



W.P.No.34844 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on
14.03.2023

Orders Pronounced on
05.06.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

W.P.No.34844 of 2022
and W.M.P.No.34262 of 2022

Shri Vigneshwara Vidhyalaya Matriculation
Higher Secondary School,
Rep. by its Correspondent
R.Murugasami Balasamuthiram,
Tiruppur – 641 666.

..Petitioner

Vs.

- 1.The District Collector,
Tiruppur District,
Tiruppur.
- 2.The Tahsildar,
Avinashi Taluk,
Avinashi,
Tiruppur District.
- 3.The Block Development Officer,
Tiruppur,
Tiruppur District.
- 4.The President,
Perumanallur Panchayat Union,
Perumanallur,
Tiruppur District.

..Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records of the 1st respondent which culminated in the impugned administrative sanction in Na.Ka.No.1046/2022/A7 dated 13.09.2022 for construction of Gasifier Crematorium at the land in S.F.No.148 of Perumanallur Village, and quash the same as illegal, arbitrary and would cause health hazard to the young children who are studying in 3 schools, which are functioning within close proximity of the proposed site for construction of Gasifier Crematorium.

For Petitioner : Mr.V.P.Sengottuvel
Senior Counsel

For Respondents
For R1 & R2 : Mr.C.Selvaraj
Additional Government Pleader

For R3 & R4 : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

The petitioner school has filed this writ petition seeking for issuance of Certiorarified Mandamus to quash the administrative sanction granted in Na.Ka.No.1046/2022/A7 dated 13.09.2022 for construction of Gasifier Crematorium at the petition land in S.F.No.148 of Perumanallur Village, on the ground of health hazards to the young children and other alternative sites, have not been considered, in spite of the representation made by the various village people to the 1st respondent.



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WEB COPY 2.(a). Brief facts of the case:

As per the affidavit, the petitioner school was established in the year 1991 by the educational agency Shri Vigneshwara Educational Trust and is under administration of the Trust for the past 32 years at S.No.232/2 Part of Perumanallur Village, Avinashi Taluk, Tiruppur District, where nearly 800 students are studying in Primary, Secondary and Higher Secondary system. Another school, namely KMC Public School, with a student population of about 1100, is functioning at S.F.No.216 & 230 of Perumanallur Village, Avinashi Taluk, Tiruppur District, which is close to the petitioner school and similarly Government Higher Secondary School, with a student population of around 900 students functioning at S.F.No.227/A of Perumanallur Village, Avinashi Taluk, Tiruppur District.

2.(b). The students and teaching and non-teaching staff of all the three schools are mostly using village road in S.F.No.149A to reach the respective schools from Perumanallur Village, which is having a population of about 10,000 people and there are 7 burial grounds earmarked in the Revenue Records of Perumanallur Village and the same are being used by the villagers to bury and cremate dead bodies. One such burial ground is in S.No.148, which



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is lying diagonally opposite to the petitioner school on the other side of the village road in S.F.No.149A.

2.(c). The respondents herein proposed to construct a Gasifier Crematorium at the burial ground in S.F.No.148 of Perumanallur village for the use of thousands of people living in and around the said village. The parents of the students studying in the schools and the villagers made representation dated 24.11.2022 to the respondents herein not to construct Gasifier Crematorium on the land in S.F.No.148, as the same is being used by the students studying in the three schools mentioned above, which would cause great health hazard to the students, teaching and non-teaching staff of the three schools.

2.(d). The petitioner herein also submitted a representation dated 15.12.2022 to the respondents herein not to construct Gasifier Crematorium on the land in S.F.No.148, which is lying in the village road in S.F.No.149A, which is one of the main roads leading to all three schools from Perumanallur Village. When there are other six burial grounds within the same village and which are no way affecting the public in general, the respondents herein are bent upon to construct a crematorium in S.F.No.148 of Perumanallur Village, without considering the other options. The respondents failed see that the



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construction of a crematorium in S.F.No.148, which will be used by thousands of people who are living about 20 to 25 Kms from the Perumanallur Town, abutting the village road in S.F.No.149A, will cause health hazard and air pollution in the institutional area where three schools are functioning and thousands of students are studying. Hence the writ petition.

3. Heard Mr.V.P.Sengottuvel, learned senior counsel appearing for the petitioner, Mr.C.Selvaraj, learned Additional Government Pleader appearing for respondents 1 and 2 and Mrs.S.Mythreye Chandru, learned Special Government Pleader, appearing on behalf of respondents 3 and 4 and also perused the materials available on record.

4. The case of the petitioner school is that there are 800 students studying in the school and there are two more schools in the very same area. In total, three schools have been running in the proposed site for construction of Gasifier Crematorium in S.F.No.149A, which will cause health hazard to the students, teaching and non-teaching staff of the said three schools and the alleged failure on the part of the 1st respondent / District Collector in considering the other alternative sites, does not have any such civil conditions in the close neighbourhood.



