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W.P.Nos.3340, 25577 & 25587 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.3340, 25577 & 25587 of 2024 and  
WMP.Nos.3600, 27923, 27924, 27934 & 27935 of 2024

WP.No.3340 of 2024

A.Sadasivam

... Petitioner

Vs.

- 1.The District Collector  
and Inspector of Panchayats,  
Salem District,  
Salem
- 2.The Assistant Director,(Panchayats),  
O/o. The District Collector,  
Salem District,  
Salem
- 3.The Sub Collector/Revenue Divisional Officer,  
Mettur Revenue Division,  
Mettur Dam-1,  
Salem District
- 4.The Tahsildar,  
Mettur Taluk,  
Mettur Dam,  
Salem District
- 5.The Block Development Officer,  
Village Panchayat,  
Mecheri Panchayat Union,  
Mecheri – 636 453,  
Mettur Taluk, Salem District



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6.The Village Panchayat President,  
Mallikundam Panchayat,  
Mallikundam,  
Mettur Taluk,  
Salem District

7.Palanisamy

8.V.Thailappan

9.C.Elanthaiyappan

(7<sup>th</sup> respondent impleaded vide order dated  
13.03.2024 made in WMP.No.7687 of 2024 in  
WP.No.3340 of 2024)

(8<sup>th</sup> & 9<sup>th</sup> respondents impleaded vide  
order dated 30.08.2024 in WMP.No.19002  
of 2024 in WP.No.3340 of 2024)

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing respondents 1 & 2 and 5 & 6 to take appropriate action against the illegal burial ground in survey No.78/9, measuring to an extent of 75 cents, situated at Mallikundam Village, Mettur Taluk, Salem District based on the representation of the petitioner dated 23.01.2023.

For Petitioner : Mr.M.R.Jothimanian

For Respondents

For R1 to 4 : Mr.J.Ravindran,  
Additional Advocate General  
Assisted by  
Mr.S.J.Mohammed Sathik,  
Government Advocate

For R5 & 6 : M/s.S.Anitha



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For R7 : Mr.R.Nalliyappan

For R8 & 9 : Mr.T.Mohan,  
Senior Counsel  
for Mr.M.Ragul Kousik

WP.No.25577 of 2024

A.Sadasivam

... Petitioner

Vs.

- 1.The District Collector  
and Inspector of Panchayats,  
Salem District,  
Salem
- 2.The Assistant Director,(Panchayats),  
O/o. The District Collector,  
Salem District,  
Salem
- 3.The Sub Collector/Revenue Divisional Officer,  
Mettur Revenue Division,  
Mettur Dam-1,  
Salem District
- 4.The Tahsildar,  
Mettur Taluk,  
Mettur Dam,  
Salem District
- 5.The Block Development Officer,  
Village Panchayat,  
Mecheri Panchayat Union,  
Mecheri – 636 453,  
Mettur Taluk, Salem District
- 6.The Village Panchayat President,  
Mallikundam Panchayat,  
Mallikundam,  
Mettur Taluk,



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Salem District

... Respondents

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**PRAYER:**

Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order dated 15.06.2024 in Na.ka.No.2073342/2024/K.2 passed by the first respondent and quash the same, consequently forbear respondents from converting or permitting to use as burial ground in survey No.78/9 measuring to an extent of 75 cents situated at Mallikundam Village, Mettur Taluk, Salem District.

For Petitioner : Mr.M.R.Jothimanian

For Respondents

For R1 to 4 : Mr.J.Ravindran,  
Additional Advocate General  
Assisted by  
Mr.S.J.Mohammed Sathik,  
Government Advocate

For R5 & 6 : Mr.M.Rajendran,  
Additional Government Pleader

WP.No.25587 of 2024

1.V.Thailappan  
2.C.Elanthaiyappan

... Petitioners

Vs.

1.The District Collector  
and Inspector of Panchayats,  
Salem District,



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- Salem
- 2.The Assistant Director,(Panchayats),  
O/o. The District Collector,  
Salem District,  
Salem
- 3.The Sub Collector/Revenue Divisional Officer,  
Mettur Revenue Division,  
Mettur Dam-1,  
Salem District
- 4.The Tahsildar,  
Mettur Taluk,  
Mettur Dam,  
Salem District
- 5.The Block Development Officer,  
Village Panchayat,  
Mecheri Panchayat Union,  
Mecheri – 636 453,  
Mettur Taluk, Salem District
- 6.The Village Panchayat President,  
Mallikundam Panchayat,  
Mallikundam,  
Mettur Taluk,  
Salem District

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order dated 15.06.2024 in Na.ka.No.2073342/2024/K.2 passed by the first respondent and quash the same, consequently forbear respondents from converting or permitting to use as burial ground in survey No.78/9 measuring to an extent of 75 cents situated at Mallikundam Village, Mettur Taluk, Salem District.



