



W.P.(MD) No.18494 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.18494 of 2024
and
W.M.P(MD)No.15718 of 2024

Mahaboobpalayam Sunnathul Jamaath Masjid,
Rep by its President haji Er.S.Nijamalikhhan
No.32, Ansarinagar 5th Street,
Mahaboobpalayam
Madurai-625 016.

.. Petitioner

Vs.

- 1.The District Collector,
O/o.The District Collectorate Campus,
Madurai,
Madurai District.
- 2.The Revenue Divisional Officer,
O/o.the Revenue Divisional office,
Madurai,
Madurai District.
- 3.The Tahsildar,
O/o.The Tahsildar,
Madurai West Taluk,
Madurai.



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4.Head Survey Officer,
O/o.the Tahsildar,
Madurai West Taluk,
Madurai.

5.Subash

6.Tamil Nadu Evelingical Lutheran Church,
Rep., by the property Officer,
Rev. C.Sam Jebaraj Stephenson,
Having Office at Thanquebar House,
Thiruchirapalli District.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent vide his proceedings in Na.ka.No.2074/2023/B dated 05.12.2023 and quash the same as illegal and consequently, to direct the 3rd respondent to grant patta in respect of new S.No.1617/2 and Old S.No.218 to an extent of 46 cents situated in Ponmeni Village, Madurai Taluk, allotted to the petitioner's Wakf vide proceedings of the Board of revenues No.2698 Mis dated 19.07.1912, for the purpose of usages as a “Mohammadian Burial Ground” to the persons belonging to 13 Mahallas including various Pallivasals situated in and around Mahaboobpalayam, Madurai within the period that may be stipulated by this Court.

For Petitioner	:Mr.C.Venkateshkumar
For R1 to R4	:Mr.B.Saravanan Additional Government Pleader
For R5&R6	:No appearance



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ORDER

This writ petition is filed challenging the impugned order passed by the third respondent vide his proceedings in Na.ka.No.2074/2023/B dated 05.12.2023 and quash the same as illegal and consequently, to direct the third respondent to grant patta in respect of new S.No.1617/2 and Old S.No.218 to an extent of 46 cents situated in Ponmeni Village, Madurai Taluk.

2.It is the case of the petitioner that the land measuring an extent of 46 cents in the aforesaid survey number had been allotted to the petitioner's Wakf vide proceedings of the Board of Revenues No.2698 Mis dated 19.07.1912, to be used as a “Mohammadian Burial Ground” for the persons belonging to 13 Mohallas including various pallivasals situated in and around Mahaboobpalayam, Madurai. The petitioner would submit that various jamaths used the said property as a burial ground for the time immemorial. Though they were allotted 46 cents, the revenue records were not correspondingly mutated on account of which, there were disturbances from all sides to use the entire 46 cents of land



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and steps to survey and demarcate the boundaries did not evoke with sufficient response.

3.The petitioner would also submit that by efflux of time, the usage of the land as a burial ground was restricted to an extent of 12 cents and some persons have also attempted to encroach into the property. Therefore, in the light of the above, the petitioner had also submitted the representations to the third respondent on 28.05.2019 and to the revenue authorities on 16.03.2022 and to the second respondent on 09.01.2022 to conduct survey and settlement operations and charges were also paid on 03.08.2022 through E-challan. Since no effort has been made, the petitioner filed W.P(MD)No.9153 of 2023 before this Court seeking to direct the third respondent to grant patta in respect of new S.No.1617/2 and Old S.No.218 to an extent of 46 cents. When the writ came up for hearing, this Court by order dated 20.04.2023 directed the third respondent to issue notice to the aggrieved parties, conduct an inspection, examine the records and thereafter pass orders. The third respondent, pursuant to this order, vide his proceedings dated



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24.08.2023, directed the fourth respondent to assist him to survey and submit the report. Subsequently, the land was surveyed and enquiry was also conducted and after an enquiry, the third respondent has passed the impugned order stating that the burial ground was only to an extent of 14.23 cents.

4.The petitioner would further submit that the burial ground situated in T.S.No.3 and the property of the respondents 5 & 6 is situated in T.S.No.4 and 64. The burial ground has been wrongly recorded as 576 sq.m(14.23 cents) and the remaining 1250 sq.m(31 cents) belonging to the petitioner wakf has vanished from the revenue records. The petitioner's contention is that the remaining land still is available and is a vacant land, since survey has not been properly conducted, the land has been included in T.S.No.4. The petitioner would submit that number of dead bodies being received has increased to 250 bodies every year and burying one dead body over the other dead bodies is causing a distressing and painful situation. Therefore, the order passed by the first respondent requires to be revisited and direction issued with reference to the



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remaining lands in T.S.No.3 which has now been wrongly recorded as T.S.No.4 the same has to be restored to the petitioner.

