

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5156 of 2016

A.V.Fernandez

.. Petitioner

Vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The Revenue District Officer,
Chengalpet.

3. The Tahsildar, Tiruporur.

4. The Commissioner,
Block Development Officer,
Thiruporur Panchayat Union,
Thiruporur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents 1 to 4 to permit the petitioner to forthwith construct the Tomb on the body of his late wife buried on 06.08.2015 at the Church attached to Karumbakkam Panchayat on the basis of the fourth respondent's proceedings made in Na.Ka.No.3029/2015/A2, dated 27.10.2015.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mrs.P.Rajalakshmi, Govt. Advocate

ORDER

The petitioner has filed this Writ Petition for issuance of a Writ of Mandamus to direct the respondents 1 to 4 to permit the petitioner to forthwith construct the Tomb on the body of his late wife buried on 06.08.2015 at the Church attached to Karumbakkam Panchayat, on the basis of the fourth respondent's proceedings made in Na.Ka.No.3029/2015/A2, dated 27.10.2015.

2. It is averred by the petitioner in the affidavit filed in support of the Writ Petition that he is a retired Civilian from the Armed Forces and his wife Mrs.Delcy Joy, who was suffering from cancer, died on 05.08.2015. Before her demise, it

was her final wish to construct a Tomb over her body after her death. Hence, after her death, the Church authorities came to be informed at Karumbakkam for performing the final rites. A clarification arose as to the area of burying the body and on the suggestion of the Panchayat President and that of the competent Church authorities, the burial took place on 06.08.2015 in the graveyard at Karumbakkam Church. When the final rites were on, there was some gossip in the Church that as the petitioner's wife hails from the nearby/next village of Ammapettai, Nellikuppam, the burial at Karumbakkam Panchayat Union was under protest and to the said gossip, necessary clarification was made stating that as there was no Church with provision for Cemetery / burial ground and to construct a Tomb in Ammapettai, Nellikuppam, it has been from time immemorial that in respect of these types of deaths in the adjoining village, people were permitted to perform the final rituals including the subsequent construction of Tomb in the said Cemetery. As there was some objection and hesitation in granting permission insofar as the petitioner's claim is concerned, the petitioner made a representation, dated 31.08.2015 to the first respondent for construction of the Tomb in the Cemetery where his wife was buried. Thereafter, the first respondent directed the third respondent to initiate further course of action. Subsequently, the fourth respondent, by proceedings, dated 27.10.2015, in Na.Ka.No.3029/2015/A2, informed the third respondent that permission/sanction for construction of the Tomb, is under the authority and domain of the third respondent. Since no action was taken, the petitioner has filed the present Writ Petition for the above said relief.

3. When the matter is taken up for hearing, learned counsel for the petitioner submitted that a direction may be given to the respondents to permit the petitioner to construct the Tomb over the body of his late wife, on the basis of the above said proceedings of the fourth respondent, dated 27.10.2015.

4. On the above aspects, this Court also heard the learned Government Advocate, who took notice for the respondents.

5. Taking into account the nature of the relief sought for in this Writ Petition, this Court is of the considered opinion that such a positive direction sought for by the petitioner in this Writ Petition cannot be granted. However, considering the factual aspects of the matter, without going into the merits of the claim of the petitioner, this Court directs the petitioner to submit a fresh representation to the third respondent, along with a copy of this order, within a period of one week from the date of receipt of a copy of this order, and on receipt of such representation, the third respondent is directed to pass appropriate orders, on the basis of the above said proceedings of the fourth respondent, dated 27.10.2015 and after giving an

opportunity of hearing to the petitioner and necessary parties, the third respondent shall dispose of the said representation, on merits and in accordance with law, within a period of twelve weeks thereafter.

6. With the above observations and directions, the Writ Petition is disposed of. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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Copy to

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Revenue District Officer, Chengalpet.
3. The Tahsildar, Tiruporur.
4. The Commissioner,
Block Development Officer,
Thiruporur Panchayat Union, Thiruporur.

+1 cc to Mr.L.Chandrakumar Advocate sr.8886

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