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For Petitioners : Mr.T.Mohan,  
Senior Counsel  
for Mr.M.Ragul Kousik

For Respondents  
For R1 to 4 : Mr.J.Ravindran,  
Additional Advocate General  
Assisted by  
Mr.S.J.Mohammed Sathik,  
Government Advocate

For R5 & 6 : Mr.M.Bindran,  
Additional Government Pleader

### **COMMON ORDER**

This writ petition in WP.No.3340 of 2024 has been filed for direction to respondents 1, 2, 5 & 6 to take appropriate action as against the illegal burial in survey No.78/9 admeasuring to an extent of 75 cents situated at Mallikundam Village, Mettur Taluk, Salem District as per the representation submitted on 23.01.2023. The other writ petitions in WP.Nos.25577 & 25587 of 2024 have been filed challenging the order passed by the first respondent dated 15.06.2024 thereby reclassified the land comprised in survey No.78/9 admeasuring 0.12.0 hectare out of 0.30.0 hectares from the classification of Government poramboke to burial ground.



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2. The petitioner in WP.No.3340 of 2024 and WP.No.25577 of 2024 are one and the same. He owns agricultural land in survey no.333/3A1 situated at Mallikundam Village, Mettur Taluk, Salem District and also residing there with his family members. The petitioners in WP.No.25587 of 2024 own agricultural land in survey No.333/1 and survey Nos.334/1A1A, 333/3A2 situated at Mallikundam Village, Mettur Taluk, Salem District. Adjacent to their lands, a common public well and a Muniappan temple are situated in survey no.78/9 (hereinafter called as 'the subject property') within the extent of 75 cents which is classified as Government land - well and the same is being used by the villagers for their common purpose. There is a common well for drinking water purpose to all the villagers. In the land comprised in survey Nos.35/1, 35/3, 35/4 to an extent of two acres and 49 cents situated at Mallikundam Village, used for burial ground for the past several decades by all the villagers. It has been duly approved by the local authority as per the Tamilnadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999. While being so, the subject land comprised in



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survey No.78/9 is under occupation of third parties to use the same as burial ground without any approval from the sixth respondent. The entire villagers are using the burial ground comprised in survey Nos.35/1, 35/3, 35/4 of Mallikundam Village. During covid 19, some bodies were buried in the subject property. Due to lockdown and pandemic circumstances, the villagers of Mallikundam Village could not able to object the same. The said Rules mandates that the burial ground should be approved by the Village Panchayat and conditions for opening of burial ground mandated under the Rules and also other conditions to be complied with. Therefore, the writ petition in WP.No.3340 of 2024 has been filed for direction to take appropriate action against illegal burial in the subject property. This Court by order dated 16.02.2024, in view of the judgment of the Hon'ble Division Bench of this Court in the case of **Jagadheeswari Vs. B. Babu Naidu** reported in (2023) 3 LW 697, ordered that the first respondent or the authorised person shall immediately inspect the subject property to factually ascertain as to whether the subject place has been granted requisite licence under the Rules for burial or cremation and if so, whether such activities are taking place in accordance with law and file



2.1 After several adjournments no report was filed by the respondents. While being so, on 24.04.2004, respondents were directed to file counter. However, without filing counter, the respondents produced order dated 15.06.2024 passed by the first respondent thereby reclassified the subject property to an extent of 0.12.0 hectares out of 0.30.0 hectares as burial ground and also produced the proceedings dated 15.03.2024 on the file of the sixth respondent thereby informed that the subject land has been taken for use of burial ground as per the Rules. Therefore, this Court by order dated 18.06.2024 observed that this Court is completely dissatisfied with the act of the first respondent in passing order dated 15.06.2024 in spite of the fact that time was granted to file counter when the writ petition is pending in WP.No.3340 of 2024. Therefore, till decision is taken with regard to the subject property, no burial should be done in the subject property and if any one deviates, the same will be viewed seriously. Respondents 1 & 2 were directed to file counter which should contain the details regarding the population and



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death rate in that area, classification regarding the subject property in the revenue records and find out if there are any interested parties with regard to the subject property. Thereafter, the fourth respondent filed counter which was adopted by the first and third respondents on 10.07.2024 and subsequently on 12.08.2024, additional counter was filed by the fourth respondent which was also adopted by respondents 1 & 3. Therefore, the order dated 15.06.2024 on the file of the first respondent has been challenged in the subsequent writ petitions in WP.Nos.25577 & 25587 of 2024.

