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W.P.No.15212 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.15212 of 2020

Parvathi Sunitha Kumaran

... Petitioner

-Vs-

1. The District Collector
Salem Salem District
The Collectortate
Fort Main Road
Salem-636 001
Salem District.
2. The Revenue Divisional Officer
Salem The Collectortate
Fort Main Road
Salem-636 001, Salem District
3. The Block Development Officer
Yercaud
30/68 Ondikadai
Salem-Yercaud Ghat Road
Yercaud-636 601
Salem District.
4. The Thasildar
Yercaud Taluk Officer
Yercaud-636 601
Salem District.



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5. The Village Panchayat Officer
Vellakkadai Panchayat
Yercaud-636 601
Salem District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent dated 11.12.2020 and quash the same as illegal and direct the respondents 1 to 4 to conduct the filed survey in the presence of the petitioner and her counsel and fix the burial ground 90 meters away from the rain water stream and consequently to file additional amended affidavit with additional grounds and thus render justice. It is therefore prayed that this Hon'ble Court may be pleased to permit the petitioner to file the computer print out of the 3rd respondent proceedings in Na.Ka.No.332/17/Aa2 dated 12.10.2019 by dispensing with the product of the original impuged order.

**(Prayer amended vide order dated 16.2.2021
made in WMP.4059/2021 in WP.15212/2020 by BPJ).**

For Petitioner Mrs.A.Arulmozhi

For Respondents Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging the proceedings of the 1st respondent dated 11.12.2020 and for a consequential direction to the respondents to earmark the place



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for the permanent burial/cremation in the Piliyur Panchayat Union as recommended by the 3rd respondent through proceedings dated 12.10.2019.

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2. When this writ petition was filed in the year 2020, the petitioner had sought for a direction to the respondents to act as per the recommendation made by the 3rd respondent through proceedings dated 12.10.2019. However, during the pendency of this writ petition, pursuant to a report submitted by the Tahsildar, the 1st respondent had issued the impugned proceedings dated 11.12.2020 and hence, the same has been made a subject matter of challenge in this writ petition.

3. The main grievance that was expressed by the petitioner is that there is a Odai situated at Survey No.26 and people living in and around Piliyur Village, Yercaud, started cremating/burying the corpses very near to the river stream and thereby, contaminating the water. This was taken note of by the 3rd respondent and by letter dated 12.10.2019, the Block Development Officer (BDO) had observed that Survey No.26 and 27 is very near to the Odai and had recommended for a burial ground at Survey No.28/5. When this was placed before the District Collector, consequential directions were issued by the District Collector through proceedings dated 20.05.2020. In spite of the same, the burial/cremation continued very near to the water body. Left with no other option, the present writ petition was filed before this Court.



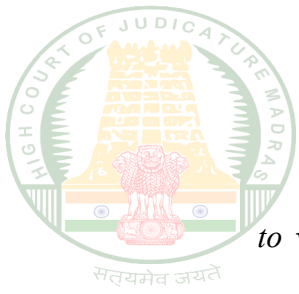
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4. Heard Mrs.A.Arulmozhi, learned counsel for the petitioner and Mrs.S.Mythreye Chandru, learned Special Government Pleader appearing on behalf of the respondents.

5. A counter affidavit was filed by the 4th respondent viz., Tahsildar of Yercaud. The stand taken by the 4th respondent in the counter affidavit was taken note by this Court and the following order was passed on 7.12.2020.

Pursuant to the orders passed by this Court on 02.11.2020, fourth respondent has filed a counter affidavit. It is quite surprising that the fourth respondent has taken a stand, which is clearly contrary to the recommendation made by the Block Development Officer, Yercaud, by letter dated 12.10.2019. In the said letter, the Block Development Officer has requested the District Collector to demarcate the survey number situate at S.No.28/5, which is a poramboke land, as a burial ground. It is also brought to the notice of this Court that pursuant to the recommendation made by the Block Development Officer, the District Collector, by proceedings made in Na.Ka.No.8577/20, File No.K3, dated 20.05.2020 has already confirmed the recommendation made by the Block Development Officer. Under such circumstances, it is not known as to how the Tahsildar, Yercaud, can take a completely contrary stand and file a counter affidavit before this Court.

When this was brought to the notice of the learned Government Advocate, the learned Government Advocate sought for some time to take instructions and



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to verify the proceedings of the District Collector referred supra. The learned Government Advocate further submitted that in the event of the District Collector already confirming the recommendation made by the Block Development Officer, the same shall be complied with by the fourth respondent and reported before this Court.

Post this case under the caption 'for reporting compliance' on 18.12.2020.

