



W.P.No.8297 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.8297 of 2019
and W.M.P.Nos.8851 & 8854 of 2019

P.Senthilkumar

.. Petitioner

Vs.

1. The District Collector,
Kanchipuram District,
Kanchipuram.
2. The Revenue Divisional Officer,
Madurantakkam Taluk,
Madurantakkam,
Kanchipuram District.
3. The Tahsildar,
Madurantakkam Taluk,
Madurantakkam,
Kanchipuram District.
4. The Commissioner,
Madurantakkam Municipality,
Madurantakkam,
Kanchipuram District.



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5. John

6. Mohamadh Ismail

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other appropriate writ or direction in the nature of a Writ calling for the records of the 2nd respondent in passing the impugned order dated 25.01.2011 in Ref No.Na.Ka.4781/2010/C and quash the same by directing the respondents 2 to 4 to comply with the directions given the 1st respondent through his letter dated 03.01.2011 in ref No.42820/2010 (எதிர் 1) and to permit the villagers of the Kadaperi Village, Madurantakkam Taluk, Madurantakkam, Kancheepuram District to cremate the dead bodies of the said kadaperi Village, in Mayanam Poramboke land in S.No.39/1 T.S.No.10/1 measuring 34 cents at Kadaperi Village, Madurantakkam Taluk, Madurantakkam, Kancheepuram District.

For Petitioner : M/s.N.Varadha Rajan

For Respondents : Mr.U.Baranidharan,
Additional Government Pleader for R1 to R3

: M/s.P.Srinivas for R4

: M/s.K.Govi Ganesan for R5 & R6



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ORDER

This Writ Petition has been filed seeking to quash the impugned order dated 25.01.2011 which was passed by the 2nd respondent and for a consequential direction to the respondents 2 to 4 to comply with the directions given the 1st respondent vide his letter dated 03.01.2011 and permit the villagers of the Kadaperi Village, Madurantakkam Taluk, Madurantakkam, Kancheepuram District to cremate the dead bodies of the said kadaperi Village, in Mayanam Poramboke land in S.No.39/1 T.S.No.10/1 measuring 34 cents at Kadaperi Village, Madurantakkam Taluk, Madurantakkam, Kancheepuram District.

2. It is the case of the petitioner that he is a permanent resident of Kadaperi Village, Madurantakkam Taluk, Madurantakkam, Kancheepuram District, wherein, 2 Mayanam poramboke lands, comprised in S.No.39/1 now in T.S.No.10/1 to an extent of about 34 cents and in S.No.904 now in T.S.No.10/11 to an extent of about 19 cents are being utilized for cremation of dead bodies by the villagers. The respondents 5 & 6, who have



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constructed their houses in and around the mayanam lands, are obstructing the residents of the Kadaperi village from cremating the dead bodies in the said land and they, filed a suit in O.S.No.223 of 2015 on the file of District Munsif Madurantakkam seeking declaration of the land in S.No.904 alone as cremation ground and for permanent injunction restraining the villagers from cremating the dead bodies in S.No.39/1, which was decreed on 10.08.2018 as prayed for, based on which, the present impugned order dated 25.11.2011 has been passed by the 2nd respondent declaring the land in S.No.904 to be utilized for cremation and burial of dead bodies by the villagers and a direction was issued to the Municipal Commissioner, Madurantakkam for constructing a compound wall in the land comprised in S.No.904. Challenging the same, this Writ Petition has been filed.

3. Learned counsel for the petitioner submits that the order impugned which has come to be passed is wholly contrary to the letter dated 03.01.2011 issued by the 1st respondent directing to construct a compound wall in the land comprised in S.No.39/1 for the purpose of utilizing the said land for cremating the dead bodies. Further, the suit was decreed even



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without impleading the residents of the Kadaperi Village who are the actual beneficiaries. Therefore, as against the decree passed in O.S.No.223 of 2015, the petitioner has filed an appeal suit on the file of the Subordinate Court, Madurantakkam in A.S.No.6 of 2021, and the same is pending.

4. Learned Additional Government Pleader appearing for the respondents 1 to 3 relying upon the counter affidavit submits that initially objection was raised by the Adi-Dravida people of Gandhi Nagar for cremating the dead bodies in the mayanam land comprised in Survey No.39/15 which was classified as burial ground. In view of the objections raised, the Revenue Divisional Officer Madurantakam found alternate land in S.No.39/1 and classified the said land as “Mayanam Poromboke” and recommended the said land to be utilized as burial ground by constructing a compound wall in the said land vide order dated 25.12.2010 and sent a letter to the District Collector, Kancheepuram, who in turn, on receipt of the same, directed the 2nd respondent to take appropriate action for construction of the said compound wall. However, the residents of Kadaperi Village objected for the same. Hence, the land in S.No.904 was classified as



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Mayanam Poromboke and the same was directed to be utilized for cremation and burial of dead bodies.

5. In the mean time, suit for declaration in O.S.No.223 of 2015 came to be filed by respondents 5 & 6 and the same was decreed on 10.08.2018 declaring the land comprised in S.No.904, Kadaperi Village as cremation ground. It is further submitted that in order to give quietus to the issue, the 4th respondent herein a proposal has been sent to develop the existing burial ground in Indira Nagar in ward A, Block No.10 comprised in Survey No.18 of Madurantakam Town, as Electric Crematorium at an estimated cost of Rs.178.00 Lakhs to the Director of Municipal Administration, Chennai, however, the orders are awaited for sanction of funds. As against the decretal order, the petitioner has preferred an appeal and therefore the appropriate remedy for the petitioner lies before the competent civil court where the appeal is pending. Hence, filing of Writ Petition before this Court is not sustainable.



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6. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. It is the admitted case of the parties that a suit in O.S.No.23 of 2015 had ended in a decree in favour of respondents 5 & 6 against which an appeal is pending consideration in A.S.No.6 of 2021 before the subordinate Court, Madurantakam, which has been filed by the petitioner. That being the case, a decree is in favour of the respondents where no stay has been granted in favour of the petitioner in the appeal, the petitioner cannot come before this Court for the relief under Article 226 of the Constitution. The proper course for the petitioner to ventilate his grievance is to pursue the appeal to its logical end. Therefore, no relief as sought for by the petitioner can be granted. Further, it is also to be pointed out that though the impugned order is of the year 2011, however, the petitioner has filed the petition only in the year 2019, after a lapse of eight years and the delay for approaching this Court belatedly has also not been properly explained. In such a scenario, the petition deserves to be dismissed.



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8. For the reasons aforesaid, this Writ Petition stands dismissed

liberty to the petitioner to work his remedy in the manner known to law.

There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NHS

Index : Yes / No

Internet : Yes / No

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M.DHANDAPANI, J.

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