



W.P. No.10908/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
27.04.2023	28.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10 908 OF 2023

AND

W.M.P. NO.10808 OF 2023

B.Babu Naidu

.. Petitioner

- Vs -

1. The District Collector
Thiruvallur District
Thiruvallur.
2. The Assistant Director (Panchayat)
Collectorate, Thiruvallur
Thiruvallur District.
3. The Revenue Divisional Officer
Thiruthani, Thiruvallur District.
4. The Revenue Tahsildar
Pallipet Taluk Office
Pallipet, Thiruvallur District.
5. The Village Panchayat President
Nochili Village



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Pallipet Taluk
Thiruvallur District.

6. The Inspector of Police
Pothatturpet Police Station
Pothatturpet, Thiruvallur Dist.

7. Jagadheeswari

8. Sandeep

9. Gopi

10. Sekar

11. Markendayan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents 1 to 6 take stern action against the respondent 7 to 11 for burying the dead body of Narashimmalu Naidu on 2.4.2023 and order to exhume the body from the petitioner's possession of lands in S. Nos.257/2A, 257/1, 200/3 and 201/6 and relocate the same in the burial ground in S.F. No.205, Vijayamambapuram, Nochili Village, Pallipet Taluk, Thiruvallur District, by considering their representations dated 2.4.2023 and 3.4.2023 to ensure protection of the petitioner's rights to the property.

For Petitioner : Mr. C.Mohan, SC,
For Mr. P.Krishnan

For Respondents : Mr. U.Baranidharan, AGP



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for RR-1 to 4 & 66
Mr. N.G.R.Parsad for
Mr. L.Damodaran for RR-7 to 11
Mr. K.Elango for R-5

ORDER

The burial of the dead body in the lands in S. Nos.257/2A, 257/1, 200/3 and 201/6 by respondents 7 to 11 is assailed by the petitioner and also seeks a consequential direction for exhumation of the body and burial at S.F. No.205, Vijayamambapuram, Nochili Village, Pallipet Taluk, Thiruvallur District, and the inaction in not considering the petitioner's representation dated 2.4.2023 and 3.4.2023 has led to the filing of the present petition.

2. It is the case of the petitioner that he is the owner of various extents of land in S. Nos.256/1A2, 244/4A to I, 245/1G, 257/2A, 257/2B and 245/1C and the petitioner is also in possession of patta. The petitioners vendors are in possession of S. Nos.200/3, 201/6 and 257/1. Respondents 7 to 11 are neither owners of any of the aforesaid lands nor do they have marketable title to the aforesaid immovable property and solely with an ill-motive to grab the



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said lands, the private respondents are frequently attempting to usurp the properties of the petitioners, including indulging in acts of vandalism and also criminal acts of waylaying the petitioner's son and daughter-in-law and assaulting them, which has resulted in registration of Crime No.20 of 2023 under Sections 341, 294 (b), 323, 506 (1) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. It is the further case of the petitioner that the private respondents attempted to trespass into certain properties owned by the petitioners in Nochili Village, which led to the filing of O.S. No.28/2023 on the file of the Sub Court, Tiruthani against respondents 3, 4 and 8 to 11 and others seeking the relief of declaration of possessory title and for permanent injunction.

3. It is the further case of the petitioner that with regard to the notice issued u/s 107 Cr.P.C. on the basis of the information received from the 6th respondent by the 3rd respondent, in view of the pending dispute between the petitioner and private respondents, the private respondents and the petitioner were shown as 'A' party and 'B' party respectively and the matter was posted for enquiry.



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4. It is the further case of the petitioner that in the meantime, on 2.4.2023, at about 9.30 a.m., with a view to usurp the property of the petitioner, the private respondents bought the dead body of one Nariashimmalu Naidu, the husband of the 7th respondent and attempted to bury the dead body which resulted in the filing of the complaint by the wife of the petitioner, which resulted in the police coming to the spot, where it was found that attempt was being made to bury the dead body and the petitioner's wife was threatened and abused in filthy language.

5. In spite of the complaint given by the wife of the petitioner and the interference of the 4th respondent along with the Revenue Inspector and Menial, who objected to the illegal acts sought to be perpetrated by the private respondents, under the influence of alcohol, the petitioner and others were abused and wished away from the property and the 6th respondent refused to receive the complaint and take action on the same, which resulted in the petitioner giving a complaint to the 1st respondent, dated 3.4.2023 to intervene and exhume the dead body and relocate the same in the notified



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burial ground in S.F. No.205. In spite of the efforts of the petitioner, none of the respondents have come forward and taken any action on the complaints of the petitioner. In view of the inaction of the respondents, the present writ petition has been filed.

