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W.P.No.652 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM:

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

W.P.No.652 of 2021

P.Venkatesan (alias) G.P.Venkatesan
Rep. by his Power of Attorney agent
Paulpandian

...Petitioner

-Vs-

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.
2. The Zonal Officer,
Zone No.11, Greater Chennai Corporation,
No.33, Arcot Road,
Valasaravakkam,
Chennai – 600 087.
3. The Assistant Engineer,
Division No.146,
Greater Chennai Corporation,
Maduravoyal,
Chennai – 600 095.
4. The Thasildar,
Maduravoyal Taluk,
Maduravoyal,
Chennai – 600 095.

5. Vimalraj

... Respondents



W.P.No.652 of 2021

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 4 to remove the buried corpse of Mrs.Vanitha Vimalraj from the 20 feet public road in S.No.269/2 of Nethaji Nagar, Maduravoyal Village, Maduravoyal Taluk, Chennai District, within a time period fixed by this Court.

For Petitioner : Mr.M.V.Seshachari

For Respondents

For R1 to R3 : Mrs.P.T.Ramadevi
Standing Counsel

For R4 : Mr.C.Kathiravan
Special Government Pleader

For R5 : Mr.A.K.Sriram
Senior Counsel
For Mr.S.Anil Sandeep

ORDER

This writ petition has been filed for direction directing the respondents 1 to 4 to remove the buried corpse of the fifth respondent's wife from the 20 feet public road in S.No.269/2 of Nethaji Nagar, Maduravoyal Village, Maduravoyal Taluk, Chennai District.

2. The petitioner had purchased the property to an extent of 0.371 cents in Survey No.269/1 situated at Maduravoyal Village, Maduravoyal Taluk, Chennai, by the registered sale deed dated 11.03.1992 vide document No.874 of 1992. Subsequently, a portion of



W.P.No.652 of 2021

the subject property ad measuring 2060 sq.ft., was settled in favour of his daughter by the registered settlement deed dated 19.10.1994 vide document No.3818 of 1994. Thereafter, she conveyed the said property in favour of the petitioner's son by the registered sale deed dated 27.03.1995 vide document No.1133 of 1995. In turn, the petitioner's son appointed the petitioner as power agent to deal with the property by the Power deed dated 28.07.1998 registered vide document No.909 of 1998. There is a 20 feet road running north to south, perpendicularly and leading to the subject property. The petitioner is having access to reach the subject property through the said road.

3. While being so, the fifth respondent and his family members caused obstruction to use the said road as such the petitioner was constrained to file suit in O.S.No.476 of 1998 on the file of the Additional District Munsif Court, Poonamallee, seeking declaration as the petitioner is entitled to have ingress and egress through the said road to reach the subject property and also sought for mandatory injunction as against the fifth respondent to remove the obstruction and construction put up by him in the said road. The said suit was decreed in favour of the petitioner by the judgment dated 13.12.2011. Aggrieved by the same, the fifth



W.P.No.652 of 2021

respondent filed an appeal suit in A.S.No.23 of 2012 on the file of the Sub Court, Poonamallee and obtained an interim order of stay of all proceeding in O.S.No.476 of 1998. Thereafter, it was dismissed for default and now the fifth respondent filed restoration petition and it is pending.

4. In the mean while, the fifth respondent's wife died due to cardiac arrest during Covid-19 pandemic situation ie., on 19.10.2020. The fifth respondent had buried his wife body in the said road, which is only access to reach the subject property. Therefore, the petitioner lodged complaint before the concerned jurisdiction police station. He also submitted representations to the official concerned but no action has been taken so far. Hence, the present writ petition.

5. The learned counsel appearing for the petitioner raised two legal grounds that the fifth respondent could not have buried his wife body without any application or permission from the first respondent, as contemplated under Section 325 of the Chennai City Municipal Corporation Act, 1919. Further, the subject road is the main access to reach the subject property of the petitioner. The petitioner also obtained



W.P.No.652 of 2021

decree in his favour. While being so, the fifth respondent buried the body and it is clear violation of law.

6. The respondents 1 & 2 filed counter and the learned Standing Counsel appearing for the respondents submitted that the fifth respondent had buried his wife body in the land of 20 feet road comprised in survey No.269/2 situated at Nethaji Nagar, Maduravoyal Village, Maduravoyal Taluk, Chennai District, without obtaining any license from the first respondent as contemplate under Section 319 of the Chennai City Municipal Corporation Act, 1919. As per records, the said land is used as public pathway.

7. The fifth respondent filed counter and the learned Senior Counsel appearing for the fifth respondent submitted that the place in which the fifth respondent buried his wife body is not disputed. In the appeal suit in A.S.No.23 of 2012, there is an interim order staying the operation of the judgment and decree passed in O.S.No.467 of 1998. While pending the suit, the learned Advocate Commissioner was appointed and as per the report submitted the learned Advocate Commissioner dated 13.03.2004, the 20 feet pathway is a private



W.P.No.652 of 2021

property belongs to the fifth respondent and it is not a public pathway.

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8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. On perusal of records revealed that, the 20 feet road is not an only accesses to the subject property since there is separate road as per the sale deed. In the said pathway, the petitioner had installed generator by putting concrete generator room. Further the petitioner has no access towards northern side to his property. Therefore, the said pathway is a private property belongs to the fifth respondent in which the fifth respondent's wife body buried. The fifth respondent's wife died due to Cardiac respiratory arrest due to Cancer that too during Covid-19 pandemic situation. Therefore, he could not carry her body to the licensed burial ground. The subject land is being owned by him, he buried his wife body in the said land. Though there is dispute regarding pathway, the petitioner has no right or title over the said property. Even as per his own title deed, there is absolutely no mentioning about the pathway to reach the subject land.



W.P.No.652 of 2021

10. Admittedly, the fifth respondent's wife died and buried on 19.10.2020. It was peak stage of Covid-19 pandemic. Therefore, the fifth respondent could not able to carry her body to any burial ground. That apart, the fifth respondent buried his wife body on 19.10.2020. After the period of four years, there is no remains of the fifth respondent's wife corpse in the buried place. Further till the out come of the appeal suit, it cannot be said that the said pathway is used by the general public and it is pathway to the subject land.

11. In view of the above discussions, the directions sought for in this writ petition cannot be considered and the writ petition is devoid of merits and liable to be dismissed. The Sub Court, Poonamalle is directed to dispose the appeal suit in A.S.No.23 of 2012 on merits and in accordance with law, without influence of any of the observations made by this Court, within a period of three months from the date of receipt of a copy of this Order, if not already disposed of.

12. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.



W.P.No.652 of 2021

30.10.2024

WEB COPY

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

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W.P.No.652 of 2021

WEB COPY

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G.K.ILANTHIRAIYAN. J,

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