5.(a). Based on the counter affidavit filed by the 1st respondent / District

Collector, Mr.C.Selvaraj, learned Additional Government Pleader appearing for the respondents 1 and 2 contended that the land in S.F.No.148 in Perumanallur Village of Avinashi Taluk, Tiruppur District, is classified as burial ground as per RSR and the Revenue Records from the formation of the said village. Thus, the nearby village habitats used this burial ground for cremation of dead bodies. As a peri-urban area, considering the density of population, the Panchayat Union Council, Tiruppur, passed a Resolution No.18 dated 13.05.2022 to construct the Crematorium in this existing burial ground.

5.(b). He further contended that the surrounding Village Panchayats of Perumanallur Village Panchayat also passed a Resolution to establish the Gasifier Crematorium in S.F.No.148 of Perumanallur Village Panchayat. The Perumanallur Village Panchayat and other ten Village Panchayats are very nearby to the Tiruppur Corporation. The District Level Committee accepted to set up the Gasifier Crematorium in this existing Conventional method burial ground.

6. Mrs.S.Mythreye Chandru, the learned Special Government Pleader appearing for the respondents 3 and 4 also adopted the counter affidavit filed by the 1st respondent.



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7.(a). Mr.V.P.Sengottuvel, learned Senior Counsel for the petitioner contended that there are atleast seven burial grounds similar to the area in S.F.No.148 at Perumanallur Panchayat and Tiruppur Panchayat Union, which could be used for construction of Gasifier Crematorium. There are thousands of students studying in three schools viz., the petitioners' school, KMC Public School and Government Higher Secondary School and they are using the village road to reach their schools. There are several other burial grounds are available in the same Panchayat Union and the feasibility of constructing the proposed Gasifier Crematorium in any one of the burial grounds, which have similar feasibility of land in S.F.No.148 of Perumanallur Village. He further contended that Clauses 3 and 10 of the guidelines for site selection for construction of Gasifier Crematorium dated 19.02.2022, issued by the Director of Rural Development, Chennai, are not followed and hence stands violated.

7.(b). According to the learned Senior Advocate, the following lands which are now classified as burial grounds are situated within Tiruppur Panchayat Union, which have feasibilities for construction of Gasifier Crematorium instead of the one proposed at S.F.No.148 of Perumanallur Village:



S.No.	Survey Nos.	Extent	Village
1.	140	1.16.50 Hec.,	Perumanallur Village
2.	253/1	2.45.00 Hec.,	Perumanallur Village
3.	124/1	1.65.50 Hec.,	Sokkanur Village
4.	52/1	0.50.00 Hec.,	Merkupathi Village
5.	52/2	0.51.00 Hec.,	Merkupathi Village
6.	20B	0.43.50 Hec.,	Kanakkampalayam Village
7.	33	0.52.50 Hec.,	Kanakkampalayam Village
8.	172/2	0.78.50 Hec.,	Kanakkampalayam Village
9.	172/3	1.20.50 Hec.,	Kanakkampalayam Village
10.	221/1	0.67.50 Hec.,	Pongupalayam Village

8.(a). Mrs.Mythreye Chandru, learned Special Government Pleader has brought to my notice that the Village Panchayats and the Panchayat Union Council, Tiruppur, namely (i)Sokkanur, (ii)Thoravalur, (iii)Pattampalayam, (iv)Ettiveerampalayam, (v)Merkupathi, (vi)Muthampalayam, (vii)Sengappalli, (viii)Vallipuram, (ix)Kalipalayam, (x)Perumanallur and (xi)Kanakkampalayam, have resolved in their Resolution No.18 dated 13.05.2022 to construct the combined Gasifier Crematorium.

8.(b). Learned Special Government Pleader further drew my attention to the Resolution passed by the above said eleven Panchayat Councils mentioned in their typed set of papers and submitted that necessary approval had been



obtained from the Pollution Control Board and the District Environmental Engineer, Tamil Nadu Pollution Control Board, Tiruppur, by proceedings in No.F3753TPN / GS / DEE / TPCB / TPN / A / 2022 dated 03.06.2022 and they have consented to establish or take steps to establish the Gasifier Crematorium at S.F.No.148 of Perumanallur Village, Avinashi Taluk, Tiruppur District, as per Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, as amended in 1987.

8.(c). Learned Special Government Pleader further contended that the Commissioner of Rural Development and Panchayat Raj, Chennai, with the approval of the Committee for the works under the Scheme component of pooled assigned Revenue, has accorded necessary approval for the work of construction of Gasifier Crematorium at Perumanallur stated supra in an estimated cost of Rs.200 lakhs, as per his proceedings in Roc.No.32188/2021/TU5 dated 15.07.2022, which is evident from the typed set of papers filed in this writ petition.

