

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQU

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYASHTA, 1937

WP(C).No. 15007 of 2013 (A)

PETITIONER(S):

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

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

RESPONDENT(S):

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, VYTILA, PIN-682 019.
- * ADDL. R5 TO R22 IMPLEADED
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, THEKKUMMATTATHIL,
MULANTHURUTHY P.O.-682 314.
 13. SUNIL. M.K., TMUTHIRAPARAMBIL HOUSE,
MULANTHURUTHY P.O.-682 314.
 14. SANTHOSH E.K., EDAYKAL (H),
MULANTHURUTHY P.O.-682 314.
 15. RAJU M.P., MALAYAN (H),
CHENGOLAPADAM, MULANTHURUTHY P.O.-682 314.
 16. MANOJ M.M., MALAYAN (H),
CHENGOLAPADAM, MULANTHURUTHY P.O.-682 314.
 17. ROBIN RAJU, KUDILIL (H),
CHENGOLAPADAM, MULANTHURUTHY P.O.-682 314.
 18. M.V. KURIAKOSE, MALAYAN (H),
CHENGOLAPADAM, MULANTHURUTHY P.O.-682 314.
 19. RAJU M.N., MULLAMKORTHIL,
CHENGOLAPADAM, MULANTHURUTHY P.O.-682 314.
 20. THAMPI V.P., VILLIPARAMBIL HOUSE,
MALAYAN (H), CHENGOLAPADAM,
MULANTHURUTHY P.O.-682 314.
 21. ABHILASH T.P., THODATHIL HOUSE,
MULANTHURUTHY P.O.-682 314.
 22. T.N. MOHANAN, THODATHIL HOUSE,
MULANTHURUTHY P.O.-682 314.
- * IMPEADED AS PER ORDER DATED 22/07/2014 IN I.A. NO.9642/2014.

R1 TO R3 BY GOVT. PLEADER SMT.LISHA. M.G.
R4 BY ADVS. SRI.S.VINOD BHAT,
SRI.LEGITH T.KOTTAKKAL.
ADDL. R5 TO R23 BY ADV. SRI.G.KRISHNAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1:** COPY OF THE APPLICATION IN FORM NO.1 SUBMITTED BY THE 5TH RESPONDENT BEFORE MULANTHURUTHY GRAMA PANCHAYATH DT. 27.05.2004.
- EXHIBIT P2:** COPY OF THE DECISION NO.VII DT. 27.05.2004 OF THE MULANTHURUTHY GRAMA PANCHAYATH.
- EXHIBIT P3:** COPY OF THE COMMUNICATION NO.C2.21842/04 DT. 07.09.2004 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.
- EXHIBIT P4:** COPY OF THE COMMUNICATION NO.CM5-42400/04 DT. 15.11.2004 ISSUED BY THE 1ST RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P5:** COPY OF THE OBJECTION SUBMITTED BY MANAGING TRUSTEE OF NIRMALA CHARITABLE TRUST, THALACODE, MULANTHURUTHY DT. 06.06.2007.
- EXHIBIT P6:** COPY OF THE COMMUNICATION NO.A4.117/10 DT. 07.01.2010 ALONG WITH THE SKETCH ISSUED BY TAHSILDHAR, KANAYANNUR.
- EXHIBIT P7:** COPY OF THE COMMUNICATION NO.A4 6159/10 DT. 30.08.2010 ISSUED BY THE TAHSILDAR, KANAYANNUR.
- EXHIBIT P8:** COPYH OF THE LETTER NO.D1[A]11344/2010/ER DRT. 19.05.2010 SUPERINTENDENT OF POLICE, ERNAKULAM RURAL, ALUVA.
- EXHIBIT P9:** COPY OF THE COMMUNICATION NO.GWE/109/11 DT. 13.06.2011 ISSUED BY THE DISTRICT OFFICER, GROUND WATER DEPARTMENT, ERNAKULAM.
- EXHIBIT P10:** COPY OF THE JUDGMENT DT. 20.10.2011 IN WP(C).NO. 27849/2011 BEFORE THIS HON'BLE COURT.
- EXHIBIT P11:** COPY OF THE LETTER DT. 09.03.2012 BY THE UNDER SECRETARY TO THE GOVERNMENT TO THE 1ST RESPONDENT.
- EXHIBIT P12:** COPY OF THE PROPOSAL OF THE 4TH RESPONDENT DT. 21.03.2012 SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P13:** COPY OF THE REPORT NO.B2-8923/2012 DT. 21.05.2012 OF THE 2ND RESPONDENT.
- EXHIBIT P14:** COPY OF THE COMMUNICATION NO.B-4355/12 DT. 12.06.2012 OF THE RDO, FORT KOCHI.
- EXHIBIT P15:** COPY OF THE GO(RT)NO.2451/2012/LSGD DT. 23.08.2012 ISSUED BY THE 3RD RESPONDENT.

