

Temple Land Cannot Be Used To Bury Dead Bodies: Madras High Court Slams Authorities For 'Callous Attitude'

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

R. MAHADEVAN; J., J. SATHYA NARAYANA PRASAD; J.

W.P.(MD) No.8310 of 2018 & W.M.P.(MD)No.7866 of 2018; 25.11.2022

S.P. Narayanan *versus* District Collector, Thoothukudi District

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 5 to consider and dispose of the petitioner's representation dated 29.06.2017 as expeditiously as possible within a time frame manner.

For Petitioner: R. Anand

For Respondents: R. Baskaran Additional Advocate General assisted by P. Subbaraj, SGP for R1 to R4 and R6 M. Muthugeethayan Standing Counsel for R5

ORDER

R. MAHADEVAN , J.

The relief sought in this Public Interest Litigation is to issue a writ of mandamus, directing the respondents to consider the representation of the petitioner dated 29.06.2017 and take steps to prevent the corpses from being buried in the land in S.No.180, Keezha Tiruchendur Taluk, Thoothukudi District belonging to Arulmigu Subramaniya Swamy Temple; retrieve the said land and permit the public and devotees, who visit the said temple at the festive times, to use the same for the purposes of resting, parking, etc.

2. The petitioner claims to be a devotee of Lord Murugan and he has been selling hats in the pathway of Arulmigu Subramaniya Swamy Temple at Thiruchendur. According to him, there are lots of devotees visiting the said temple in festive times, during which, there will be a heavy traffic jam, leading to difficulty for the devotees to take rest and even to breath freely. Expressing the same, the petitioner approached the officials requesting to provide adequate measures in this regard, but the same was not considered. The petitioner further averred that there is a vacant land in S.No.180, Keezha Tiruchendur Taluk, Thoothukudi District measuring an extent of 30 acres available near the Moovar Jeeva Memorial, which was originally utilized by the devotees to take rest and parking purposes, but is now being used for burial and other illegal activities during night hours. Pointing out the same, the petitioner made a representation on 29.06.2017 to the respondents, praying to take steps to retrieve the said land and allocate the same for the usage of devotees and public, who visit the subject temple. However, the said representation is pending without any progress. Therefore, this writ petition as a public interest litigation.

3. The learned counsel for the petitioner submitted that as per section 110 (f) of the Tamil Nadu Panchayats Act, the respondent authorities are bound to reserve and allot lands for burying and cremating the dead bodies. Hence, they ought to have allotted an alternate land for the people of Subramaniyapuram for burial and consequentially, retrieved the subject land for the usage of public and devotees, who visit the temple during the festive times.

4. The learned Standing Counsel appearing for the fifth respondent produced a communication sent by the Joint Commissioner / Executive Officer of Arulmigu Subramaniya Swamy Temple, dated 01.11.2022, to the Revenue Divisional Officer, Tiruchendur, and submitted that the fifth respondent has already made a request through letter dated 16.07.2004 to the revenue officials, to prevent the third parties from using the

temple land as burial ground and allocate an alternate place for the same to the people of Subramaniyapuram, to which, the Revenue Divisional Officer, by reply dated 08.02.2005 stated that steps would be taken in due course. However, till date, no action was taken on the communication sent by the fifth respondent. Therefore, the learned counsel sought appropriate direction to the Revenue authorities in this regard.

5. On the other hand, the learned Additional Advocate General appearing for the respondents 1 to 4 and 6 fairly submitted that the respondent authorities would consider the representation of the petitioner, in the light of the communication sent by the fifth respondent, on merits and in accordance with law, within a time frame to be stipulated by this court.

6. Heard the learned counsel appearing for both sides and perused the materials available on record.

7. Concededly, the subject temple viz., Arulmigu Subramaniya Swamy Temple, Tiruchendur is an ancient temple and one among six abodes of Lord Murguan. It is situated on the shores of Bay of Bengal. Many Hindu festivals, such as vaikasi visagam, avani festival, skanda sasti festival, Masi festival, Soorasamharam are celebrated auspiciously in a grand manner and during the said days, huge crowd visits the temple for dharshan. In such circumstances, it is obvious that the public and devotees would be put to much hardship in getting through the day, if adequate basic amenities are not available near the temple.

8. The grievance of the petitioner is that the devotees and people who visit the subject temple during the festive times, are experiencing difficulties, due to lack of facilities, such as, resting, parking, etc, in and around the temple area, whereas the vacant land in S.No.180 of Keezha Thiruchendur village belonging to the temple, is now being used for burial and other illegal activities during night hours. Hence, the petitioner sought a direction to the respondent authorities to retrieve the temple land from being used as burial ground and allocate an alternate place for the same to the people of Subramaniyapuram, so as to enable the devotees and public, who visit the subject temple, to use the same for parking and other purposes.

9. It is a trite law that the right to dignity is not restricted to human life alone, but is available even after death. The Supreme Court has laid down that the right to life under Article 21 also includes the right to die with dignity. Therefore, the right to accord a decent burial or cremation to the dead body of a person should be taken to be part of the right to such human dignity. Further, it is beyond the pale of doubt that the right to be cremated or buried in accordance with one's religious rituals, rites, practices and beliefs is an essential part of the fundamental right to practice and profess one's religion in accordance with Article 25 of the Constitution.

10. At the same time, it cannot be allowed to bury dead bodies in the land belonging to the temple. This court has time and again reiterated that the lands belonging to the temples are used only for religious purposes and the activities connected therein; and that the HR & CE Department is the custodian of the temples and its properties, and the authorities should take all effective measures to safeguard the same from encroachment / unauthorized occupation. That apart, a duty is cast on the Commissioner under Section 23 of the HR&CE Act, to ensure that the temples and endowments are properly administered and their income is duly appropriated for the purposes for which they were founded or exist; and the Joint Commissioners are clothed with the powers under Sections 78, 79 and 80 to retrieve the temple lands from the encroachers.

11. As evident from the communication dated 01.11.2022 of the Joint Commissioner / Executive Officer of the subject temple, the fifth respondent has also accepted the claim of the petitioner and made a recommendation to the revenue officials to retrieve the land in S.No.180 of Keezha Thiruchendur village, belonging to the temple from utilising it for burying deadbodies, allocate alternate place for the same to the people of Subramaniyapuram and permit the devotees and public to use the same for parking and other purposes. Despite the same, no steps have been taken by the revenue officials, till date. Such a callous attitude on the part of the respondent authorities cannot be countenanced by this court.

12. Therefore, considering the seriousness of the issue involved herein, this court directs the respondent authorities to consider the representation of the petitioner dated 29.06.2017 and pass appropriate orders, on merits and in accordance with law and also in the light of the communication of the Joint Commissioner / Executive Officer of the subject temple dated 01.11.2022, within a period of three months from the date of receipt of a copy of this order. Needless to state that the first respondent shall consider for allotting the alternative site for the said purpose.

13. With the above direction, the Writ Petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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