

THE HON'BLE SRI JUSTICE BATTU DEVANAND

WRIT PETITION No.12727 OF 2021

ORDER:

This writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Mandamus declaring the action of the respondents in proposing to allot/assign part of the Hindu burial ground/Smasanam land in Sy.No.153 of Pedakakani Village and Mandal, Guntur District, for the purpose of Christian Cemetery as arbitrary, illegal, without authority and jurisdiction, contrary to BSO 15 (4) and in violation of Article 21, 48A and 51A(g) of the Constitution of India including Public Interest and consequently to direct the respondents not to allot/assign any part of the Hindu burial ground/Samsanam land in Survey No.153 of Pedakakani Village and Mandal, Guntur District, for the purpose of Christian Cemetery or to any other purposes.

2) A counter-affidavit has been filed by the 5th respondent.

3) Heard Sri G. Peda Babu, learned counsel, representing Sri Ramachandra Rao Gurram, learned counsel for the petitioners on record, learned Government Pleader

for Panchayat Raj, learned Government Pleader for Revenue and Sri I. Koti Reddy, learned Standing Counsel for 6th respondent.

4) Learned counsel for the petitioners submits that the petitioners are agriculturists and absolute owners of land in Survey Nos.149, 150, 151, 155, 145, 147 and 118 of Pedakakani Village and Mandal, Guntur District. A drainage canal exists adjacent to the western border of those lands running from north to south in Survey No.653 of "Dharma-Cheruvu" tank poramboke and to its west is bund of that tank with clay road thereon running from north to south and to its west is tank bed. The said drainage canal running from the north to south through the eastern boundary of tank land in Survey No.653, takes a turn towards east through the land in Survey No.153 on its southern side and thereafter to further east.

5) As per revenue records, the land to an extent of Ac.0-95 cents in Survey No.153 is recorded as "Smasanam", but, on land only an extent of about Ac.0-70 cents is available. After leaving the necessary extent for the drainage canal and its bunds, boundary wall was constructed on the remaining entire northern boundary of that "Smasanam". The said drainage canal serves as an

irrigated water source to its adjacent agricultural lands of the petitioners.

6) Learned counsel for the petitioners further submits that the shrinkage of the entry point to the Hindu Cemetery would cause some serious issues to the users of the Cemetery and further no land will be available for future expansion of road and drainage canal. Learned counsel finally submits that the respondent authority intends to assign or allot any land for Christian Cemetery, they could have identify atleast 1 to 3 acres of continuous single bit of Government poramboke land or acquire and give for Christian Cemetery. There are no bonafidies in proposing the small bit of land in Survey No.153 for that purpose which was left for drainage canal, for entrance of burial ground and road margins and may be for future expansion of those.

7) Learned counsel for the petitioners submits that explaining the grievance being faced by the petitioners, they personally tried to represent the concerned authorities on 22.06.2021, but they refused even to receive under acknowledgement and hence, the said representation was sent through registered post on 22.06.2021 to the respondents.

8) On the other hand, the 5th respondent (i.e.) the Tahsildar of Pedakakani Mandal, Guntur District, in his counter-affidavit, stated that as per RSR of Pedakakani Village and Mandal of Guntur District, total land admeasuring to an extent of Ac.48-43 cents is classified as Government Poramboke (Malinidivari Cheruvu). An extent of land admeasuring Ac.0-95 cents is classified as Government Poramboke (Burial Ground). Adjacent to this Cheruvu, there is road for ingress and egress to the agricultural fields adjacent to the road. It is also stated that small canals with 4 feet width and 2 feet depth, from this canal water is used for the purpose of agricultural fields.

9) Out of land of Ac.0-95 cents classified as burial ground, a part of land to an extent of Ac.0-71 cents is already in use as Hindu burial ground, which is surrounded by boundary wall which is already constructed. The remaining extent of Ac.0-24 cents of burial ground land is encroached by the petitioners and it is under their cultivation.

