



W.P.(MD)No.4488 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.06.2024

Pronounced on : 08.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.4488 of 2021

and

W.M.P.(MD)No.3604 of 2021

Rajamani
on behalf of St. Peter Luthren Church

... Petitioner

Vs.

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Sub Collector,
O/o. The Sub Collector,
Cheranmahadevi,
Tirunelveli District.

3. The Tashildar,
Taluk Office,
Nanguneri,
Tirunelveli District.

4. A.Subeda

... Respondents



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Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertain to impugned proceedings Na.Ka.No.A8/2783/2020 dated 22.09.2020 passed by the third respondent and further direct the second respondent to consider the appeal dated 10.10.2020 in accordance with law.

For Petitioner : Mr.V.Rajiv Rufus
For R1 to R3 : Mr.A.K.Manikkam
Special Government Pleader
For R4 : Mr.V.Sukumar

ORDER

The Writ Petition is directed against the order dated 22.09.2020 passed by the third respondent and for directions to the second respondent to consider the appeal dated 10.10.2020 in accordance with law.

2. The writ petitioner has claimed to have filed the present writ petition on behalf of St. Peter Luthren Church, Perumalanchi, Nanguneri Taluk, Tirunelveli District.

3. The case of the writ petitioner is that St. Peter Luthren Church is existing in the present place i.e., in Natham Survey No.1518/6 for around



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36 years and from that time onwards one burial ground is existing next to the Church, that the fourth respondent, who fought with the Church members and left the Church, made a false complaint before the third respondent alleging that the burial ground has been newly formed and the said burial ground is functioning within the prohibited distance, that though the complaint was lodged by the fourth respondent under the guise of Villagers with ulterior motive, the third respondent, without hearing and without providing any opportunity to the writ petitioner and other Villagers, has passed the impugned order, that the third respondent failed to consider the report given by the Revenue Inspector dated 20.08.2020, that the third respondent by the impugned order is prohibiting the Villagers using the burial ground situated in Natham Survey No.1518/5, Thalapathy Samuthiram Part-1 Village, Nanguneri Taluk, that the other Villagers approached the second respondent and preferred an appeal dated 10.10.2020 and that the same is pending before the second respondent till now.

4. It is the further contention of the writ petitioner that when the burial ground was used by the Villagers in 1983, there were no buildings



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within the ambit of 90 metres, that the buildings have come after many decades, that the fourth respondent is claiming that their house situated within 90 metres from the burial ground, but this was happened because of the fourth respondent and other violators, that the report of the Revenue Inspector would show that the Church and the burial ground were in existence for many decades, that the fourth respondent has lodged the complaint with ulterior motive, that the third respondent, without considering the factual aspects in proper perspective, has passed the impugned order mechanically and that therefore, the writ petitioner was constrained to file the present writ petition.

5. The defence of the third respondent is that the Village people belongs to Thalopathy Samuthiram Part-1 Village, Nanguneri Taluk had approached the third respondent authority with their representation dated 19.08.2020 stating that one Rajarathinam is trying to establish a burial ground in the property in Survey No.1518/5, which is classified as Government poromboke without authority of law and requested to take necessary action, that the third respondent has issued necessary direction to the Revenue Inspector, Nanguneri to conduct field inspection and file a



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report, that the officials had conducted survey and field inspection in respect of the subject property in Survey No.1518/5, that they came to know that the subject issue is revolving with two properties situated in Survey Nos.1518/5 to an extent of 0.07.35 hectare and 1518/6 to an extent of 0.03.98 hectare situated in Thalapathy Samuthiram Part-1 Village, Nanguneri Taluk, that the said properties are classified as Government poromboke in revenue records, that the Church is constructed in a portion of the property in Survey No.1518/6 to an extent of 650 sq.mts and in Survey No.1518/5, the property is used by the persons belong to the Church as burial ground, that they came to understand that the disputed burial ground is formed without any authority of law, that the Church people is using the said property as burial ground without any licence as contemplated under Rules 5 and 7 of the Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999 (hereinafter called as 'the said Rules'), that the Church and the burial ground, which are existing in the Government poromboke land, should have been treated as encroachment and the encroachment ought to have been removed in terms of the Tamil Nadu Land Encroachment Act, 1905, that there is no illegality or arbitrariness in the impugned order passed by the third respondent and



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that the writ petition is totally unsustainable and the same is liable to be dismissed.