6. Learned senior counsel appearing for the petitioner submits that a burial ground is already in existence in S.F. No.205/1, which finds place in the village map within 150 mtrs. If at all any new place is to be earmarked for burial ground or for burning of the dead bodies, doing such acts in the patta land is impermissible and if at all the new place is required, an application to that effect is to be submitted to the 2nd respondent who shall inspect the property and notify the land as burial ground after getting necessary orders from the 1st respondent.

7. It is the further submission of the learned senior counsel that G.O. Ms. No.203, Rural Development (C4) Department dated 5.10.1995, which has been issued in exercise of powers conferred under Sections 116 (xxxi) and 242 (2) of the Tamil Nadu Panchayats Act, 1994, which Government Order resulted



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in the introduction of Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999. Rules 4 to 7 of the said Rules clearly indicate the manner in which the authorities have to earmark a new place for burying or burning the dead bodies. However, in the case on hand, none of the Rules have been followed by the respondents.

8. It is the further submission of the learned senior counsel that if at all the respondents 1 to 6 want to notify the patta lands for the purpose of burial, they have to follow the mandate of Article 300 A of the Constitution and they cannot allow respondents 7 to 11 to take law into their own hands, thereby infringing on the rights of the petitioner. Therefore, learned senior counsel prays that this Court may issue a writ as prayed for.

9. Per contra, learned counsel appearing for the private respondents, viz., respondents 7 to 11 submitted that the body of the husband of the 7th respondent is not buried in the lands of the petitioner. It is the further submission of the learned counsel that the act of the petitioner in digging a deep pit resulted in the 7th respondent not able to bury the body of her



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husband in the burial ground earmarked for the purpose, which resulted in the 7th respondent burying the body of her husband in the land comprised in S. No.201/3, which belonged to one Ramesh Naidu. The owner of the property, Ms.Shantha, the wife of Late Ramesh Naidu consented to the burial of the body in her land and, as such exhumation of the body would not arise. It is the further submission of the learned counsel that the Ms.Shantha had not only consented for burial of the body in the field belonging to her, but has also informed of her consent to the appropriate authority in writing and in compliance of all the legal formalities, the body has been buried.

10. It is the further submission of the learned counsel that the land in which the body has been buried is neither the land of the petitioner nor the petitioner has any right or title over the said land. When the land owner herself had permitted the body of the deceased to be buried in the said land, there can be no quarrel made by the petitioner that the body should not be buried in the said land. It is the further submission of the learned counsel that the Panchayat Rules provide for the utilisation of the said land as a burial



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ground and, therefore, the claim of the petitioner to the contra is wholly devoid of merits.

11. It is the further contention of the learned counsel that though there is a bar with respect to burial/burning of a dead body within the Municipal and Corporation limits as per the provisions of the relevant Act, however, such a prohibition is not available under the Rules, 1999 and, therefore, the burial/burning of a body in a private place, even on a patta land, is very much permitted. It is the further submission of the learned counsel that the burial of the body on patta land has been done with the consent of the land owner and the objection raised by the petitioner cannot survive and there arises no reason for exhumation of the body. In support of the aforesaid submission, learned counsel relied on the decision of the Division Bench of this court in ***P.Muthusamy&Ors. – Vs – The District Collector &Ors. (W.A. No.909 and 910 of 2014 – Dated 21.11.2022)*** and submitted that the Division Bench had given a categorical finding that there is no bar for burial in places other than designated places and, therefore, the body of the husband of the 7th respondent buried in a patta land, which does not belong to the petitioner,



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cannot in any way be questioned by the petitioner and, accordingly, prays for dismissal of the present petition.

12. Learned standing counsel appearing for the 5th respondent submits that already there was rivalry between the petitioner and the private respondents leading to registration of Crime No.20 of 2023 and also litigation in O.S. No.28 of 2023. It is the further submission of the learned standing counsel that the dead body of the husband of the 7th respondent was buried in S.F. No.201/3, which is a private property of one Ramesh Naidu, but is claimed to be under the possession of the writ petitioner. It is the further submission of the learned standing counsel that the burial of the body in the said land led to quarrel between the two groups with regard to burial of the body, in which the group of the petitioner claimed for burial of the body in the burial ground earmarked in the village map in S.F. No.205/1, while the group of the private respondents claimed burial of the dead body in S.F. No.201/3.