10) It is further submitted in the counter-affidavit that the 1st petitioner is having land to an extent of Ac.4-83

cents in Survey Nos.147, 150-B, 150-C, which is adjacent to the land classified as burial ground in Survey No.153. The 1st petitioner encroached the burial ground land for an extent of Ac.0-24 cents and cultivating the same. Now it is proposed by the respondents to allot the land to an extent of Ac.0-24 cents out of Ac.0-95 cents of burial ground land to the S.C. community people for burial ground. It is clearly mentioned in the counter of the 5th respondent that there is no such proposal for allotting roads or canals or Cheruvu lands which are adjacent to the petitioners' agricultural lands to the burial ground for S.C. community people.

11) Leaned Government Pleader for 5th respondent submits that Pedakakani Village is a major Panchayat, Semi Urban village, adjacent to Guntur Town and adjacent to National Highway with population around 30,000. The residents of Sakuruvari peta, Pushaparaj Colony, YSR Colony, Bandlamudipeta of Pedakakani Village submitted representation stating that they belongs to SC category living from past 50 years in the respective colonies without having any graveyard. Presently these colony people are doing funeral activities on the tank bund (Malinidivari Cheruvu) in Survey No.653 of Pedakakani Village. Other

villagers are objecting not to do the funeral activities on the tank bund. In view of the difficulties being faced by them, in their representation they requested to allot land for burial ground because year by year population is increasing and burial grounds in the village are not sufficient.

12) Learned Government for 5th respondent submits that to allot land for burial ground to the SC community people residing in different colonies of Pedakakani Village identified the land to an extent of Ac.0-24 cents in Survey No.153 which is already classified as burial ground. As the said land is encroached by the 1st petitioner and cultivating along with his lands, he with malicious intention to occupy the burial ground land permanently and with false moto filed this writ petition.

13) Learned Government Pleader for 5th respondent would submit that there is no truth in the allegations of the petitioners that there is no road facility for ingress and egress of petitioners' agricultural lands and also for the irrigation works. He submits that there is 20 feet road at west side and 30 feet BT road on south side of the petitioners' agricultural lands situated in Survey Nos.150, 149, 147, 154, 152 and 151. Adjacent to this road, there is a small canal 4 feet width and 2 feet width used for

cultivation, even though in heavy rains on the cyclone situation also no question arises of overflows from the canal and there is no history of overflowing from this canal for past 50 years. Finally, he submits that though the proposed land of Ac.0-24 cents allotted to the burial ground for SC community people, there exists road on both sides of the fields of the petitioners can use for ingress and egress.

14) The petitioners filed a reply affidavit to the counter-affidavit filed by the 5th respondent in which the contentions of the 5th respondent in his counter-affidavit are denied. In the said reply it is categorically mentioned that if really there is an encroachment of burial ground land, the concerned authority may take back the same legally through some known process of law and at least shall follow due process of law as guaranteed under Article 14 of the Constitution of India like giving notice and opportunity to the encroachers to contest the same.

15) This Court gave anxious consideration to the submissions made by the respective counsel. Perused the material available on record.

16) Originally, the petitioners filed a Writ Petition No.11269 of 2021 against the respondents alleging that

they are allotting part of "Dharma-Cheruvu" (tank) land in Survey No.653 of Pedakakani Village and Mandal, which is classified as tank land, for the purpose of Christian Cemetery as arbitrary, illegal and without authority and jurisdiction. During the course of hearing, the learned Standing Counsel for the Gram Panchayat, on instructions, submitted that the tank is situated in Survey No.653 and in Survey No.153 there is Ac.0-71 cents of land which was classified as graveyard. Out of Ac.0-71 cents of land which was classified as graveyard, Ac.0-47 cents of land is being used as burial ground from a long period. Now the remaining Ac.0-21 cents of land is proposed for Christian Cemetery. On consideration of the submissions made by the learned Standing Counsel for the Gram Panchayat which has supported by the learned Government Pleader for Revenue appearing for the 5th respondent therein, this Court disposed of the said writ petition recording the statement of the learned counsel for the respondents that they are not touching the land in Survey No.653.

17) Now the petitioners filed the present writ petition against the action of the respondents in proposing to allot/assign part of the Hindu burial ground land in Survey No.153 for the purpose of Christian Cemetery.