6. It is their further contention that there is no appeal provision against the impugned order as per the provisions of the said Rules and as such, there is no legal ground to approach the second respondent by way of an appeal and that therefore, the writ petition, which is legally not maintainable, is liable to be dismissed.

7. It is pertinent to note that as per the revenue records, the land in Survey Nos.1518/5 and 1518/6 are classified as Government poromboke. It is not the specific case of the writ petitioner that the land in Survey No. 1518/6 where the Church is available and the land in Survey No.1518/5 in which burial ground is existing are owned by the Church authorities. Even according to the writ petitioner, Church is existing in Survey No.1518/6 for around 36 years at the time of filing the present writ petition.

8. The learned counsel appearing for the writ petitioner would mainly rely on the report submitted by the Revenue Inspector in pursuance



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of the direction of the third respondent, wherein, he has stated that the burial ground was there for more than 40 years.

9. The learned counsel appearing for the fourth respondent would submit that earlier the land was used by the people attached with the nearby Church as burial ground and thereafter they were permitting the other people from some other place to use the disputed place as burial ground.

10. The learned Special Government Pleader appearing for the respondents 1 to 3 would submit that even assuming that there was a burial ground in existence, but after the said Rules came into force, the writ petitioner or the Church authority has to necessarily take licence and without following the provisions of the said Rules, they cannot be permitted to use the said place as burial ground. He would further submit that as per the Rule 7(1) of the said Rules, no person shall bury or burn in any place within 90 metres of a dwelling place and that since the present burial ground is situated within 50 metres from the dwelling place and even on that ground also, the same cannot be entertained.



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11. The learned counsel appearing for the writ petitioner would submit that the burial ground now under dispute was not recently formed and the same was in existence for more than 40 years even as per the report of the Revenue Inspector, Nanguneri Taluk, that therefore there was no chance or occasion for getting any licence as contemplated under the said Rules and that the writ petitioner is ready to apply and obtain the necessary licence, if required.

12. At this juncture, it is necessary to refer Rule 4 of the said Rules,

“4. Registration of burial and burning grounds.-

(1) Every owner or other person having the control over any place used as a place for burying or burning of the dead shall, if such place is not already registered under the Act or any other Act, apply to the Village Panchayat to have such place registered.

(2) If it appears to the Village Panchayat that there is no owner or person having the control of such place, the Village Panchayat shall assume such control and register such place or may, with the sanction of the Assistant Director (Panchayats) close it.”

13. The above Rule contemplates that if the burial ground was already in existence and if that ground is not already registered under the



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Tamil Nadu Panchayats Act r/w the said Rules, they have to apply to the Village Panchayat for registration.

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14. As already pointed out, in the case on hand, it is not the case of the writ petitioner that they have already registered the said place as burial ground with the concerned Panchayat or obtained necessary licence as per the provisions of the said Rules.

15. Hon'ble Full Bench of this Court in the case of ***Jagadheeswari and others Vs. B.Babu Naidu and others*** reported in (2023) 3 LW 697 (FB), while answering a reference, has considered the scope of Rules 4 to 7 of the said Rules and observed as follows:-

“20. Rule 4 is in respect of places used as place for burying or burning of dead, prior to the Act and Rules came into force, it is mandatory for the owner of the land to register with Panchayat. If no owner or person having control of such place, makes application, then the village Panchayat itself shall assume control and register such place, or may, with the sanction of the Assistant Director (Panchayat) close it.

