

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WA.No. 1793 of 2015 () IN WP(C).15007/2013

(AGAINST THE ORDER/JUDGMENT IN WP(C) 15007/2013 of HIGH COURT OF KERALA
DATED 26-05-2015)

APPELLANT(S)/PETITIONER IN THE WPC:

SHIBU V.K. Aged 46
S/O.KURIAKOSE, VALIYAVEETIL HOUSE, MULANTHURUTHY P.O.
ERNAKULAM DISTRICT.

BY ADVS.SRI.R.KRISHNAKUMAR (CHERTHALA)
SMT.TINY THOMAS

RESPONDENT(S)/RESPONDENTS IN THE WPC:

1. DISTRICT COLLECTOR/DISTRICT MAGISTRATE, ERNAKULAM
DISTRICT, COLLECTORATE, KAKKANAD
ERNAKULAM PIN: 682 314.

2. DISTRICT MEDICAL OFFICER,
(HEALTH), ERNAKULAM, PIN: 682 011.

3. STATE OF KERALA
REP. BY ITS SECRETARY
LOCAL SELF GOVERNMENT (DB) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN; 695 001.

4. PASTOR M.JOSEPHKUTTY
THE PENTECOSTAL MISSION, JANATHA,
VYTTILLA, PIN: 682 019.

5. BINOY PETER,
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

6. T.M.PATHROSE,
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

7. T.M.PAULOSE,
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

8. JOMY JOHN,
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

9. REJI JOSE
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

10. T.M.JOSEPH
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

11. EBY
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

12. BOBAN T.VARGHESE
THEKKEDATH, MULANTHURUTHY, P.O. 682 314.

13. SUNIL M.K.,
MUTHIRAPARAMBIL HOUSE, MULANTHURUTHY P.O.682 314.

14. SANTHOSH E.K.
EDAYKAL HOUSE, MULANTHURUTHY P.O., 682 314.

15. RAJU M.P.
MALAYIL HOUSE, CHENGOLAPADAM, MULANTHURUTHY P.O
682 314.

16. MANOJ M.M
MALAYAN HOUSE, THEKKEDATH, MULANTHURUTHY
P.O. 682 314.

17. ROBIN RAJU,
KUDILIL HOUSE, CHENGOLAPADAM, MULANTHURUTHY P.O.
682 314.

18. M.V.KURIAKOSE,
MALAYAN HOUSE, CHENGOLAPADAM, MULANTHURUTHY P.O.
682 314.

19. RAJU M.V.
MULLAMKORTHI, CHENGOLAPADAM, MULANTHURUTHY P.O.
682 314.

20. THAMPI V.
VILLIPARAMBIL HOUSE, MALAYAN HOUSE, CHENGOLAPADAM
MULANTHURUTHY P.O., 682 314.

21. ABHILASH T.P.,
THODATHIL HOUSE, MALANTHURUTHY P.O., 682 314.

22. T.N.MOHANAN,
THODATHIL HOUSE, MALANTHURUTHY P.O., 682 314.

R BY GOVERNMENT PLEADER SRI.RENJITH
R BY SRI.G.KRISHNAKUMAR
R BY SRI.S.VINOD BHAT

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-08-2015, THE
COURT ON 25/9/2015 DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

W.A. No.1793 of 2015

Dated this the 25th day of September, 2015

JUDGMENT

Sunil Thomas, J.

The petitioner, who unsuccessfully challenged Exts.P15,16 & 18 orders issued by the competent authority under the Kerala Panchayat Raj (Burial and Burning Grounds) Rules 1998, is the appellant herein.

2. The 4th respondent in the writ petition submitted an application dated 27/05/2004 before the first respondent for issuance of licence for constructing an ordinary burial ground in 3.68 ares of property in Sy.No.69/2 of Mulanthuruthy Village. The Grama Panchayath by its resolution dated 27/5/2004 resolved that they have no objection in according sanction for the burial ground, as the area was not thickly populated and there was a burning

ground of Scheduled Caste community near the proposed cemetery. Thereafter, pursuant to the direction of the first respondent, the 4th respondent took out notice through paper publication. A charitable Trust and some residents of the locality raised objections. The Tahsildar by his communication dated 7/1/2010 initially conveyed that no harm will be caused to anybody by establishing the burial ground by the 4th respondent. However, subsequently by another communication dated 30/8/2010, he informed that the residents of the locality have objected to the burial ground on an apprehension that the drinking water in the locality will be contaminated and he requested the first respondent to seek a report of the Ground Water Department. Based on it, the first respondent required the District Officer, the Ground Water Department to conduct an inspection. He, accordingly, reported that construction of a concrete vault for disposing of the corpse will prevent water pollution in the area. Based on the above recommendation, the first respondent declined permission for ordinary burial ground and directed the 4th respondent

to submit an application with plan for construction of concrete vault. This was assailed by the 4th respondent in W.P.(C) No.27849/2011, wherein this Court directed the 4th respondent to file a statutory appeal to the Government and the 3rd respondent was directed to consider the same on merits ignoring the delay. Thereupon, the 4th respondent submitted a sketch and plan of the proposed concrete vault based on the available materials. The first respondent granted permission by Ext.P16 under Rule 6 (8) (c) of the above Rules to set out the construction work of the concrete wall at the proposed site.