13. It is the further submission of the learned standing counsel that in spite of the talks held by the 4th respondent to have an amicable settlement,



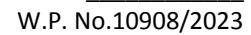
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the private respondents did not heed to the words of the 4th respondent and were adamant to bury the body in S.F. No.201/3 and, in fact, using abusive words and causing problems, the private respondents buried the body in S.F. No.201/3. In this regard, crime in FIR No.206 of 2023 was registered against five persons, which includes the 7th and 11th respondents and during the course of investigation, the involvement of 26 other persons came to light and, therefore, they have also been implicated as accused Nos.6 to 31.

14. It is the further submission of the learned standing counsel that private property cannot be notified as burial or cremation ground unless the procedure contemplated under the Rules, 1999 are followed and the 2nd respondent is the authority competent to notify the private land as a burial/burning ground. It is further submitted that already there is a burial/burning ground just behind S.F. No.201/3 in S.F. No.205/1 and the body can be exhumed and buried in the existing burial ground at S.F. No.205/1.

15. Learned Addl. Government Pleader appearing for respondents 1 to 4, while concurred with the submissions of the learned standing counsel for



16. This Court gave its careful consideration to the submissions made by the learned counsel appearing on either side and perused the materials available on record.



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17. The Tamil Nadu Panchayats Act, 1994, and the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999 provides for the procedure to be followed for the purpose of utilisation of a land as a burial/burning ground. The relevant provisions of law mandate that no patta land could be used for the purpose of utilisation as a burial/burning ground and for a land to be used as a burial/burning ground, necessary permission of the District Collector, on the report of the appropriate authority ought to be obtained before such land is put for utilisation as a burial/burning ground.

18. Reliance has been placed on the decision of the Division Bench in *Muthusamy's case* to drive home the point that there is no bar or prohibition in respect of burials outside licensed/designated areas. No doubt there is a specific bar contained in the Tamil Nadu District Municipalities, wherein Section 281 (3) prevents any burial or burning in a non-designated or unlicensed area. The said provision is not disputed by either party. However, under the Panchayats Rules, there is no such prohibition for burial in the panchayat area and the only prohibition is that such a burial ground should not be located within a distance of 90 meters from the dwelling unit or a



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source of drinking water supply. In this background, it is contended that the burial of the dead body of the husband of the 7th respondent being in a place, which is not within a distance of 90 meters nor near the source of a drinking water supply, the same cannot be said to be impermissible.

19. A careful perusal of the decision of the Division Bench in *Muthusamy's case* reveals that the Division Bench had taken into consideration the various customs in various parts of the State in respect of burning and burial of the dead and the Division Bench had gone on to further hold that in some villages, there is no specific place earmarked for burial and only in that scenario, the Legislature, in its wisdom, has left it to the village, where custom prevails and thought it fit to refrain from interfering with the custom. In this regard, the observation of the Division Bench, is quoted hereunder for better understanding :-

“20. These three different enactments which provide for burial or burning of the dead have different provisions, while burying or burning of the dead in Municipal and City Municipal Corporation areas outside the areas licensed or designated as burial or burning grounds is completely prohibited, the same is not the case in a Panchayat area. The prohibition in a



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Panchayat area is only in places which are located within a distance of 90 meters from the dwelling unit or a source of drinking water supply. There are various customs in various parts of the State in respect of burning and burial of the dead, there are Villages where there is no specific place earmarked for burial or burning. In such places it is the custom of the Villages that prevails. Therefore, the legislature thought it fit to refrain from interfering with such custom in respect of Village Panchayat areas alone. We find that such restraint is based on sound reasoning taking into account the density of population and urbanisation. Care has been taken to empower the Panchayat to ban burials in a particular area depending upon the need."

20. From the above order of the Division Bench, it is implicitly clear that only if there is a customary practice in a particular village and further if there is no specific burial/burning ground available, then the recourse to burying the body in the place, which is not located within a distance of 90 meters from the dwelling unit or a source of drinking water supply is permitted. However, there is no dispute about the fact that in close proximity to the lands of the petitioner as also the land in which the body has been buried, there is a



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designated burial/burning ground, which is being used time immemorial by all the persons in the village for the purpose of burial/burning of the dead bodies.

21. In the above backdrop, when there is no customary practice being followed by the persons in the village with regard to burying of the body and when there is a designated place for burying the body, and even it is not the case of the private respondents that the burial of the dead body is on account of customary practice, the act of respondents 7 to 11 in burying the dead body in S.F. No.201/3 cannot be appreciated and it falls foul to reason that there is no prohibition under the Rules, 1999 and, therefore, a dead body can be buried on any land.

