

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 34108 of 2014 (K)

PETITIONERS:

1. N.V.MATHEW, AGED 54 YEARS,
S/O. VARKEY, NJAVALLIKUNNEL, THOVARAYAR P.O.,
20 ACRE KARA, KATTAPANA VILLAGE, IDUKKI DISTRICT.
2. BIJU XAVIER, AGED 40 YEARS,
S/O. XAVIER, PANAKKATHOTTAM HOUSE, THOVERAYAR P.O.,
20 ACRE KARA, KATTAPANA VILLAGE, IDUKKI DISTRICT.
3. ROBIN PHILIP, AGED 40 YEARS, S/O. PHILIP,
PULIYANICKAL P.O., THOVARAYAR P.O., 20 ACRE KARA
KATTAPANA VILLAGE, IDUKKI DISTRICT.
4. JOSEPH K.J., AGED 55 YEARS,
S/O. JOSEPH, KARUKAPPALLI HOUSE, THOVARAYAR P.O.,
20 ACRE KARA, KATTAPANA VILLAGE, IDUKKI DISTRICT.
5. ULAHANNAN A.U @ JOY, AGED 52 YEARS,
S/O. ULAHANNAN, AMBATTU HOUSE, THOVERAYAR P.O.,
20 ACRE KARA, KATTAPANA VILLAGE, IDUKKI DISTRICT.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE DISTRICT COLLECTOR,
CIVIL STATION, KUYILIMALA, PAINAVU,
IDUKKI - 685 575.
3. KATTAPPANA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY
GRAMA PANCHAYATH OFFICE, KATTAPANA, IDUKKI- 685 508.
4. THE SECRETARY,
KATTAPPANA GRAMA PANCHAYATH, GRAMA PANCHAYATH OFFICE,
KATTAPANA, IDUKKI- 685 508.

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: 2 :

R3-R4 BY ADV. SRI.LIJI.J.VADAKEDOM, SC, KATTAPPANA
GRAMA PANCHAYATH
R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1-TRUE COPY OF THE MASS PETITION DATED 11/11/2013.

EXHIBIT-P2-TRUE COPY OF THE ORDER NO. E1-24603/2014 DATED 05/07/2014.

EXHIBIT-P3-TRUE COPY OF THE APPLICATION DATED 05/09/2013 (2014).

EXHIBIT-P4-TRUE COPY OF THE LETTER NO. A3/9416/2014 DATED 30/09/2014.

EXHIBIT-P5-TRUE COPY OF THE REPLY DATED 10/11/2014.

RESPONDENTS' EXHIBITS :

EXHIBIT R3(a): COPY OF RESOLUTION NO.23 DATED 12.06.1981 ALONG WITH ENGLISH TRANSLATION.

EXHIBIT R3(b): COPY OF THE PANCHAYATH REGISTER SHOWING THE PURCHASE OF AN EXTENT OF 6.47 ARES OF PROPERTY FOR THE PURPOSE OF CONSTRUCTING THE APPROACH ROAD AND THE COMPOUND WALL AROUND THE BURIAL GROUND.

EXHIBIT R3(c): TWO PHOTOGRAPHS OF THE PANCHAYATH BURIAL GROUND.

EXHIBIT R3(d): THE OTHER PHOTOGRAPHS SHOWING THE LOCATION OF SOME OF THE BURIAL GROUNDS SITUATED AS ADJOINING AND ALSO IN CLOSE PROXIMITY OF THE PANCHAYATH BURIAL GROUND.

EXHIBIT R3(e): COPY OF THE RECEIPT DATED 26.02.2015 ISSUED FROM THE OFFICE OF THE ENVIRONMENTAL ENGINEER, POLLUTION CONTROL BOARD, IDUKKI.

EXHIBIT R3(f): COPY OF THE REPORT DATED 06.03.2015 SUBMITTED BY THE TAHSILDAR, IDUKKI ALONG WITH ENGLISH TRANSLATION.

EXHIBIT R3(g): COPY OF THE QUOTATION SUBMITTED BY THE CONTRACTOR DATED 16.09.2014.

EXHIBIT R3(h): TRUE COPY OF THE COMPLETION CERTIFICATE DATED 19.01.2015.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 34108 of 2014 (K)

Dated this the 19th day of March, 2015.

JUDGMENT

The petitioners, who are said to be the residents of the Irupathekar kara in Kattappana village of Udumbanchola Taluk in Idukki District, have a grievance that the 3rd respondent Grama Panchayath has been developing and constructing a public crematorium near their residences, without any valid permission under the provisions of the Kerala Panchayath Raj (Burial and Burning Grounds) Rules, 1998 ('the Rules' for brevity).