8.(d). Learned Special Government Pleader also drew my attention to Paragraph No.11 of the counter affidavit filed by the 1st respondent / District Collector stating that the 1st respondent / District Collector and Chairman,



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District Rural Development Agency, Tiruppur, has in the impugned order in Na.Ka.No.1046/2022/A7 dated 13.09.2022, accorded necessary administrative sanction to the Joint Director / Project Director, District Rural Development Agency, Tiruppur, to construct the Gasifier Crematorium at S.F.No.148 of Perumanallur Village, at an estimated cost of Rs.200 lakhs by following the procedures laid down in Tamil Nadu Transparency of Tender Act, 1998, and the Rules issued thereunder. Accordingly, necessary tenders were called for through On-line and advertisements in several newspapers on 16.09.2022.

9. After hearing the rival submissions of the learned Senior Counsel for the petitioner and learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned Special Government Pleader appearing for the respondents 3 and 4 and the respective typed set of papers including the Resolution passed by the eleven Village Panchayat Unions and also Google Map filed by the Assistant Engineer, Tiruppur and the Zonal Map filed by the Tiruppur Panchayat Union, Tiruppur District, had also been taken into consideration.

10. The Burning and burial grounds, which are classified as “poramboke” and vested with the Village Panchayat and the Village Panchayat concerned,



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shall have power to regulate the usage of such “porampoke” land, provided the “porampoke” land is at the disposal of the Government as per Section 134(2) of the Tamil Nadu Panchayat Act, 1994.

11. It is to be stated that Sections 110 and 111 and sub-sections (f) and (j) of the Tamil Nadu Panchayats Act, 1994, deals with the duty of the Village Panchayat concerned to make reasonable provision for carrying out the requirements of that Panchayat in respect of the opening and maintenance of burial and burning grounds and the construction of works of public utility and the provisions of other facilities for the safety, health, comfort, convenience, culture of the inhabitants of the village.

12. Perusal of the counter affidavit shows that permission had been accorded under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, on 03.06.2022 and administrative sanction has been granted on 13.09.2022.

13. In the counter affidavit, it is also pointed out that according to Rule 33 and Annexure XVIII – Zoning Regulations in the Tamil Nadu Combined Development and Building Rules, 2019, Nursery Schools, Primary Schools,



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High Schools, Higher Secondary Schools, Libraries, Reading Rooms, Parks, Playgrounds, Farms, Gardens, Nurseries including Burning, Burial Grounds, Crematoria and Cemeteries building or premises, shall be permitted in residential use Zone.

14. It is a specific case of the 1st respondent / District Collector that in the objection petitions said to have been filed by various people, they have noticed that signatures of the unidentifiable public /villagers were found.

15. From the Map produced by the Assistant Engineer, Tiruppur, showing the circle of 90 meters radius from the boundary of the burial ground at Perumanallur Village Panchayat, I find that a reasonable portion of the school building falls within the said 90 meters radius. The map produced by the learned Special Government Pleader appearing for the Tiruppur Panchayat Union were also taken into consideration.

16. By way of additional typed set of papers, on the side of the petitioner's FMB Sketches and Maps for SF Nos.140, 148, 253/1, 253/2 of Perumanallur Village; SF No.124/1 of Sokkanur Village; SF Nos.52/1 and 52/2



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of Merkupathi Village; SF Nos.20B, 33, 172/2 and 172/3 of Kanakkampalayam Village and S.F.No.221/1 of Pongupalayam Village, have also been filed.

17. This Court while exercising powers under Article 226 of the Constitution of India, cannot sit and select a suitable site for the Gasifier Crematorium. It is for the revenue authority to make suitable selection based upon the guidelines issued by the Government in this regard.

18. My attention was drawn to the guidelines for proposal for Gasifier Crematorium issued by the Director of Rural Development and Panchayat Raj in LR No.8330/2022/TU-4 dated 19.02.2022, wherein guidelines for “site selection” for construction of Gasifier Crematorium has been enumerated. The guidelines, which are necessary for the facts of this case are:

- i. The minimum area of the site selected should be of 29 m x 29 m (9050 Sq.ft)
- ii. The site may be preferably nearer to Peri-urban / Urbanized areas to be more beneficial for public, but there should not be any Gasifier / Electrified Crematorium (in Rural & Urban) available within 15 Km radius of the site selected.
- iii. The site selected should be located in such a manner that, it is beneficial for the people of 10 Panchayats, who can reach the crematorium comfortably.



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- iv. The selection of site closer to any built up area should be avoided to prevent public objection.