22. It is not in dispute that the land in which the body of the husband of the 7th respondent is buried neither belongs to respondents 7 to 11 nor it belongs to the petitioner. The said land belongs to a third party and it is the case of the 7th respondent that the said third party, who is the owner of the land had permitted the burial of the dead body of the 7th respondent's husband in the said land. However, as already held by this Court, no patta



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land could be used for the purpose of burying a dead body, be it in a Municipal or Corporation area or even a Panchayat area, so long as customary practice is not shown.

23. As aforesaid, it is not in dispute that in close proximity to the land in which the body is buried, there is a burial ground, which has been in usage and is being used by all the persons in the village. The only ground on which the 7th respondent claims that the burial of the body of her husband in the land in S. No.201/3 is that the land does not belong to the petitioner and the owner of the land had consented to the burying of the dead body in the said land. However, it is to be noted from the materials available in the typed set of documents that the said land in which the body is buried is adjacent to the lands of the petitioner. The claim of the 7th respondent for burying the body in the land in S. No.201/3 is only on account of a deep pit having been dug between the land and burial ground. Other than the said ground, no other ground is available in the counter filed by the 7th respondent. Equally, the argument advanced on behalf of the 7th respondent also does not reveal any



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new ground, except elasticising the ground, which has been canvassed in the counter.

24. In the aforesaid backdrop, the findings rendered by the Division Bench with regard to burial vis-a-vis customary practice assumes significance, and for better appreciation, the same is extracted hereunder:-

“23. In the light of the above factual matrix, we find that there is a practice in the Village to use this land in Survey No. 237/1A as a burial ground. Neither the Rules nor the enactment which governs the field prohibit burial in a non-designated place. Material is also available to show that there are designated burial grounds on community basis in the Village.”

(Emphasis Supplied)

25. In the aforesaid case, there is a customary practice in the village with regard to burial of dead body. However, in the case on hand, such a customary practice does not exist and it is also not the case of the private respondents. It is to be pointed out that even as a matter of customary practice, no patta land could be used as a burial ground and no authority has the power to grant any approval to use the patta land as a burial ground.



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Further, if no burial ground is available in a place, then the appropriate authority shall submit a report identifying a government land, which could be used for burial ground and approval of the same could be accorded by the 1st respondent. However, as aforesaid, there is a burial ground in existence, which is used by the members of the village. Such being the undisputed case, there being no customary practice among the people in the village with regard to burial of the dead body, necessarily the dead body ought to be buried in the place which is designated for the aforesaid purpose, and the usage of the land belonging to one Ramesh Naidu, even on the consent of the land owner does not have the approval of law. In the absence of any customary practice, the reliance placed on the decision in *Muthusamy's case* would not in any way enure to the benefit of the private respondents and the contention in this regard is wholly misconceived.

26. Further, one other factor, which also assumes significance is the fact is the civil suit between the petitioner and the private respondents, which is pending adjudication coupled with the criminal case, which has been raised by the petitioner against the private respondents. This clearly shows that all is



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not well with the parties and the friction between the two rival factions has resulted in the law and order situation, which has escalated and is brewing in the locality, thereby endangering the lives of the people living in the village. Therefore, it is amply clear that the present issue is the outcome of the tussle between the petitioner and the private respondents which has serious implication in the law and order situation prevailing in the locality.

27. Merely because the owner of a land consents for usage of the land for the purpose of burying the dead body, the same cannot be permitted to be used for the said purpose, which is against the provisions of law and merely because there is no prohibition under the Panchayat Rules, 1999, the same cannot be a ground to grant permission, as any such grant would be against the interest of the society and the people living in the locality. The societal feelings as a whole have to be taken into consideration and not the feeling of the individuals, who try to do acts for one reason or the other, which is in their favour. Law and order is the backbone of every civilized society and the societal values should be safeguarded against the individual interest of the citizen.



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28. In this regard, the observations in *Muthusamy's case* would squarely address the present issue and the relevant portion of the said order is quoted hereunder :-

"24. We hasten to add that the fact that there is no prohibition cannot be used as a license to bury or dispose of the dead anywhere and everywhere. Wherever there are designated places for burial and burning of the corpse, burial and burning must be restricted to those designated places unless there is a custom in the Village or area concerned to use any other place for burial or a burning of corpses. It will be open to the Panchayat, under Sub Rule 3 of Rule 7 to ban burial or burning in a particular place even though it is designated."