6.After the above order was passed, the 4th respondent proceeded to submit a report dated 10.12.2020 to the RDO by stating that Survey No.27 is being utilized as a burial ground and there is resistance from the public to shift it to Survey No.28/5. This representation given by the Tahsildar was followed up with lightening speed by the District Collector and proceedings were issued on 11.12.2020, giving up the earlier proposal for shifting the burial ground to Survey No.28/5.

7.This Court wanted to ascertain and satisfy itself as to whether the present burial ground is situated very near to the water stream and hence an order was passed on 29.4.2021 and the relevant portion is extracted hereunder:

4.Taking note of the rival submissions, this Court, as agreed by both the parties, is inclined to appoint an Advocate Commissioner, for placing the factual matrix before this Court. Accordingly, Mr.M.Hariharan, Flat No.7, Parijat Apartment, No.9/5, 5 th Main Road, R.A.Puram, Chennai-600028, Mobile No.98843 34293, is appointed as Advocate Commissioner. He shall go



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and inspect the lands pertaining to all the survey numbers in question, with the help of revenue officials, after giving due intimation to all the parties and find out the location of the existing and proposed burial ground and whether it causes pollution to water and air or any environmental issues and file a detailed report, enclosing the relevant documents, such as sketch, photographs etc. within a period of four weeks. The petitioner is directed to pay a sum of Rs.25,000/- towards remuneration to the Advocate Commissioner, apart from transportation and other incidental charges, within a period of one week from today.

8.Pursuant to the above order, Mr.M.Hariharan, advocate inspected the place with the help of the surveyor and revenue officials and after holding discussion with the local public, filed a report before this Court along with the photographs. For proper appreciation, the relevant portions in the report are extracted hereunder:

“2.The properties in issue before this Court are S.No.26, 27 and 28/5 which are all poramboke lands in Puliur Village, yercaud. It is pertinent to mention about the description of the property. The S.No.26 & 27 is between two estates namely honey rock estate and blue valley estate, which separates both the estates. The stream water is running in the middle of the S.No.26 & 27 which is deep stream and at the end of S.No.26 there is water falls which cannot be accessed because of bushes around it.



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3.The properties in S.No. 26, 27 and 28/5 were inspected on 06.08.2021, upon giving the inspection notice to all the parties. I requested the Surveyor of the local jurisdiction to identify and measure the properties and the surveyor, revenue officials and local public were also present and the properties in S.No. 26 were measured by metes and bounds. The sketch, photographs and other details are annexed to this report.

4.The report with regard to Property in S.No.26 as follows:-

The present burial ground is located in S.No.26 and this site is the starting point of Puliur village. It is on the way from yercaud to Kaveri peak. The land in surv number 26 is next to the road, with a super structure of concrete stage, which will be used to do after burial rituals. At the end of the survey number there is a water falls.

There are around 35 to 40 burial stone marks were visible to the eyes the local public has informed that there would be a minimum of 100 bodies which were buried in that survey number.

At about 54 meters from the road, water stream is running and the b were buried at the closest range of one meter to 40 meters from the stream. Further during seasonal rains falls water flow will increase considerably in size and in force of flow, since the stream is located in a valley and therefore water collecting is both and forceful which is the resource for the animals and local villagers.



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For the purpose of report after going through the writ petition, I have prepared a questionnaire as detailed below:-

1. Is there a Stream Going through S.No.26?
2. Are dead bodies buried in S.No.26?
3. Is there a structure for cremation available in survey number 26?
4. How many bodies were buried in S.No.26?
5. Any other Structure available in S.No.26?
6. If available what is the purpose of such structure?
7. What is the maximum distance between stream and boundary of S.No.26?
8. What is the distance between stream and buried bodies?
9. Is the survey number 26 borderline is less than or more than 90 meters stream?

These questions were circulated to the officials as well as village pub petitioner's husband for answering but the villagers were refused to answer those analyses are also enclosed with the report. The answers were mostly against the government department as the bodies are buried very closely to the stream which will contaminate the water resources and the water from the same stream is used for drinking as well as for their daily uses like washing clothes, feeding the cattle's etc. Subsequently, the water will reach Vanniyar dam in Dharmapuri.



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The villagers at the end of inspection have submitted a representation stating to allot the same place for burial ground. For which, the petitioner husband has objected not receive any representation for any third party to the writ petition.

As the bodies being buried very close to the stream, there is a chance for water pollution in the running stream.

5.The report with regard to Property in S.No.27 as follows:-

The stream from Survey no.26 ends as falls in starting point of Survey no.27 and continue behind the petitioner properties which are utilised by them. As the starting point of the S.No.27 is full of bushes it is humanly not possible to measure the said property and the officials also stated that there is no access to the land. The villagers gave a statement that they have not buried any death bodies in that survey number. At the end of the S.no.27 there is a small stagnation of water which flows from S.Nos.26 & 27.