2. The learned counsel for the petitioners has submitted that there is no material to show that the burial ground in question had been in existence prior to the promulgation of the Rule. According to him, the statute provides different methods for establishing any burial ground and for making improvements thereon based on whether it was a pre-existing burial ground or the one that came into existence after the

enforcement of the Rules.

3. The learned counsel has drawn my attention to Rule 4 of the Rules to stress that if there is any dispute whether a cemetery was in existence on the commencement of the Rules and deemed to have been registered, the same shall be subject to the decision of the District Collector concerned. According to him, to this day, the respondents could not produce any material to show that there was any decision made by the District Collector in that regard.

4. The learned counsel has also drawn my attention to Rule 6(2) of the Rules to contend that even if it were to be treated as an existing one, if there is an increase or expansion of the area of the cemetery, the same shall be considered as opening of a new cemetery requiring the compliance with the Rules.

5. Eventually, the learned counsel has referred to the counter affidavit filed by respondents 3 and 4 to contend that there is ample admission on the part of the Grama Panchayath

that a new structure has been put up in the name of an LPG based Crematorium without any valid permit. It is the singular contention of the learned counsel that though there is a reference in the counter affidavit to the efforts made by the Panchayath to obtain what is said to be the consent of the District Collector, it ought to have been obtained before the respondent Grama Panchayath could make its efforts to commence any work regarding the LPG Fired Crematorium. In sum and substance, the learned counsel has urged this Court to interdict all further developments in the cemetery, without any valid permission or prior grant from the District Collector.

6. Per contra, the learned counsel for the respondent Grama Panchayath has submitted that there is no iota of doubt as could be seen from Exts.R3(a) and R3(b), which are the resolutions dated 12.06.1981 passed by the General Body of the Grama Panchayath and also the extract of the Asset Register of the Grama Panchayath respectively, that burial ground is a pre-existing one. He has further contended that the very bona fides

of the petitioners are in question.

7. Apart from making other submissions touching upon all the issues raised by the petitioners, the learned counsel for the Grama Panchayath has eventually submitted that the Grama Panchayath will not commence the operation of the LPG Fired Crematorium unless and until it obtains all the necessary statutory permissions, including the consent of the District Collector in terms of Rule 6(2) of the Rules.

8. Heard the learned counsel for the petitioners and the learned counsel for the respondent Grama Panchayath, apart from perusing the record.

9. Indeed, Exts.R3(a) and R3(b) would go to show that the burial ground in question is a pre-existing one. Even otherwise, if there is a dispute concerning the status of the burial ground, in terms of Rule 4(2) of the Rules, 1998, the District Collector concerned shall take a decision on the issue regarding its deemed registration under the Rules. However, the question that falls for consideration is at what stage the dispute could be

raised and at whose instance the District Collector is required to take a decision. In my considered view, at any point of time, if the petitioners have any doubt with regard to the status of the burial ground, nothing prevented them to raise a dispute before the District Collector. In the absence of any application before the District Collector questioning the status of the burial ground, we cannot expect the District Collector to take a decision in that regard.

10. Once it is accepted that the burial ground is a pre-existing one, as could be seen from Exts.R3(a) and R3(b), it is pertinent to observe that Rule 6(2) of the Rules comes into picture. It is evident from the averments made in the counter affidavit that the respondent Grama Panchayath did admit that it had begun the process of putting up a new LPG Fired Crematorium, which requires the necessary permission from the District Collector concerned under Rule 6(2) of the Rules.

11. I find considerable force in the contention of the learned counsel for the petitioners that the Grama Panchayath

ought to have obtained the permission before commencing any activity to establish the said crematorium. At any rate, we cannot lose sight of the fact that to this day it has not become functional, and that the Grama Panchayath only represents the public interest. As such, I am not inclined to attribute any motive to the Grama Panchayath for the minor latches, if any.

12. Whatever be the objective behind the Grama Panchayath's establishing the LPG Fired Crematorium, which is said to serve the purpose of having a cleaner and more eco-friendly system of cremation, this Court, however, cannot countenance any effort on the part of the authorities to bypass what are otherwise statutory safeguards.

13. In the facts and circumstances, it is desirable that the respondent Grama Panchayath expedite its process of obtaining the necessary permissions, especially the one under Rule 6(2) of the Rules from the District Collector concerned.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioners

and the learned counsel for the respondent Grama Panchayath, this Court disposes of the writ petition making it clear that the respondent Grama Panchayath shall not commence the operation of the newly established LPG Fired Crematorium, without obtaining the necessary permission under Rule 6 of the Rules. In that process, if the petitioners have any grievance, they are at liberty to make their objections to the District Collector, who is required to take an informed decision on providing the necessary consent to the Grama Panchayath, after hearing all the parties concerned. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

