



WEB COPY



W.P.No.3438 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.3438 of 2021

And

W.M.P.Nos.3938 and 24362 of 2021

S.Ziyaullah

... Petitioner

Vs.

- 1.Tamil Nadu Wakf Board
Rep. by Chief Executive Officer
No.1, Jaffer Syrang Street,
Valla Seethakathi Nagar,
Chennai – 1.
- 2.The Executive Officer/ Superintendent of Wakf,
B.Hyder Burial Ground Wakf,
139, Dr.Besant Road,
Chennai.
- 3.The Managing Committee,
B.Hyder Burial Ground Wakf,
109, Dr.Ambedkar College Road,
Vyasarpadi,
Chennai – 12.
- 4.The Government of Tamil Nadu,
Rep. by Secretary,
Minorities, Backward and Most Backward Class,
Fort St.George,
Chennai.

...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Mandamus forbearing the respondents from any manner developing or altering the nature of the burial ground comprised in S.No.151 and 153 totally measuring 5 cawnies 24 grounds and 1396 sq.ft. situate at Dr.Ambedkar College Road, Vyasarpadi, Chennai, belonging to B.Hyder Burial Ground Wakf.

For Petitioner : Mr.N.A.Nassir Hussain
for Mr.Mohamed Rafi

For Respondents : Mr.C.Shankar for R1
R2 – No Appearance
Mr.I.Abdul Basith for R3

ORDER

This writ petition has been filed seeking issuance of Writ of Mandamus forbearing the respondents from any manner developing or altering the nature of the burial ground comprised in S.Nos.151 and 153 totally measuring 5 cawnies 24 grounds and 1396 sq.ft. situate at Dr.Ambedkar College Road, Vyasarpadi, Chennai, belonging to B.Hyder Burial Ground Wakf.

2.The learned counsel appearing for the petitioner submitted that the land in S.Nos.151 and 153 totally measuring 5 cawnies 24 grounds and 1396 sq.ft. situate at Dr.Ambedkar College Road, Vyasarpadi, Chennai, belongs to B.Hyder Burial Ground Wakf. The learned counsel further submitted that B.Hyder Burial Ground bearing



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Registration No.181 is a surveyed, registered, gazette Wakf under the supervisory control of the Tamil Nadu Wakf Board and further submitted that in the Government Gazette dated 20.05.1959 issued under Section 5(2) of the Wakf Act, 1954, the object of Wakf is shown as pious, Charitable and religious for the burial of Muslims. However, in the said burial ground, the respondents 1 to 3 decided to construct building and sent proposal to the Government for change of classification. The learned counsel further submitted that once a property is classified as burial ground, even the Government have no power to change its character since once burial of body is started in a property it cannot be converted to a residential property or any other property. Hence, the respondents 1 to 3 sending proposal to the Government for construction of building is not sustainable one.

3.The learned counsel appearing for the first respondent submitted that the respondents 1 to 3 only sent proposal to the Government and it is for the Government to decide the change of character.

4.Admittedly, the subject property has been declared as a burial



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ground. Once a property is classified as burial ground, even the Government have no power to change its character since once burial of body is started in an area, it cannot be re-classified as a residential area or commercial area and there is no provision under any Act or Rule for re-classification of burial ground. In the absence of any provision under any Act or Rule, the proposal sent by the respondents 1 to 3 to the fourth respondent is impermissible one and the said proposal is non-est in law.

5.The writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

05.09.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Tamil Nadu Wakf Board
Rep. by Chief Executive Officer
No.1, Jaffer Syrang Street,
Valla Seethakathi Nagar,
Chennai – 1.

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- 2.The Executive Officer/ Superintendent of Wakf,
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