



W.P.No.12771 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

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

W.P.No.12771 of 2021

and

W.M.P. Nos.13570, 13571 and 13879 of 2021

R.Malika

... Petitioner

Vs

1. The District Collector,  
Office of the District Collector,  
Tiruppur District,  
Karuppa Goundanpalayam,  
Tiruppur – 641 604.
2. The Tahsildar,  
Tiruppur South,  
Seventhapalayam,  
Tiruppur – 641 606.
3. The President,  
Nachipalayam Village Panchayat,  
Koduvai-Nachipalayam Road,  
Tiruppur – 641 606.
4. The Inspector of Police,  
Avinashipalayam Police Station,  
Avinashipalayam,  
Tiruppur District – 638 660.



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5. Saravana Kumar

(R5 impleaded vide order dated 27.10.2021 made in  
W.M.P.No.24066 of 2021 in W.P.No.12771 of 2021)

6. Tiruppur Labbai Sunnath Jamaath Masjith,

Rep by its Muthavalli,

M.Shahul Hameed,

S/o.K.F.Mahammed Yoosuf,

No.63, Big Bazaar Street,

Tiruppur – 641 604.

(R6 impleaded vide order dated 18.08.2022 made in  
W.M.P.No.1624 of 2022 in W.P.No.12771 of 2021)

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings dated 23.02.2021 passed by the first respondent in Na.Ka.No.3450/2021/A1, quash the same and direct the respondents to stop all further proceedings pertaining to the proposed burial ground at Nachipalayam Village, Tiruppur, adjacent to the schedule property of the petitioner.

For Petitioner : Mr.M.L.Joseph  
for M/s.Chennai Law Associates

For Respondents : Mr.P.Sanjay Gandhi,  
Government Advocate (for R1, R2 & R4)

Mr.Stalin Abhimanyu,  
Additional Government Pleader (for R3)

Mr.M.Guruprasad (for R5)

Mr.P.Dinesh Kumar (for R6)



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## ORDER

The Writ Petition has been filed challenging the order passed by the first respondent dated 23.02.2021, thereby, the first respondent re-classified the land comprised in S.No.24/3 of an extent of 0.38.5 hectares from Sarkar Thoppu to burial ground.

2. The petitioner and the fifth and sixth respondents belonging to the same Village, viz., Rangapalayam, Nachipalayam, Tiruppur District. While pending the Writ Petition, the fifth and sixth respondents were impleaded in this Writ Petition and supporting the case of the petitioner. By a registered Partition Deed dated 04.07.2014, vide Document No.1895 of 2014, the petitioner and her family members had acquired title to the properties, which were purchased by their father. As per the said Partition Deed, the properties ad-measuring 0.10 acres in S.No.24/2, 0.58 acres in S.No.25/1, 0.59 acres in S.No.25/2, 0.69 acres in S.No.25/3, 3.01 acres in S.No.33/1, 0.28 acres in S.No.33/3 and 3.81 acres in S.No.39(Part), totally measuring 12.26 acres in Nachipalayam Village, Tiruppur South Taluk, Tiruppur District, were allotted to the petitioner. In pursuant to the said



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Partition Deed, the petitioner is in possession and enjoyment of the said properties. Adjoining the said land, there is an “Odai” which runs through the Southern boundary of the petitioner's property. Adjacent to the said Odai, there is a land comprised in S.No.24/3, which was classified as 'Sarkar Thoppu'. While that being so, based on the representation submitted by some of the persons, the first respondent re-classified the said Sarkar Thoppu land as burial ground for the purpose of using the same, to bury the body for specific community by the impugned proceedings dated 23.02.2021.

3. The specific case of the petitioner is that, no notice was given to the adjacent land owners and also no public notice was given to raise their objections. In fact, the third respondent resolved by a resolution dated 09.02.2021, objecting the said re-classification of the land as burial ground and sought for allotment of the said land for the purpose to build public bathrooms and toilets for more than 300 families residing in Rangapalayam Adi Dravida Colony.



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4. While pending the Writ Petition, this Court appointed an Advocate Commissioner to find out as to whether any classification at all as “burial ground” has been made, as the proposed burial ground is near the water body and is causing any hindrance to the residential localities and also as to whether there is any feasibility of construction of public bathroom and toilets in the said place. Accordingly, the learned Advocate Commissioner inspected the subject property and had taken photographs while noting down the physical features. As per the report, the petitioner's property is located in S.No.25, which is on the West of the subject property and there is a well and two houses. The distance between Well and the subject property, is about 4.6 meters and the distance between two houses and the subject property is about 5 meters and 77 meters. The subject land in S.No.24/3 ad-measuring 95 cents, had been originally classified as “Sarkar Thoppu” in 'A' Register from 1912 onwards. While that being so, on 21.12.2020, the sixth respondent herein made a representation to the first and second respondents seeking Kabarsthan to Muslims. Therefore, the second respondent issued notice dated 18.01.2021 under Form A-1 for recording objections, if any. Thereafter, it was re-classified as burial ground for Muslims. Further, the



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pathway to the proposed burial ground is through the land comprised in S.No.24/1B and it is classified as “Odai” a tributary from Noyyal River and runs under the canal of National Highways to reach Kuttai on the Southern side. The said Odai runs adjacent to the subject land and crosses the National Highways through a canal and travels South and finally ends in S.No.245/1B1, Vannanthurai Pudur Kuttai in Nachipalayam Village.