3. The learned Additional Advocate General appearing for respondents 1 to 4 submitted that in compliance of the writ petition in WP.No.3340 of 2024, the Village President granted approval to use the subject land as burial ground. On the representation submitted by the petitioner therein, the first respondent conducted enquiry. In fact, objections were called for and no objections were raised by the villagers. Considering the same and also the communication dated 15.03.2024 of the Panchayat President, the first respondent sub divided the subject



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property to an extent of 0.12.0 hectares out of 0.30.0 hectares comprised in survey no.78/9 from the classification of Government Poramboke-well to burial ground situated at Mallikundam Village, Mettur Taluk, Salem District. He further submitted that the said place is used for burial ground for particular community those are not permitted to bury the bodies in the existing burial ground situated at survey nos.35/1, 35/3, 35/4. Therefore it is just and necessary for the first respondent to reclassify the land as burial ground. The first respondent has got power under Standing Orders of the Board of Revenue 23-A to reclassify the land below area of 10 acres and value of Rs.50,000/-. Therefore, the order which is impugned in these writ petitions is not suffered with any infirmity or illegality.

4. Mr.T.Mohan, the learned Senior Counsel appearing for the petitioner in WP.Nos.25587 and Mr.M.R.Jothimanian, the learned counsel appearing for the petitioners in WP.No.3340 of 2024 & 25577 of 2024 submitted that though this Court specifically directed the first respondent to file counter, without filing counter, order was passed behind the petitioners on 15.06.2024. In fact, this Court was dissatisfied



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with the action of the respondents in passing the order impugned in these writ petitions without filing counter and also while pending the writ petition in WP.No.3340 of 2024. When the petitioner filed writ petition to consider the representation submitted by the petitioner for taking action as against the illegal burial in the subject land dated 23.01.2023, the first respondent ought to have given opportunity of hearing to the petitioner. In fact, without even calling for any objection, it was mechanically stated that there were no objections from the villagers, that too when the objection raised by the petitioner was very much pending on the file of the first respondent dated 23.01.2023 and also when this Court had taken cognizance of the issue. Further, the first respondent has no power to reclassify the subject land from Government poramboke—well to burial ground. The Commissioner of Land Administration has got power to reclassify the land as per the Revenue Standing Orders.

5. Heard, the learned counsel appearing on either side and also perused all the materials placed before this Court.



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6. Admittedly the petitioners own their patta lands adjacent to the subject property. They constructed their respective houses and are residing there. That apart, in the subject property, there is a Muniappan temple and a drinking water well for the villagers. The subject land is admeasuring 0.30.0 hectares (75 cents) and it is classified as Government poramboke-well. During covid pandemic circumstances, some bodies were buried in the subject property. It was not objected by the villagers due to lockdown. Further, there is no record to show that the subject land has been used as burial ground for the past. Even as per the report of the District Revenue Officer of Salem, in the subject land, there is a Muniappan temple and it is classified as Government poramboke-well. On the request made by the SC Arunthathiyar community people, part of the subject land was reclassified as burial ground to an extent of 0.12.0 hectares. In fact, the petitioners submitted representation to take appropriate action for illegal burial in the subject land as early as on 23.01.2023. It was duly received by the respondents. There was no action and as such, the petitioner was constrained to file writ petition in WP.No.3340 of 2024. One of the contentions raised by the petitioner is



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that the subject land is never used for burial ground and it is not licensed to bury the body as contemplated under Rules 5 & 7 of Tamilnadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999. It is relevant to extract the same hereunder:

5. Conditions for opening of burial and burning ground.

(1) No new place for burying or burning the dead, whether private or public, shall be opened, formed, constructed or used, unless a licence has been obtained from the Village Panchayat on application.

(2) Such application for a licence shall be accompanied by the plan of the place for which licence is required showing the locality, boundary and extent thereof, the name of the owner or person or community interested therein, the system of management and such further particulars as the Village Panchayat may require.

(3) The Village Panchayat to which an application is made may-

(a) grant or, if there is valid reason to be recorded in writing, refuse to grant a licence, or

(b) postpone the grant of a licence until the objection, if any to the site has been cleared or any particulars called for by it have been furnished.

(4) The Assistant Director (Panchayats) may cancel or modify any order passed by a Panchayat under sub-rule (3):

Provided that no order either on application or suo motu



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prejudicial to the appellant shall be passed without giving reasonable opportunity of being heard to the appellant under this sub-rule or sub-rule (3)".

7. Place for burial and burning grounds.

(1) No person shall bury or burn or cause to be buried or burnt any corpse in any place within ninety metres of a dwelling place or source of drinking water-supply other than a place licenced as a burial and burning ground.

(2) The person having control of a place for burying or burning the dead shall give information of every burial or burning of a corpse at such a place to any officer appointed by the Village Panchayat for this purpose.

