



W.A.(MD)No.1260 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

W.A.(MD)No.1260 of 2024

and

C.M.P.(MD)No.9718 of 2024

Mani Bharathi

... Appellant

-Vs-

1.The District Collector,
Karur District, Karur.

2.Revenue Divisional Officer,
Kulithalai, Karur District.

3.The Tahsildar,
Kadavur, Karur District.

4.Leelavathi

... Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 28.08.2023 made in W.P.(MD)No.20892 of 2023 on the file of this Court.



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For Appellant : Mr.M.Pitchai Muthu
For R1 to R3 : Mr.N.Satheesh Kumar,
Additional Government Pleader
For R4 : Mr.T.Thirumurugan

JUDGMENT

[Judgment of the Court was delivered by *R.SURESH KUMAR, J.*]

This Writ Appeal has been directed against the order passed by the Writ Court, dated 28.08.2023 made in W.P(MD)No.20892 of 2023.

2.The 4th respondent was the writ petitioner in whose favour patta has been granted in respect of S.No.318/20 and 318/21 at Palaviduthi Village, Kulithalai Taluk, Karur District by the Revenue Tahsildar. Therefore, it become the patta land of the 4th respondent / writ petitioner.

3.However, in the said land the appellant / 4th respondent had buried a dead body sometime in November, 2022, which triggered the 4th respondent / writ petitioner to file the Writ Petition, seeking the prayer of Mandamus, to forbear the respondents 1 to 3 from granting permission to the 4th respondent to use the petitioner's patta land in S.No.318/20 and 318/21 situated at Palaviduthi Village, Kulithalai Taluk, Karur District as a graveyard by considering the petitioner's representation dated 13.07.2023.



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4. When the Writ Petition was taken up for hearing, before the Writ Court, it was submitted on behalf of the official respondents by the learned Additional Government Pleader that already there has been a burial ground in S.No.318/10, which could be used by the 4th respondent. However, the 4th respondent had buried the dead body in the land, which has been given patta to the writ petitioner.

5. Having taken note of the said factor, the Writ Court has given direction through the impugned order dated 28.08.2023, directing the authorities to remove or exhume the buried dead body on the land, which belongs to the writ petitioner and to make burial in the actual burial ground, which has already been allotted to S.No.318/10.

6. As against the said order, the present Writ Appeal has been directed.

7. Reiterating the aforesaid, the learned counsel for the appellant would submit that as against the grant of patta in S.Nos.318/20 and 318/21 in favour of the 4th respondent / writ petitioner, already an appeal has been filed to the Revenue Divisional Officer concerned, who directed the parties to approach the civil Court



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and already, the 4th respondent / writ petitioner initiated civil Suit, seeking bare injunction.

8. When that being the position, since the land in question had already been the burial ground of the community belongs to the present appellant, all of a sudden, if that land has been given patta in favour of the 4th respondent / writ petitioner, that would not alter the nature of the land in question, as it has been used only as a burial ground. Therefore, the dead body, which has been buried in the month of November, 2022 in the said land, cannot be exhumed at this length of time as directed by the learned Single Judge through the impugned order. Therefore, he seeks indulgence of this Court.

9. The stand taken before the Writ Court has been reiterated by the learned Additional Government Pleader for the official respondents. Insofar as the 4th respondent is concerned, the learned counsel, on instructions, would submit that since the land in question is admittedly a patta land, which belongs to the 4th respondent / writ petitioner, it cannot be used as a burial ground either by the appellant herein or by any other third party. At the same time, he fairly submitted, on instructions, that insofar as exhuming the buried dead body in the month of November, 2022 is concerned, that position since has been changed now, as long



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time has gone after the burial, at this length of time, the 4th respondent / writ petitioner is not insisting upon to execute the said order of the learned Single Judge, which is impugned herein, to shift the dead body from the writ petitioner's patta land to the actual burial ground.

10.To that extent, the learned counsel for the appellant has also agreed upon that if the already buried dead body is not disturbed and shifted, unless final conclusion arrived it by the revenue Court or by the civil Court with whom parties can approach for appropriate remedy with regard to the right over the property, which is in question, no burial of dead body would be taken place in the patta land of the 4th respondent / writ petitioner, he contended.

11.In view of the said submission made by the learned counsel on either side, especially, the appellant as well as the contesting 4th respondent and also having taken note of the stand maintained by the learned Additional Government Pleader, this Court is inclined to dispose of this Writ Appeal with the following order:-

“(i)The direction given by the learned Single Judge through the impugned order in para No.5 is set aside;



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(ii)Resultantly, the buried dead body in the month of November, 2022 at the land in question belongs to the 4th respondent / writ petitioner need not be shifted to actual burial ground; and

(iii)But at the same time, hereafter, until final conclusion is arrived with regard to the title over the property either by the civil Court or by any other authorities, no such burial shall be taken place either by the appellant herein or his family or any other third parties in the land that has been given patta in favour of the 4th respondent / writ petitioner.”

12.With this modification of the impugned order, this Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] & [G.A.M., J.]
30.07.2024

NCC : Yes / No
Index : Yes / No
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