ petition.

4. The learned Counsel for the petitioner has contended that, once, the second respondent arrives at a finding that it is the private patta land of the writ petitioner, he has no jurisdiction whatsoever to grant right of access to the complainants to reach the graveyard. He had further contended that as a owner of the property, he is entitled to fence the same. Hence, he prayed for allowing the writ petition.

5. The learned Counsel for the petitioner further contended that a civil suit in O.S.No.101 of 2013 has been filed by four persons representing four communities before the District Munsif Court, Eranial, for the relief of declaration that they have right of easement over plaint 'B' Schedule property for using the same as a pathway to reach plaint 'A'



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Schedule property. The plaintiffs have also sought for a decree for mandatory injunction directing the defendants to remove the construction, iron gate and blocked white fencing put up in the plaint 'B' Schedule property. The plaintiffs have further prayed for a decree for perpetual injunction restraining the defendants from putting up any construction or obstruction in the plaint 'B' Schedule pathway. Pending suit, the plaintiffs therein had filed I.A.No.343 of 2013, seeking a relief of ad-interim mandatory injunction. The said application was dismissed on 17.07.2014 and the same has become final. Hence, the learned Counsel for the petitioner had contended that once, the fifth respondent was not successful in getting an interim order from the civil Court, thereafter, the order passed by the second respondent cannot be implemented.

6. The learned Counsel for the petitioner has further contended that, pending writ petition, out of the four communities, three communities have purchased properties for the purpose of creating a cremation ground in Survey Nos.1099/2, 1063/4B and 1060/12B. He further contended that a common burial ground has been made available



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by the concerned Panchayat in Survey No.1060/12A. When the fifth respondent and other community people have already purchased some private patta lands for the purpose of creating a graveyard, again the respondents cannot insist upon the pathway to reach the alleged graveyard in Survey Nos.799/16 and 799/20. Hence, he prayed for allowing the writ petition.

7. Per contra, the learned Senior Counsel appearing for the fifth respondent has contended that from time immemorial the property belonging to the writ petitioner was been used as a pathway to reach the graveyard. The other properties which have been purchased by the fifth respondent and other community people, do not have any regular pathway to reach them. He further contended that it is very difficult to reach the properties which have been purchased by the community people during the rainy days. Hence, he prayed that the present interim arrangement made by the second respondent under the impugned order may be continued till the disposal of the civil Court. The learned Senior Counsel further contended that they are not seeking any right over the private patta land of the writ petitioner except a right of passage to carry



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the dead bodies to reach the graveyard in Survey Nos.799/16 and 799/20.

In view of the limited right which is being sought for as against the private patta land of the writ petitioner, the interim arrangement that was made by the second respondent herein in the impugned order may be sustained.

8. The learned Special Government Pleader appearing for the official respondents has submitted that a proposal has been sent by the second respondent herein for acquiring a portion of the writ petitioner's property in Survey Nos.797/2A1 and 799/21 for acquiring the same for the purpose of making an access to the graveyard in Survey Nos.799/16 and 799/20. However, such proceedings have not reached any final stage of notification so far.

9. I have carefully considered the submissions made on either side.

10. A perusal of the impugned order passed by the second respondent herein clearly indicates that Survey No.797/2A1 is the private property of the writ petitioner. The fifth respondent and other persons



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belonging to four communities are seeking a right of pathway over the said private property to reach a graveyard, which is located on the Northern side of the writ petitioner's property. The second respondent has given a specific finding that right of access over a private patta land has to be resolved only by a competent civil Court. Admittedly, in the present case, four persons representing four different communities have already filed O.S.No.101 of 2013, which is pending before the District Munsif Court, Eraniel. According to the learned Counsel for the writ petitioner, the evidence has been closed and it is in the argument stage. Pending writ petition, all community people excepting Yogeswara community people have made some alternative arrangements by purchasing some private patta lands, which is used as a graveyard. When some alternative arrangements have already been made by the said community people, I do not find that the interim arrangement ordered by the second respondent herein should continue further.

11. In view of the above said facts, this Court passes the following order:



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“(i) The District Munsif Court, Eranial is directed to dispose of O.S.No.101 of 2013 on or before 31.12.2022. The outer time limit fixed by this Court shall be adhered to strictly. The learned Counsel appearing on either side are directed to co-operate with the trial Court. The issue being relating to pathway to a burial ground, considering the sensitive nature of the matter, the trial Court is directed to strictly adhere to the time limit and report it back to the Registry about the disposal of the suit.

(ii) Till the disposal of the O.S.No.101 of 2013, the people belonging to all the four communities are directed to use their alternative lands, which have been purchased by them for the purpose of burial ground.

(iii) After the disposal of the civil Court, depending upon the decree of the civil Court, the fifth respondent and other community persons are at liberty to approach the second respondent again for passing fresh orders. The order passed in



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this writ petition will not in any way alter the classification of the already approved graveyard in Survey Nos.799/16 and 799/20.”

12. With the above said observations, the writ petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

28.09.2022

Index : Yes / No
Internet : Yes / No
btr

To

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Nagercoil.
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R.VIJAYAKUMAR, J.

btr

4.The Panchayat President,
Vellichanthai 1st Grade Panchayat,
Vellichanthai,
Kanyakumari District.

Order made in
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