- EXHIBIT P16: COPY OF THE ORDER NO.M5/42400/04 DT. 13.09.2012 OF THE 3RD RESPONDENT.
- EXHIBIT P17: COPY OF THE JUDGMENT DT. 08.03.2013 IN WP(C).NO.31207/2012 OF THIS HON'BLE COURT.
- EXHIBIT P18: COPY OF THE GO(RT)NO.1422/2013 DT. 31.05.2013 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R4A COPY OF THE POSSESSION CERTIFICATE NO.3974/11 DATED 17/09/2011 ISSUED BY VILLAGE OFFICER, MULANTHURUTHY.
- EXT.R4B COPY OF THE LOCATION SKETCH WITH CERTIFICATE ISSUED BY THE VILLAGE OFFICER, MULANTHURUTHY DATED 27/08/2011.
- EXT.R4C COPY OF THE APPLICATION DATED 27/05/2004 MADE BY THE 4TH RESPONDENT.
- EXT.R4D COPY OF THE DECISION DATED 27/05/2004 OF THE MULANTHURUTHY GRAMA PANCHAYATH.
- EXT.R4E COPY OF THE COMMUNICATION NO.C2.21842/04 DATED 07/09/2004 OF THE 2ND RESPONDENT.
- EXT.R4F COPY OF THE SITE PLAN ISSUED BY VILLAGE OFFICER, MULANTHURUTHY.
- EXT.R4G COPY OF THE COMMUNICATION NO.A4-13439/2004 DATED 14/10/2004 BY TAHSILDAR, KANAYANNUR TALUK.
- EXT.R4H COPY OF THE COMMUNICATION NO.M5-42400/04 DATED 15/11/2004 ISSUED BY THE 1ST RESPONDENT.
- EXT.R4I COPY OF THE COMMUNICATION NO.129/04 DATED 31/12/2004 ISSUED BY VILLAGE OFFICER, MULANTHURUTHY.
- EXT.R4J COPY OF THE COMMUNICATION NO.187/04 DATED 05/01/2005 ISSUED BY MULANTHURUTHY GRAMA PANCHAYATH.
- EXT.R4K COPY OF THE PUBLICATION PUBLISHED IN DEEPIKA DAILY DATED 25/11/2004.
- EXT.R4L COPY OF THE OBJECTIONS FILED BY THOMAS KURIAKOSE BEFORE THE 1ST RESPONDENT.

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EXT.R4M	COPY OF THE REPORT NO.A4-6159/10 DATED 30/08/2010 OF TAHSILDAR, KANAYANNUR TALUK.
EXT.R4N	COPY OF THE REPORT NO.GWE/109/11 DATED 13/06/2011 OF DISTRICT OFFICER, GROUND WATER DEPARTMENT, ERNAKULAM.
EXT.R4O	ORDER NO.M5-42400/04 DATED 12/08/2011 OF THE 1ST RESPONDENT.
EXT.R4P	COPY OF THE ORDER NO.2451/2012 L.DIS. DATED 23/08/2012 OF THE 3RD RESPONDENT.
EXT.R4Q	COPY OF THE CERTIFICATE NO.C2-23820/12(L.DIS) ISSUED BY 2ND RESPONDENT.
EXT.R4R	COPY OF THE PHOTOGRAPHS.

//TRUE COPY//

PA. TO JUDGE

rs.

A.M.SHAFFIQUE, J

W.P.C.No.15007 of 2013

Dated this the 26th day of February 2015

J U D G M E N T

Petitioner has approached this Court challenging Exts.P15, P16 and P18 orders issued by the competent authority under the Kerala Panchayath Raj (Burial and Burning Grounds) Rules 1998.