18) Several contentions are raised in the affidavit filed along with the writ petition and the arguments advanced by the learned counsel for the petitioners. After hearing the arguments of the learned counsel for the petitioners at length with regard to the difficulties to be faced by the petitioners for ingress and egress to their agricultural fields, if the said land is allotted as Christian Cemetery, it appears, all those contentions are made against the proposal of the respondent authorities for allotting the said land for burial ground to the SC community people.

19) Though several contentions are raised by the petitioners with regard to difficulties to be faced by them for ingress and egress to their agricultural fields, if Ac.0-24 cents of land of Hindu burial ground in Survey No.153 is allotted for burial ground to SC community people, after considering the averments made in the counter-affidavit filed by the 5th respondent, in the opinion of the Court, there is no any substance in the contentions of the petitioners. The bonafidies are doubtful on noticing their contentions in Writ Petition No.11269 of 2021. The said writ petition is filed contending that the respondents are proposing to allot land in Survey No.653 for Christian

Cemetery. After recording the submissions of the learned Government Pleaders and learned Standing Counsel, the said writ petition is disposed of as the tank land in Survey No.653 is not proposed for Christian Cemetery.

20) Again the petitioners filed this writ petition against the proposal of the respondents to allot Ac.0-24 cents of burial ground land out of Ac.0-95 cents in Survey No.153 to provide burial ground to the SC community people.

21) As per the contention of the respondents, the said Ac.0-24 cents of land which is proposed for burial ground to the SC community people is under the encroachment of the 1st petitioner and he is cultivating the same.

22) In the counter-affidavit filed by the 5th respondent (i.e.) the Tahsildar, Pedakakani Mandal, it is clearly mentioned that the residents of Sakuruvari peta, Pushaparaj Colony, YSR Colony, Bandlamudipeta of Pedakakani Village, submitted representation stating that they belongs to SC category living from past 50 years in the respective colonies without having any graveyard. Presently these colony people are doing funeral activities on

the tank bund in Survey No.653 of Pedakakani Village and other villagers are objecting for that. In view of the difficulties being faced by them, in their representation, they requested the respondent authorities to allot land for burial ground.

23) In the considered opinion of this Court, right to life guaranteed under Article 21 of the Constitution of India includes right to dignity and respect and the same is not only available to a living man but also to his dead body. The Courts have time and again reiterated to uphold the dignity and protect the rights of the dead.

24) The Hon'ble Apex Court in land mark case of ***Parmanand Katara v. Union of India & another***¹ and recognized that the right to life, fair treatment and dignity, extend not only to a living person but also to his dead body after his death.

25) The National Human Rights Commission, India, in its Advisory for Upholding the Dignity and Protecting the Rights of the Dead, it is mentioned at point No.6(B)(iii) as extracted hereunder:

(iii) **Maintenance of burial grounds/ crematoriums:** It must be ensured by the State/Local

¹ (1995) 3 SCC 248

Government that the condition of crematoriums, burial grounds, electric crematoriums are properly maintained to keep them in effective working conditions.

26) Under Section 297 of Indian Penal Code the rights of deceased persons include right against trespass of burial sites, places of funeral rights, etc., are provided.

27) The relevant provision under the Andhra Pradesh Gram Panchayat Act, 1994 is extracted hereunder:

87. Provision of burning and burial grounds:- A Gram Panchayat may, and shall, if no sufficient provision exists, provide at the cost of the Gram Panchayat Fund, places to be used as burial or burning grounds or crematoria, and may charge rents and fees for the use thereof.

28) Section 302 of Andhra Pradesh Municipalities Act, 1965, provides as under:

302. Provision of burial and burning grounds and crematoria within or outside municipality. - (1) The council shall provide, free of charge, places to be used as burial or burning grounds or crematoria either within or outside the limits of the municipality.

(2) If the council provides any such place outside the limits of the municipality, all the provisions of this Act and all bye-laws framed under this Act for the management of such places within the municipality, shall apply to such place.