5.A counter has been filed by the third respondent, in which, it has been submitted that pursuant to the order passed in W.P.(MD)No.9153 of 2023, notice was issued to the petitioner and the petitioner had submitted a detailed representation dated 22.05.2023 enclosing necessary documents. An notice of enquiry was also given to the other stake holders, viz., the respondents 5 and 6 and they were directed to appear an enquiry on 26.06.2024 and the enquiry was conducted on 27.06.2024. It is the contention of the third respondent that as per the order of the Board of Revenue dated 19.07.1912, 46 cents of lands had been alienated to the Madura Municipality free of charge for the occupancy right and free of assessment for use as a Mohammadian burial ground. It is also stated that if the land is not used for the said purpose, the same can be resumed and in case, the lands are resumed, compensation will not exceed the initial cost or the value at the time of resumption or acquisition. Therefore, it is the contention that the lands were not alienated to the petitioner, but to



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the Madurai Municipality and therefore, the writ petition is not maintainable. Further, he has submitted that then District Collector, Madurai, on the basis of the order of the Board of Revenue, had alienated 20 cents of lands in the adjoining S.No.200 in favour of Madurai Municipality for providing path-way to the new Mohammadian burial ground. Therefore, it is very clear that it is only the local body, who has a right to the said property. The fifth respondent also appeared for enquiry and has submitted that he has purchased 11726.25 sq.fts of land comprised in T.S.Nos.1617/1B and 1617/1C from one Karuthammal @ Pechiammal and her sons and daughters vide sale deed, dated 29.03.1998.

6.One Victor Jesudas, appeared before the third respondent, on 13.06.2023 and submitted that the property comprised in T.S.No.1617/2B and 3A originally belonged to Leipzig Evangelical Lutherns Mission and later, the property was transferred to the Church of Sweden Mission by a deed, dated 16.05.1917 and therefore, the property has been transferred to the sixth respondent TELC under a deed, dated 10.05.1962, who in



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turn had leased out to the Tamil Nadu Theological Seminary, Madurai under a lease agreement dated 17.11.1971. In fact the Church of Swedish Mission had filed a writ petition in W.P(MD)No.3222 of 2013 challenging the running of the school by the sixth respondent and the said writ petition was dismissed by order dated 29.11.2022, thereby confirming the title of the sixth respondent. In the counter he had also stated that these lands were settled in the year 1920 as Government Poromboke. The Mohammadian burial ground is located an extent of 14.23 cents in T.S.No.3, land measuring an extent of 25.41 cents comprised in T.S.No.64, registered in the name of Subash B.Jain and the land measuring an extent of 1.31 cents in T.S.No.4 has been transferred from Sweden Church Mission and registered in the name of Abraham Das, President of Kremar Sandakaran Foundation.

7.In the light of these documents, the Tahsildar, Madurai, has passed the impugned order directing the petitioner to approach the Civil Court as the revenue authorities cannot declare title. In the counter it is further submitted that against the order of the Tahsildar, Madurai, the



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present writ petition has been filed when there is an alternative remedy of an appeal before the Revenue Divisional Officer, Madurai. Hence, he prays to dismiss the writ petition.

8.I have heard the submissions made by the respective counsels and perused the materials carefully.

9.The counter of the third respondent and the documents that have been filed clearly shows that there is the burial ground which is comprised in T.S.No.3 measuring an extent of 14.23 cents, the land belonging to the fifth respondent comprised in T.S.No.64 measuring an extent of 25.41 cents and the land measuring an extent of 1 acres 31 cents stands in the name of the sixth respondent. The sixth respondent also traced title right from the year 1970. Therefore, it appears that there is a serious dispute with reference to the title to the property.

10.That apart, even the initial allotment by the Board of Revenue clearly indicates that the alienation is in favour of the Madurai



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Municipality and not in favour of the petitioner. The alienation has been stated as Mohammadian Burial ground. However, it is clearly stated that if the land is not used then the Government can resume it. Even according to the petitioner, the usage of the land as a burial ground had been reduced to 12 cents, whereas as per the order of the third respondent, it was seen that patta has been issued to the respondents 5 and 6 for the remaining lands. Therefore, the petitioner has to necessarily established its rights to an extent of 46 cents. That apart writ petition has been filed without exhausting the alternative remedy for filing an appeal.

11.In view of the above, I see no reason to set aside the order impugned passed by the third respondent dated 05.12.2023. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

19.08.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes



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P.T.ASHA, J.
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