5. The relevant portion of Report of the learned Advocate Commissioner, reads as follows:-

*“d) “DISCUSSION WITH” AND “QUERIES RAISED” TO THE REVENUE OFFICIALS BASED ON THE DOCUMENTS AND INSPECTION:*

*The Tahsildar, Village Administrative Officer and firka surveyor elucidated the FMB Sketch of Survey No.24/3 and the Village. While narrowing our attention to the Northern side of Survey No.24/3, we found a wavy line oodai in the FMB sketch which is visible from Northern East corner in Survey No.24/3,*



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*running to South East and the same line slopes down towards Survey No.267, located on the southern side of S.No.24/3 and the Odai transcends into Syrvey No.267 and reaches Survey No.245/1B1 which is Vannanthurai Pudur Kuttai.*

*a) When questions were raised about the wavy line within the boundaries of Survey No.24/3 (Government Land) the Village Administrative Officer said that the wavy line indicates an Odai, Vanndi pathai.*

*b) Secondly, when enquired that S.No.24/1B was classified as Oodai,Vandi Pathai, the Tahsildar replied stating that before UDR, RSR there was no entry as Vandi Pathai in S.No.24/1. The total extent is Acre 13.28 and it was classified only as Oodai after UDR 24/1 is sub-divided as 24/1A & 24/1B. Patta has been given in the name of Periyasamy Nadar after UDR (Updating registry scheme). According to the officials, patta was granted before several years for the extent of acre*



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*0.19  $\frac{3}{4}$  in S.No.24/1A and S.No.24/1b has been classified as Odai Vandai Pathai after UDR.*

*c) Thirdly when asked about the start and end point of Odai, the firka surveyor stated that the Odai in Nachipalayam Village starts from the Northern side of Noyal River passes through Eastern boundaries S.Nos.15, 16, 19, 21, 23, 22, 6, Western side of S.Nos. 26, 24/3, 24/2, 25, 32, 33, 34, 35, 47, 48, 49, 56 and ends in Southern boundaries of Survey No.245/1B1 Vannanthurai Kuttai. The total length and width of odai could not be identified since it's plying more than 13 acres.*

### ***(III) FEASIBILITY OF CONSTRUCTION OF PUBLIC BATHROOM AND TOILETS.***

*There are more than 250 families are residing in the Nachipalayam Village. It seems that there is no public toilets and bathroom for those families. All the residents do not have*



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*independent toilets and bathroom and resort to open defecation in the proposed burial ground as for their natural calls. Hence, it is necessary for the people to construct bathroom and toilets for the Village without affecting the water body/odai located in S.No.24/1B. Alternative steps can be taken to ensure that each house in Village has a separate bathroom and toilets with Swachh Bharat Mission Scheme and the state can be directed to do the needful, to eradicate open defecation, which also causes air and water pollution.”*

6. Thus, it is clear that the subject property is located adjacent to Odai comprised in S.No.24/1B. Though in the Odai, there is water flow, if there is rain or sufficient water flow from nearby puddle, the area marked as Odai will be the channel for water to run through.

7. On a perusal of the counter-affidavit filed by the first respondent, it reveals that only after issuance of notice, objections were called for change of classification among Village public and subject land



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was re-classified as “burial ground”. Therefore, all the general public were given opportunity to raise objections before re-classification as burial ground. Only on the request made by the particular religion of people to form Karbarsthan (burial ground), the said subject land was re-classified as burial ground.

8. Rule 7(1) of the Tamil Nadu Panchayats (Provision of burial and burning grounds) Rules, 1999, states the condition not to bury or burn any corpse in any place within ninety meters of a dwelling place or source of drinking water-supply other than a place licenced as a burial and burning ground. Therefore, the burial ground cannot be legally permitted near water body or residential building and prohibition is mentioned as ninety meters from the water body or residential.

9. Admittedly, the subject property is located within the prohibited distance. Therefore, the first respondent, without considering the above aspects and without considering the objections raised by the Village public and without considering the resolution passed by the third respondent, had



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mechanically re-classified the said subject land as burial ground. Hence, the order of re-classification of land in S.No.24/3 cannot be sustained and it is liable to be quashed. Accordingly, the impugned proceedings dated 23.02.2021 is hereby quashed.

10. In the result, this Writ Petition is allowed. However, the first respondent is directed to choose alternative place for burial ground as requested by the sixth respondent in accordance with Rules 5 and 7 of the Tamil Nadu Panchayats (Provision of burial and burning grounds) Rules, 1999 and other relevant Rules, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index:Yes/No  
Neutral Citation/Yes/No  
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**G.K.ILANTHIRAIYAN, J.**

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