



W.A(MD)No.805 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.805 of 2024
and
CMP(MD)No.6011 of 2024**

K.Ravichandran

... Appellant

vs.

1. The District Collector,
Thanjavur District.

2. The Revenue Divisional Officer,
Pattukottai,
Thanjavur District.

3. The Tahsildhar,
Peravurani Taluk,
Thanjavur District.

4. The Block Development Officer,
Sethupavachathram Panchayat Union,
Thanjavur District.

5. The President,
Vumathanadu Village Panchayat,
Peravurani Taluk,
Thanjavur District.

6. Ayyachamy



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7. Shanmugam

8. Bharathi

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 19.12.2023 made in W.P(MD)No.24385 of 2023.

For Appellant : Mr.T.Arul for Mr.R.Balakrishnan
For R1 to R5 : Mr.N.Satheesh Kumar
Additional Government Pleader
For R6 to R8 : Mr.Poornachandran

JUDGMENT

(Judgment of the Court was made by **R.SURESH KUMAR, J.**)

This intra-court appeal has been directed against the order passed by the Writ Court dated 19.12.2023 made in W.P(MD)No.24385 of 2023.

2. The appellant was the writ petitioner who approached the Writ Court with the prayer of Writ of Mandamus to direct the 1st respondent to accept his gift of 10 cents of land in Survey No.241/4A1, Vumathanadu Village Panchayat, Peravurani Taluk, Thanjavur District and classify the same as a burial ground for their community people of Aladikkadu village, by considering the representation of the writ petitioner/appellant dated 16.08.2023.



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3. The case of the petitioner/appellant is that, there has been a burial ground which was used by the community people of the petitioner/appellant. Subsequently, the said burial ground has been abandoned, as there has been no access road or way available.

4. Therefore, in that village, in their community, if anybody dies, they find it difficult to find out a burial ground. Therefore, the petitioner had come forward to voluntarily donate 10 cents of land in the said survey number as carved out separately for the purpose of establishing a burial ground which, in fact, had been used as a burial ground at least for one or two occasions in the recent past.

5. With this intention, the petitioner/appellant had already given a detailed representation to the 5th respondent, i.e., the President of the Village Panchayat on 16.08.2023 and requested the Village Panchayat President to pass necessary orders declaring the said 10 cents of land provided/earmarked or donated by the petitioner/appellant as a burial ground for their community people.



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6. In order to consider the said representation and to pass necessary orders by the Village Panchayat President, seeking a Mandamus only, the said writ petition had been filed.

7. However, the learned Judge through the order dated 19.12.2023, had observed that it is the duty of the official respondents to ensure that the notified graveyard is having proper access. He has further observed that as and when any death occurs in the village, there shall not be any restriction in taking the dead bodies to the notified graveyard/cremation ground and it is the duty of the official respondents to ensure the same.

8. After having made this observation, the learned Judge disposed of the said writ petition through the impugned order dated 19.12.2023.

9. Heard Mr.T.Arul, learned counsel for Mr.R.Balakrishnan, learned counsel appearing for the petitioner/appellant, Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the respondents 1 to 5 including Mr.Poornachandran, learned counsel appearing for the private respondents i.e., respondents 6 to 8.



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10. Learned Additional Government Pleader appearing for the respondents 1 to 5 would contend that, declaring a particular area as a burial ground or registering particular area as a burial ground or burning ground, is the duty of the village executive authority who is none other than the elected President. That is being controlled by the rule called, The Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999, under G.O(Ms)No.213, Rural Development (C4) Department, dated 5th October, 1999.

11. Relying upon the said rule, learned Additional Government Pleader would contend that, if at all an application has to be made for registration and declaration of a burial ground, such an application has to be made to the executive authority of the village panchayat concerned i.e., the 5th respondent in proper form. However, the representation that has been made by the petitioner dated 16.08.2023, cannot be construed as an application in proper form within the meaning of the said rule. Therefore, the Village Panchayat President is not obliged or obligated to consider such a representation only for consider and dispose of the same. Therefore, if at all any application is made in proper form under the rule by the petitioner, for seeking a declaration of a burial ground in respect of the 10 cents of lands being earmarked or carved out or donated by the petitioner for their community people, such an application



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would be considered by the 5th respondent village panchayat under the rule, of course, after hearing the objection, if any, from the village people and accordingly, a decision would be arrived at on merits and in accordance with law, he contended.