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19. From the above document, I find that the petitioner-school is situated within 90 metres from the proposed construction site and it is stated by the learned Additional Government Pleader that the proposed site is a Peri-urban and Urbanised area and eleven Villages Panchayat habitats will be benefited.

20. Based upon the “selection of the site” made by the 1st respondent, the Village Panchayat and the 11 Panchayat Unions of Tiruppur District also resolved in their Resolution No.18 to construct a combined Gasifier Crematorium in the petition premises and the Pollution Control Board has also issued the necessary clearance certificate, as required under the Air (Prevention and Control of Pollution) Act, 1981, and financial sanction of Rs.200 lakhs has already been released.

21. As per the counter affidavit, I find that based upon the selection of the site by the 1st respondent, administrative sanction and financial sanction has also been accorded by the Government of Tamil Nadu.



22. The crucial point that was agitated by the petitioner is that they have cited seven burial grounds (Mayanam) outside the habitat living area, which is not at all inspected by the District Collector. However, the site chosen by the political party has been fixed without any survey study and in a hurried manner and subsequently, Resolutions of the Village Panchayats are collected.

23. On verification of the counter affidavit, I do not find any denial of statement with regard to availability of the other burial grounds (Mayanam), which are also outside the human habitation. There are 10 burial grounds (Mayanam) and same have also been stated in paragraph 5 of the reply affidavit. When there is large extent of alternative site available, the 1st respondent / District Collector ought to have inspected those areas and thereupon should have had discussion in “selecting the area” and thereafter only the 1st respondent ought to have arrived the “selection of site fit for project of Gasifier Crematorium” and hence, I find that suitable order has to be passed in this regard.

24. Therefore, I find that from the typed set of papers as well as from the list of Mayanam (Burial Grounds) available in the same vicinity, as furnished in



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the reply affidavit of the petitioner, I find that the District Collector/1st respondent has not made selection of the sites fit for Gasifier Crematorium.

25. As per the guidelines for the site selection for the construction of Gasifier Crematorium issued by the Director of Rural Development and Panchayat Raj, as extracted supra and the map produced by the Tiruppur Municipality, I find that the reasonable portion of the petitioner-school building falls within 90 meters and the newspaper reports filed in the typed set of paper indicates that apart from the petition mentioned private school, there is one more private school and Government school situated and the proposed site for the Gasifier Crematorium appears to be so close to three schools, both private and government school and hence, I find that when there are alternative sites as indicated supra are available, “no field inspection” appears to have been done by the District Collector/1st respondent in respect of those areas to find out the suitable land that fulfills the criteria as prescribed by the Director of Rural Development and Panchayat Raj, as extracted supra.

26. Accordingly, I am inclined to pass the following orders:-

(i) Though the administrative sanction and financial sanction were granted, the same is based upon the decision of the District Collector/1st



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respondent regarding “selection of sites” and hence, I find that alternative sites mentioned in the representation filed before the 1st respondent was not at all considered and it is clear even from the reply affidavit filed by the petitioner, which is extracted supra. Hence I find that the 1st respondent has chosen the petition site without inspecting the alternative site which falls within the criteria of the guidelines of Director of Rural Development and Panchayat Raj. Therefore, the District Collector/1st respondent is hereby required to inspect the sites, which are classified as burial grounds situated within the Tiruppur Panchayat Union for the feasibility of the construction of the Gasifier Crematorium, instead of the one proposed in this petition and to pass appropriate orders, within a period of (04) weeks from the date of receipt of a copy of this order. Till such time, the further work in the site process may be kept in abeyance.

(ii) The commencement of the work at the site are directed to be deferred for 8 weeks. The District Collector / 1st respondent is directed to inspect the lands that are classified as burial grounds given in the above tabular column in the paragraph No.7(b) of this order, as submitted by the petitioner on feasibility of construction of the Gasifier Crematorium in those alternative lands, be studied appropriate action be taken, if found suitable. Till such time, the further



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actions of the respondents shall stand deferred until order is passed by the

District Collector on the feasibility of the alternative burial grounds (Mayanam), with regard to the construction of Gasifier Crematorium, instead of the one proposed at petition site.

27. With the above observations, the Writ Petition stands disposed of and the commencement of works at the site is directed to be deferred for eight (08) weeks and in the meanwhile, the District Collector/1st respondent shall comply with the above said observations. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

05.06.2023

Speaking/Non-speaking order

Neutral Citation Yes / No

Index : Yes/No

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To

- 1.The District Collector,
Tiruppur District, Tiruppur.
- 2.The Tahsildar,
Avinashi Taluk,
Avinashi,
Tiruppur District.
- 3.The Block Development Officer,
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Tiruppur District.
- 4.The President,
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RMT.TEEKAA RAMAN.J,

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