3. In the meanwhile, the writ appellant herein, contending that he was a resident of the locality and was not aware of the entire proceedings till the issuance of Ext.P16 order, filed the writ petition before this Court challenging Exts.P15 and P16. The writ petition was disposed of by Ext.P17 directing the third respondent to consider the appeal preferred by the petitioner and to pass appropriate orders thereon. Pursuant to the direction contained in Ext.P17 judgment, the third respondent heard

the petitioner and dismissed the appeal by Ext.P18 order.

4. This was assailed before the learned Single Judge, inter alia, contending that the application should have been filed afresh rather than considering the application filed in the year 2004. The learned Single Judge by the impugned judgment negatived the above contention, which has resulted in this writ appeal.

5. Heard both sides and examined the records.

6. Essentially, the contention of the appellant before the learned Single Judge was that Ext.P16 order passed by the Government granting permission to the 4th respondent to put up a cemetery in the disputed land was without considering the law laid down in **Alavi v. State of Kerala** (2013 (4) KLT 723) by which the learned Single Judge after considering the relevant Rules, observed that the District Collector cannot consider a revised application when there are changes in the original application. Essential contention of the learned counsel for the writ appellant was that when the original application submitted in 2004 was not proper, revised application could not have been considered by the

competent authority and such consideration was irregular. It was contented that, since there was a change in the specification of the cemetery from ordinary burial ground to concrete vault, a fresh application ought to have been filed. The learned Single Judge held that there was only a slight change in the manner in which the cemetery was to be put up. The change was in relation to erecting a concrete vault, in the place of normal burial ground. Relying on Rule 6, especially sub rules(3), (4) and (5), the learned single Judge held that Rules provided that application for licence has to be submitted to the Secretary in the prescribed format. The application has to be accompanied by a plan of the ground to be used showing location, boundary and other particulars as the District Collector may require.

7. The learned Single Judge held that what was required by the Authority was the recommendation of the Panchayat along with the DMO's report. Ext.P15 Government Order came to be disposed of with reference to the very same application submitted by the 4th respondent

way back in 2004 on the basis of the judgment of this Court in W.P(C) No.27849/2011. Apparently, the direction in the said judgment was to the Government to consider the appeal filed by the 4th respondent. Hence, the direction to the appellate authority by Ext.P15 was with reference to the application submitted by the petitioner in the year 2004. The Government after hearing either side, formed an opinion that it will be advisable to have a concrete vault instead of the normal burial ground and therefore, the Government directed the parties to approach the District collector for appropriate orders. It was pursuant to that, the 4th respondent submitted necessary documents to the District Collector. The DMO's report regarding the concrete vault was also made available, which was referred to in Ext.P16 order.

8. Evidently, the purpose of application submitted by 4th respondent in 2004 was for permission to use the land as a burial ground. By the subsequent change, only minor change of construction was sought. Substantially the purpose remained same. The revised proposal was for a

mere eco-friendly and safe method of burial of corpse. The essential purpose of the application remained the same. On an appreciation of the above factual premise, the learned Single Judge held that the change was only a minor one especially with reference to the conversion nature of cemetery to that of concrete vault. The learned Single Judge held that the Government, which is the appellate authority, has the jurisdiction to remit the matter back to the District Collector to consider whether the concrete vault could be put up. The Panchayat has not raised any objection regarding the construction of the concrete vault. Non-submission of fresh application before the Panchayat was held to be only irregular, which did not give rise to a ground to interfere with the impugned order. We are in full agreement with the conclusion arrived at by the learned Single Judge that, being appellate authority, the Government was competent to remit the matter to the District Collector for fresh consideration. We find no reason to interfere with the conclusion arrived at by the learned Single Judge that the change from an ordinary cemetery to

that of a concrete vault was not of substantial nature warranting filing of fresh application especially considering the long delay that has occurred in the final disposal of the application filed in 2004. The conclusion arrived at by the learned Single Judge is grounded on sound factual basis.

The writ appeal is without any basis and is accordingly dismissed.

Sd/-
THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