(Emphasis Supplied)

29. While the Division Bench had adverted to the various provisions under the Tamil Nadu District Municipalities Act, Chennai City Municipal Corporation Act and the Rules, 1999, however, in finality has clearly held that wherever there are designated places for burning/burial of a corpse, burial and burning must be restricted to those designated places unless there is a custom in the village or area concerned to use any other place for burial or



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burning of a corpse. In the case on hand, as aforesaid, and which is also not disputed, there is a burial/burning ground in close proximity to the land in which the body is buried by the private respondents. That being the undisputed position, in the absence of any customary practice in the village, the act of the private respondents in burying the body in a place other than the burial/burning ground is wholly impermissible and that act is highly unlawful, which requires to be dealt with, with iron hands. Therefore, the act of the private respondents definitely warrants interference at the hands of this Court.

30. Coming to the act of the private respondents, the counter of the 5th respondent reveals that a havoc in law and order was created by the private respondents, while the 4th respondent along with the Revenue Officials and Tahsildar had gone to the place to pacify the persons and had called upon the parties for settlement talk, which was rejected by the private respondents, who wanted nothing except burying the dead body in S.F. No.201/3. The counter of the 5th respondent also further reveals that the private respondents created various problems by obstructing the officials from performing their



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official duties and the 4th respondent was unable to control the situation, as the private respondents used abusive words and caused untold problems. The act of the private respondents is not only high-handed, but singularly exhibits lawlessness, which cannot be permitted to continue in a democratic and welfare society. If each and every individual is allowed to take up the law in their own hands, there would be total anarchy and the whole country would be in war within its own citizens, thereby, the societal fabric would lose its sheen.

31. In fact, the 6th respondent ought to have taken stringent action against the private respondents, when they failed to abide by law by slurring abusive words against the officials, who had come to restore peace and harmony and settle the issue. The attitude of the private respondents had gone to such a situation that the official respondents were unable to perform their duties. The said act of the private respondents is nothing but an attempt to prevent the official respondents from discharging their duties, which ought to have been dealt with by taking recourse to the relevant provisions of the criminal law. However, such an action has not been adverted to by



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respondents 1 to 6 for reasons best known. Respondents 1 to 6, as the officials of the government and the protector of the common man, ought to have risen and taken due action against the private respondents, but they turned mute spectators when the private respondents along with their hooligans overpowered the official power and buried the dead body in a place, which is not designated for the said purpose. The above act of the private respondents definitely warrants stringent action at the hands of this Court, including criminal prosecution, but prudence and common sense prevails over this Court to resort to any such act. However, the act of burying the dead body in a place, not designated for the said purpose, cannot be allowed to be continued and, necessarily, the body, which has been buried in S.F. No.201/3 requires exhumation and burial at the place designated for the said purpose.

32. In the aforesaid circumstances, though the petitioner has sought for a direction to the respondents to consider his representations for exhumation and burial of the body from S.f. No.201/3 to S.F. No.205/1, on an overall conspectus of the case, this Court directs the 1st respondent to take



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appropriate action through respondents 2 to 6 to exhume the body, which has been buried in S.F. No.201/3 by respondents 7 to 11 and bury the remains of the dead body in the designated existing burial ground at S.F. No.205/1. The said act shall be undertaken and completed by the official respondents within a period of one week from the date of receipt of a copy of this order. Further, the 6th respondent is directed to provide necessary police force for the purpose of maintaining law and order at the time of exhumation and burial of the body so that no law and order problem is created in the said village by the private respondents and the persons acting on their behalf. The cost towards the exhumation of the dead body from S.F. No.201/3 and burial at S.F. No.205/1 shall be recovered from the 7th respondent in accordance with law, if they do not come forward to reimburse the said cost on their own volition upon demand from the official respondents.

33. The writ petition is allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in this writ petition.



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To

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Thiruvallur.
2. The Assistant Director (Panchayat)
Collectorate, Thiruvallur
Thiruvallur District.
3. The Revenue Divisional Officer
Thiruthani, Thiruvallur District.
4. The Revenue Tahsildar
Pallipet Taluk Office
Pallipet, Thiruvallur District.
5. The Village Panchayat President
Nochili Village
Pallipet Taluk
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6. The Inspector of Police
Pothatturpet Police Station
Pothatturpet, Thiruvallur Dist.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.10908 OF 2023**

**Pronounced on
28.04.2023**