2. The issue projected by the petitioner is regarding the burial ground set up by the 4th respondent. They submitted an application in the year 2004. However, the same came to be rejected by the District Collector based on a report from the police stating that the applicant is a banned organisation. The matter was carried in appeal and ultimately the Government by Ext.P15 order, permitted the applicant to submit a proper application for putting up a concrete vault type cemetery to avoid any apprehension on the side of the neighbouring land owners regarding pollution of drinking water in the locality. Based on Ext.P15 order dated 23/08/2012, the Collector issued proceedings dated

13/09/2012 granting permission to the 4th respondent to construct a concrete bunker as cemetery on the proposed site, as per the instructions submitted by the District Medical Officer, Ernakulam. The petitioner challenged the matter before this Court by filing W.P.C.No.31207/2012 which was disposed of directing the Government to consider the pending appeal. After hearing the petitioner also, the Government confirmed the directions issued by the District Collector by Ext.P18 order dated 31/05/2013. Petitioner has impugned the aforesaid orders inter alia contending that though an application was submitted by the 4th respondent in the year 2004, after the remand by the Government in terms of Ext.P15 order, no fresh application was submitted before the Panchayath. The District Collector suo motu decided the matter after getting reports from the DMO, which is contrary to the rules and therefore Ext.P18 order has no legs to stand. The entire process ought to have been initiated by the 4th respondent afresh by filing an application before the Panchayath who ought to have passed a fresh

resolution in the matter especially since original resolution was passed in the year 2004.

3. Counter affidavit was filed by the 1st respondent inter alia stating that the Government was satisfied that the concrete vault would abate the alleged nuisance and time was granted to the 4th respondent to submit a proper application in that regard. 4th respondent submitted an application before the District Collector. The District Collector had obtained a report from the DMO and on enquiry it was found that the concrete vault would be suitable for cemetery in the said locality and since there was no impediment, permission could be granted in the matter.

4. Counter affidavit has been filed by the 4th respondent supporting the stand taken by the Government. According to them, they have submitted the application in the year 2004 and once resolution has been passed by the Panchayath permitting a cemetery to be set up, there was no reason for a resolution to be passed by the Panchayath afresh when there is no change in the burial ground. It is

argued that non-submission of a fresh application before the Panchayath will at best be an irregularity and if the matter is remitted back, the entire process will have to be undertaken again. As there is no legal impediment in the cemetery being set up in the said locality and there is no valid ground agitated by the petitioner regarding existence of cemetery in the said locality, there is no reason why this Court should exercise jurisdiction under Article 226 of the Constitution of India to set aside the orders passed by the authorities.

5. Having heard the learned counsel appearing on either side, the short question to be considered is whether there is necessity to interfere with the order passed by the Government approving Ext.P16 order passed by the District Collector granting permission to the 4th respondent to put up a cemetery in the said land. The learned counsel for the petitioner relied upon the judgment in **Alavi v. State of Kerala** [2013(4) KLT 723] by which learned Single Judge of this Court, after considering relevance of the Rules, observed that the District Collector cannot consider revised

application when there are changes in the original application. It is for the applicant to submit necessary application before the Panchayath which has to pass resolution in the matter and then forward the matter to the District Collector with relevant documents.

6. Rule 6 of the Rules reads as under:

“6. Issue of licence to burial or burning grounds.- (1) *No new burial or burning ground, whether public or private, shall be opened, constructed or used without a licence from the concerned District Collector.*

(2) *In the case of increasing or expanding the area of an existing cemetery ground the same shall be considered as opening of a new cemetery and these rules shall be applicable to such burial grounds.*

(3) ലൈസൻസിനുള്ള അപേക്ഷ 1-ാം നമ്പർ ഫാറത്തിൽ സെ (കട്ടറിക്ക് നൽകേണ്ടതും അതോടൊപ്പം അപേക്ഷാ ഫീസായി ആയിരം രൂപ പഞ്ചായത്തിൽ ഓടുകേണ്ടതുമാകുന്നു.