6.The report regard to S.No.28/5 as follows:-

After inspecting S.Nos.26 & 27, I have inspected the S.No.28/5, the officials who were accompanying me are newly appointed and not in a position to locate the exact proposed burial ground. Hence the same could not be measured. The poposed burial ground which was showed



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by them is nearly half kilometer away the road and around 2 to 3 kilometre from the present burial ground. The proposed burial ground shown by the officials is full of stones”.

9.The report of the Advocate Commissioner makes it abundantly clear that the present burial ground is located at Survey No.26 and the bodies are being buried/cremated very close to the stream. The Advocate Commissioner has pointed out in the report that the bodies are buried at a distance of 1 meter to 40 meters from the stream. It is also pointed out in the report that if the bodies are buried so near to the stream, there is every chance of water getting polluted. Insofar as Survey No.27 is concerned, the Advocate Commissioner has stated that it is a land covered completely with bushes and there is no access to this land. It is therefore clear that the report of the 4th respondent dated 10.12.2020, which gives an impression as if the burial ground is at Survey No.27, is completely misleading and contrary to the ground reality.

10.The learned Advocate Commissioner has also pointed out to the fact that Survey No.28/5 is also not very accessible and it is full of stones and this place is situated around 2 to 3 kilo meters from the present burial ground at Survey No.26.

11.In the considered view of this Court, the revenue officials must keep in mind that whenever there is a proposal for shifting a burial ground, there is a bound to be public



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resistance from the local people. Just because the local people are resisting for shifting a burial ground, that does not mean that the revenue officials will not control the situation and ensure that the water stream does not get polluted. It is not as if the alternate place that has been suggested by the BDO is too far and it is only 2 to 3 kilometers from the existing burial ground. The State and its instrumentalities must keep in mind that they must always look at the larger picture and as between maintaining a water stream and hardship caused due to the shifting of the burial ground, the former must get an upper hand since it has long term implications. If the water stream is not protected and it is permitted to get polluted, the future generation will completely lose the water body and it will cause more destruction to the environment.

12.It is apparent from the report filed by the Advocate Commissioner that the continuation of the burial ground at Survey No.26, will certainly pollute the water stream and it has to be shifted immediately. Already sufficient damage has been done to that place and it should not be allowed to continue. The proceedings of the District Collector dated 11.12.2020 is arbitrary and it suffers from non application of mind since the District Collector has merely affirmed the report of the Tahsildar and withdrawn the earlier decision to shift the burial ground to Survey No.28/5. The proceedings of the 1st respondent requires the interference of this Court and accordingly, the proceedings of the 1st respondent dated 11.12.2020 is hereby quashed.



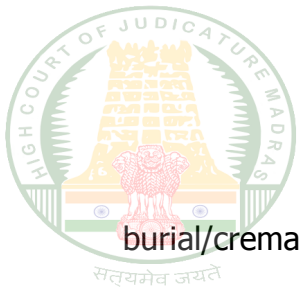
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13.The 3rd respondent, who had conducted the earlier survey and had submitted his report dated 12.10.2019, had made it very clear that the water stream is very near to Survey Nos.26 and 27 and therefore had recommended for shifting the burial ground to Survey No.28/5. This report was acted upon by the District Collector and necessary directions were given to shift the burial ground to Survey No.28/5 by making necessary changes in the revenue records. Even as per the Tamil Nadu Village Panchayats (provision of burial and burning grounds) Rules, 1999, Rule 7 mandates the place for burial and burning grounds. It makes it very clear that the burial or burning of a corpse should not take place within ninety meters of a dwelling place or a source of drinking water-supply. Shockingly in the present case, as per the report submitted by the Commissioner, the burial/cremation is taking place within a distance of 1 mtr to 40 mtrs. This is clearly in violation of the above said Rule. Such violation cannot be continued just because there is some resistance from the local public.

14.It is quite unfortunate that the District Collector acted upon the subsequent report of the Tahsildar without any application of mind and without taking into consideration the environmental impact and also the violation that was taking place while burning/burying the corpse just adjacent to the water stream.

15.In the light of the above discussion, this writ petition stands allowed and there shall be a direction to the 1st respondent to immediately take steps to shift the burial ground to Survey No.28/5. There shall be a further direction to the 1st respondent to ensure that no



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burial/cremation of corpses takes place at Survey Nos.26 and 27 and this shall be implemented forthwith. The new burial ground shall be operational at the earliest possible time and in any case not later than three months from the date of receipt of copy of this order.

16.Considering the nature of work that is involved in this case, this Court is inclined to fix an additional remuneration of a sum of Rs.25,000/- payable to the Advocate Commissioner by the petitioner.

17.Accordingly, this writ petition is allowed in the above terms. No costs.

26.04.2023

KP
Internet : Yes/No
Index : Yes/No
Speaking Order:Yes/No
Neutral Citation :Yes/No

N.ANAND VENKATESH, J.



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KP

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