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30. Both Rules 5 and 7 of the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules 1999 start with a negative clause. Rule 5 prohibits new place for burying or burning the dead without license obtained from village Panchayat. Rule 7 prohibits burning or burying any corpse, in any place, within 90 meters of the dwelling place or source of drinking water supply. The place licensed as burial and burning ground is exempted from the 90 meters restriction. Rule 5(1) does not indicate that the place where a body is buried or burnt, will not carry the character of burial ground or burning ground. If, single body is burnt or buried and the land owner has no intention to allow burial of body in future. Whoever prefers a new place whether private or public to be used for burying or burning the dead, license from the Panchayat is a pre-requisite. Thus, it is very clear that except the place which has already been registered under Rule 4 or a new place where license is obtained following the procedures contemplated under Rules 5(2) (3) and (4), no body can be buried or burnt in the place which is neither been registered or granted license.

31. That apart, it is also to be noted that Rule 6 mandates the village Panchayat to maintain a register at its office showing places which are provided, registered or licensed under Rules 3 to 5. The framers of the Rules were



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conscious of the fact that there may be violation of Rule 7 (1). Therefore, the Rule prescribes punishment for contravention of Rule 7(1) but, prosecution shall be instituted only on written sanction by the Executive Authority of the village Panchayat concerned.

32. The outcome of the above analysis of the Rules and case laws leads to the conclusion, that the condition of 90 meters restriction found in Rule 7(1) cannot be construed as right to bury body anywhere and everywhere. Burial or burning body is subject to the other provisions in the Rules. The conditions of distance restriction from the water body, cannot be read in isolation unmindful of the purpose of the Rules and other provisions thereunder.

.....

34. Moreover, after Rules, 1999 came into force, any burial in the place other than the place already registered or licensed as burial ground, goes in contravention to Rule 7(1). Any body buried in contravention to the Rules 5 and 7, is to be exhumed and buried in the designated place. If such violation is brought to the notice within the reasonable time and despite notice to exhume the body for to be buried in the designated place not adhered by the person concerned, the body is to be exhumed by the



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authority and collect the costs from the person who is cause for that illegal burial. The exhumed body must be buried in the designated place, taking into consideration the public health. Person who defies the law and refuses to exhume the body, cannot take umbrage in the delay of enforcing the law and make the Court 'fait accompli'. Accordingly, the order of reference is answered in negative.”

16. The Hon'ble Full Bench has specifically held that except the place which has already been registered under Rule 4 or a new place where license is obtained following the procedures contemplated under Rules 5(2) (3) and (4), no body can be buried or burnt in the place which is neither been registered or granted license. In the case on hand, as already pointed out, the burial ground situated in Survey No.1518/5 has not been registered as burial ground nor any licence was obtained by the writ petitioner or the Church people as contemplated under the provisions of the said Rules.

17. As already pointed out, Rule 7(1) mandates that no person shall bury or burn or cause to be buries or burnt any corpse in any place within 90 metres of a dwelling place or source of drinking water supply other



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than a place licensed as a burial or burning ground. In our case, as per the impugned order, houses are there on the east and west of Survey No. 1518/5 and the same are situated within a distance of 50 metres from the burial ground. No doubt, as rightly pointed out by the learned counsel appearing for the writ petitioner, even as per the report of the Revenue Inspector, the houses therein were shown to be constructed within 10 years. Even assuming that houses are recently constructed, it is not the case of the writ petitioner that they have registered the land in Survey No. 1518/5 as burial ground or obtained licence before the construction of the said houses. Considering the above factual aspects, the third respondent, by observing that no one has obtained prior permission nor there was any resolution of the Panchayat for using the vacant land in Survey No.1518/5 classified as Government poramboke and that since they were using the said land as burial ground without permission of the authorities, there is every possibility for law and order issue, has rightly passed the impugned order prohibiting any one from using the said land as burial ground and as such, the same cannot be found fault with.

18. The learned counsel appearing for the writ petitioner has not raised any other reason or ground to impugn the said order. Consequently,



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this Court concludes that the writ petition is devoid of merit and the same is liable to be dismissed.

19. In the result, this Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

08.07.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Sub Collector,
O/o. The Sub Collector,
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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
W.P.(MD)No.4488 of 2021
and
W.M.P.(MD)No.3604 of 2021

Dated : 08.07.2024