(4) *Application for licence shall be accompanied by a plan of the ground to be registered showing the location, boundary, extent etc., the name of the owner or person or community interested therein, the system of management and such other particulars as the District Collector may require.*

(5) *In the case of private cemetery the Panchayat shall consider the application within thirty days from the date of receipt of the application and forward the same with its recommendations to the concerned District Collector through the District Medical Officer.*

(6) *The District Medical Officer shall conduct such enquiries as he may deem necessary on the application received from the Panchayats and shall forward the application with his specific recommendations to the District Collector within thirty days of its receipt.*

(7) *The District Collector, shall, on receipt of the application, publish the same in a daily newspaper in the regional language of the locality having wide circulation, in the notice board of the Panchayat, notice board of village and other public places specified by the Government, a notice inviting objections, complaints or suggestion, if any, with regard to the issue of licence, in writing within thirty days at the cost of the applicant.*

(8) (7)-0 ഉപപട്ട (പകാരമുള്ള നോട്ടീസ് അനുസരിച്ച് ആക്ഷേപമോ പരാതിയോ, അഭിപ്രായമോ എന്തെങ്കിലും ലഭിച്ചിട്ടുണ്ടെങ്കിൽ ആയത് പരിഗണിച്ചശേഷവും യുക്തമെന്ന് തോന്നുന്നപക്ഷം സംസ്ഥാന മലിനീകരണ നിയന്ത്രണബോർഡിന്റെ ജില്ലാതല ഉദ്യോഗസ്ഥന്റെ അന്വേഷണറിപ്പോർട്ട് വാങ്ങി പരിശോധിച്ചശേഷവും ജില്ലാകളക്ടർക്ക് :-

- (a) grant licence in Form No.II; or*
- (b) refuse to grant licence; or*
- (c) postpone the grant of a licence until objections regarding the ground have been removed or any particulars called for by him have been furnished.*

(9) The District Collector shall pass an order under sub-rule (8) within six months from the date of receipt of the application and shall inform the same to the concerned Panchayath."

Sub rules (3), (4) and (5) of Rule 6 clearly indicates that an application for licence is to be submitted to the Secretary in Form No.1 and that it has to be accompanied by a plan of the ground to be registered showing location, boundary etc. and other particulars as the District Collector may require. Application has to be considered within 30 days from the date of receipt of the application. Panchayath has to forward the same with recommendation to the concerned District Collector through the DMO. There is no dispute about the fact that such an application along with necessary recommendation have been forwarded to the District Collector in the year 2004.

7. The only contention urged by the petitioner is that since there is change in the specification of the cemetery from ordinary burial ground to concrete vault, a fresh application ought to have been filed. In fact, the licensing authority is admittedly the District Collector. What is required for the District Collector for considering the application is the recommendation of the Panchayath along with the DMO's report. It is the District Collector, who, on receipt of the application publishes the same in the locality, hear the objections, complaints or suggestions received from any person objecting to the same and thereafter issue the licence.

8. Ext.P15 Government Order dated 23/08/2012 came to be disposed of with reference to the very same application submitted by the 4th respondent as early as in 2004 on the basis of the judgment of this Court dated 20/10/2011 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. It is

therefore clear that the appellate order at Ext.P15 is 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 in spite of normal burial ground and therefore Government directed the parties to approach the District Collector for appropriate orders. It is pursuant to the same that the 4th respondent submitted necessary documents to the District Collector. The DMO's report in regard to the concrete vault is also made available, which is referred to in Ext.P16 order passed by the District Collector.

9. It might be true that there is slight change in the manner in which the cemetery has to be put up. The change is, of course, putting up a concrete vault in the place of normal burial ground. But the fact remains that the Government, who is the appellate authority, has the jurisdiction to remit the matter back to the District Collector to consider whether concrete vault could be put up.

10. As far as the Panchayath is concerned, it has not raised any objection regarding construction of concrete vault. Under such circumstances, non-submission of a fresh application before the Panchayath can at best be an irregularity, on which ground there is no reason to interfere with the impugned order. That apart, petitioner has not ventilated any specific grievance as to how the petitioner or any other person be affected on account of a concrete vault being set up in the said area. Under such circumstance, I do not think that any ground has been made out by the petitioner to interfere with the impugned orders invoking the jurisdiction under Article 226 of the Constitution.

Accordingly, the writ petition is dismissed.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