12. On the other hand, Mr.Poornachandran, learned counsel appearing for the respondents 6 to 8 would contend that, the private respondents are having the agricultural lands on all the four sides of the proposed site for the purpose of burial ground as sought for by the appellant. The very purpose of the petitioner to seek for declaration of such land as a burial ground is only to give trouble to all the land owners whose land value would get diminished if the burial ground is declared there. Therefore, the private respondents and other people in the same village with the similar view of the private respondents, are totally opposing the move of the petitioner/appellant.

13. However, Mr.T.Arul, learned counsel appearing for the petitioner/appellant would submit that, if there has been no burial ground notified or registered available in any village for the purpose of burial of dead bodies or corpse, then, such a facility can be sought for by any one. In this context, under the rules, if any one comes forward to make an application for



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declaration of burial ground of a particular land which is made available for the purpose of declaring the same as a burial ground for the community concerned, it has to be decided on merits by the executive authority of the village panchayat concerned under the rule.

14. Therefore, the representation that has been given by the petitioner dated 16.08.2023, shall be treated as an application within the meaning of the rule of the said rules and accordingly the same shall be decided by the executive officer of the village panchayat i.e., the 5th respondent and only to consider the said application since the writ petition had been filed, the said prayer has not been considered by the learned Judge, instead, the learned Judge has made a mere observation that the existing burial ground or notified burial ground must have the access which shall be ensured by the official authorities. Therefore, aggrieved over the same, since the petitioner made this intra-court appeal, he seeks indulgence of this Court against the order impugned and also seeks for a direction as prayed for in the writ petition.

15. We have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.



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16. Insofar as registering or declaring a burial ground within the village limit is concerned, that is fully governed by the rule as quoted herein above. In fact, the said rule has been framed by the Government in exercise of the powers conferred by Section 116 and Clause (xxxi) of sub-section (2) of Section 242 of the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994).

17. If such a statutory rule has been framed which governs the issue with regard to burning or burial ground of the village concerned and under the rules, such registration could be possible to be made by the executive authority of the village panchayat and when such application is made by any person and if there has been a need for making such a declaration or registration of the burial ground, of course, after hearing the objection, if any, from any quarters of the village or local panchayat concerned, a suitable decision shall be taken by the executive authority of the village panchayat and that is provided under the rule.

18. When that being so, as has been rightly pointed out by the learned Additional Government Pleader appearing for the official respondents, if any application is made in proper form by any one seeking such a declaration or



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registration of a burial ground and if there has been a need for a burial ground, that shall be considered and decided by the Village Panchayat President, who is the executive authority of the village panchayat concerned in accordance with law, of course, on merits by considering the objections, if any, from any quarters of that village.

19. When that being the legal position and factual matrix of the case, the observation merely made by the learned Judge in disposing the said writ petition without considering the prayer that has been sought for in the said writ petition as has been made by the writ court through the impugned order, in our considered view, is requiring interference.

20. Resultantly, the following orders are passed in this writ appeal:

That, the impugned order of the learned Judge is hereby set aside. As a sequel, there shall be a direction to the petitioner/appellant to give his request which he has already made on 16.08.2023, by way of application in proper format within the meaning of the said rules and on making such an application with supporting documents by the petitioner/appellant, on receipt of the same, the 5th respondent/executive officer of the village panchayat i.e., the President of the Village Panchayat concerned, shall consider the same and decide it, of



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course, after giving an opportunity of being heard to both the petitioner/appellant as well as the private respondents and also any other person who has interest over the subject matter from the said village and accordingly, a conscious decision shall be taken based on the local needs of the village people concerned and accordingly a final decision shall be taken by the 5th respondent/Village Panchayat President, in the said application to be filed as indicated above, by the appellant, within a period of eight weeks thereafter.

21. With these directions, the Writ Appeal is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (G.A.M., J.)
03.06.2024

Index : Yes / No
Neutral Citation : Yes / No
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