29) On careful examination of the relevant provisions of Andhra Pradesh Panchayat Raj Act and Andhra Pradesh Municipalities Act, it is the duty of the local self-governments to provide burial ground/crematorium. In view of the specific responsibility casted on the State and Local self-Governments in the light of the law laid down by the Hon'ble Apex Court and other Courts time and again recognizing the right to life, fair treatment and dignity, extend not only to a living person but also to his dead body and these rights have been derived from Article 21 of the Constitution of India, the action of the respondents in allotting Ac.0-24 cents out of Ac.0-95 cents of land which is classified as 'burial ground' for the use of SC community people of that area is neither illegal nor violative of the fundamental rights of the petitioners.

30) The respondents to discharge their constitutional and statutory obligations decided to allot that piece of land for the use of the burial ground to the SC community people of that village. As such, it cannot be found fault under any angle.

31) Accordingly, this Court holds that right to life guaranteed under Article 21 of the Constitution of India includes right to dignity and respect and the same is not

only available to a living man but also to his dead body after his death.

32) Having regard to the facts and circumstances of the case, this Court felt that this is a sensitive issue and it has to be handled by the respondents with some care and caution. It appears from the record that the petitioners already submitted a representation, dated 22.06.2021 to the respondents in which their grievance is brought to the notice of respondents. In the counter-affidavit filed by the 5th respondent, it is averred that out of Ac.0-95 cents of land which is classified as Government poramboke (burial ground) in Survey No.153 as per RSR/Revenue records. Out of this land only Ac.0-71 cents is already in use as Hindu burial ground which is surrounded by boundary wall and remaining Ac.0-24 cents of land belongs to burial ground is encroached by the petitioners and they are cultivating the same.

33) In the background of this rival contentions, in the considered opinion of this Court, to meet the interest of justice, to consider the grievance raised in the representation, dated 22.06.2021 of the petitioners, it is deem it appropriate to direct the respondents to conduct survey with regard to the land in Survey No.153 of

Pedakakani Village and Mandal and if any land, out of Ac.0-95 cents classified as Government Poramboke (burial ground) to decide the fact of encroachment of it by any person and the respondents shall initiate necessary proceedings forthwith to evict the encroachers to enable to allot the said land for the purpose of allotting burial ground to the SC community people.

34) Accordingly, this writ petition is disposed of with the following directions:

(i) The respondents are directed to conduct survey of the land in Survey No.153 of Pedakakani Village and Mandal, Guntur District, in the presence of the petitioners and the interested parties to consider the representation, dated 22.06.2021 of the petitioners.

(ii) If the respondents found the burial ground land is under encroachment, the respondents are directed to take immediate steps to evict the encroachers by following due process of law to enable the respondents to allot the said land for burial ground to the SC community people.

(iii) The respondents are directed to conduct the survey within a period of four (04) weeks from the date of receipt of copy of this order.

There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, in this Writ Petition shall stand closed.

Before parting with this case, I am constrained to state as follows:

During the course of hearing of this writ petition, it came to the notice of this Court that due to lack of proper burial grounds/crematoriums, a section of people belongs to Scheduled Castes are doing funeral activities on the tank bund of Pedakakani Village and other villagers are objecting for that. It is very unfortunate to notice that even after 75 years of independent India some sections of people of the society are facing difficulties even for funerals also for lack of burial grounds and crematoriums in some villages and Towns.

In the light of the order passed in this case holding that right to life guaranteed under Article 21 of the Constitution of India includes right to dignity and respect and the same is not only available to a living man but also to his dead body and this view was reiterated by the Hon'ble Apex Court time and again, this Court expect that the State Government and the local self-Governments shall

make endeavour to look into this issue seriously and to ensure to provide burial grounds and crematoriums irrespective of religion, region, caste, gender, etc., to the deceased persons to have a decent burial or cremation according to their customs to which one belongs to.

The Registry is directed to mark a copy of this order to the Chief Secretary, Government of Andhra Pradesh, Velagapudi, Guntur District.

JUSTICE BATTU DEVANAND

Date: 18.08.2021
PGR

THE HON'BLE SRI JUSTICE BATTU DEVANAND

WRIT PETITION No.12727 OF 2021

Date: 18.08.2021

PGR