(3) If a Village Panchayat is satisfied-

(a) that any registered or licenced place burying or burning of the dead is in such a state or situation as to be or likely to become dangerous to the health of persons living in the neighbor-hood thereof; or

(b) that any burial ground is overcrowded with graves, and if in the case of a public burial or burning ground, another convenient place duly authorised for burying or burning of the dead exists or has been provided for the persons who would ordinarily make use of such place, it may with the previous sanction of the Assistant Director (Panchayats) give notice that it shall be not lawful after the expiry of a period of not less than two months to be specified such notice to bury or burn any corpse at such place.



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(4) Every notice given under sub-rule (3) shall be published by affixture to the notice board of the Village Panchayat and by beat of drum in the village.

(5) No person shall in contravention of any notice under sub-rule (3) and after expiration of the period specified in such notice bury or burn or cause or permit to be buried or burnt any corpse at such place.

(6) The Inspector may cancel or modify any notice issued by a Village Panchayat under sub-rule (3).

(7) Whoever contravenes any of the provisions of these Rules shall be punishable with fine which may extend to one hundred rupees or in case of a continuing breach, with fine not exceeding fifteen rupees for every day during which the breach continues after conviction of the first breach :

Provided that no prosecution shall be instituted for contravening the provisions of sub-rule (1) of Rule 7 without the written sanction of the Executive Authority of the Village Panchayat, concerned".

Thus, it is clear that the licence should have been obtained from the Village Panchayat for earmarking the place of burial ground.

7. After filing the writ petition, the sixth respondent on



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15.03.2024, informed to the fifth respondent as the subject land has been taken and used for burial ground as per the Rules. The fourth respondent by its communication dated 15.03.2024 made request to reclassify the subject land as burial ground as directed by this Court and to submit report on or before 21.03.2024. As stated supra, this Court never directed the respondents to reclassify the subject land as burial ground. This Court directed the respondents to file counter. In order to justify the subject lands' usage as burial ground, after filing the writ petition, the respondents reclassified the land as burial ground. On perusal of the communication dated 15.03.2024 on the file of the fourth respondent, the fourth respondent requested to classify the subject land as burial ground as directed by this Court. On perusal of the order dated 15.06.2024 on the file of the first respondent, revealed that on receipt of the request made by the fourth respondent, it was notified calling for objections in the village on 05.03.2024. However, there was no objections from the villagers for reclassification of the land as burial ground. Further, the subject land is valued at Rs.5 lakhs per acre, in which 0.12.00 hectares (30 cents) land valued as Rs.1,50,000/- and reclassified as burial ground.



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Even assuming that the first respondent has power to reclassify the land irrespective the Board Standing Orders, when the detailed objections raised by the petitioner dated 23.01.2023 and subsequent representation dated 02.01.2024 are very much pending on the file of the first respondent, the first respondent cannot say there were no objections from the villagers. That apart, the objections were called for on 05.03.2024 but the fifth respondent made request only on 15.03.2024 for reclassification of the subject land as burial ground. Therefore, it is sorry state of affairs that the first respondent mechanically signed the order prepared by its officers without application of mind. When the request was made on 15.03.2024, the first respondent could not have called for objections from the villagers on 05.03.2024.

8. Further, there is no whisper about the objections called for from the villagers in the reference of the order dated 15.06.2024. In order to satisfy this Court, in a haste and hurried manner, the order impugned



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has been passed by the first respondent. On this sole ground, the order impugned cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order dated 15.06.2024 of the first respondent is quashed. The first respondent is directed to issue notice to the petitioners and respondents 4 to 6 and after giving opportunity of hearing, to pass fresh orders on the objections raised by the petitioners within a period of two weeks from the date of receipt of copy of this order. Till then, no one is permitted to bury the bodies in the subject land i.e. to an extent of 0.12.00 hectares (30 cents) comprised in survey No.78/9 situated at Mallikundam Village, Mettur Taluk, Salem District. It is made clear that all the villagers of Mallikundam (irrespective of communities) are permitted to bury the bodies in the existing burial ground comprised in survey Nos.35/1, 35/3 & 35/4 situated at Mallikkundam Village. If anybody objects to bury the bodies in the existing burial ground, the jurisdictional police is directed to take appropriate action as against the objectors in the manner known to law.

9. In view of the above, all the writ petitions are allowed.



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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

30.08.2024  
(3/3)

Neutral citation:Yes/No

Index: Yes/No

Speaking/Non-speaking order

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Note: Issue order copy on 02.09.2024



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To

1. The District Collector  
and Inspector of Panchayats,  
Salem District,  
Salem
2. The Assistant Director,(Panchayats),  
O/o. The District Collector,  
Salem District,  
Salem
3. The Sub Collector/Revenue Divisional Officer,  
Mettur Revenue Division,  
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6. The Village Panchayat President,  
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Mallikundam,  
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**G.K.ILANTHIRAIYAN, J.**

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(3/3)