

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PIL WRIT PETITION NO. 18 OF 2021

RAJEEV SADASHIV LAD,
age 67 years, Indian National,
landlord, son of late Sadashiv Lad, resident of
Kambliwada, Parcem, Pernem, Goa and presently
residing at
43, Mayur, 19, Bandra Reclamation, Bandra (W),
Mumbai - 50; Mobile No.: 9892020246, Fax No.:
NIL; PAN Card WNo.: AAAPL7475Q;
Aadhar/National Unique Identity No.
734736016962; Email
ID:rajeevslad@rediffmail.com; Annual Income: Rs.
10,00,000/-.

...Petitioner.

Versus

1. STATE OF GOA
through the Chief Secretary, having office at
Secretariat, Porvorim, Goa.
2. THE COLLECTOR & DISTRICT
MAGISTRATE (NORTH),
Having Office at Collectorate Building, Panaji,
Goa 403 001
3. DY. COLLECTOR & SDO — PERNEM,
having office at Pernem, Goa.
4. VILLAGE PANCHAYAT OF MORJIM

through its Secretary, having office at Morjim,
Pernem, Goa.

5. THE DIRECTOR,
Directorate of Panchayats, Government of Goa,
having office at 3 Floor, Junta House, Panaji, Goa
403 001.

6. THE POLICE INSPECTOR, Pernem Police
Station, Pernem, Goa ...Respondents.

Mr. Pankaj Pai Vernekar, Advocate *for the petitioner.*

Ms. Maria Correia, Addl. Govt. Advocate *for respondents
No.1,2,3,5 & 6.*

Mr. Nitin Sardesai, Senior Advocate with Mr. Vibhav
Amonkar, Advocate *for respondent No.4.*

CORAM : REVATI MOHITE DERE &
M.S. JAWALKAR, JJ.

DATED : 25th October 2021

ORAL JUDGMENT :- (Per Revati Mohite Dere, J.)

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

3. By this PIL Petition, preferred under Articles 14, 21 and 226 of the Constitution and under Sections 94, 95 and 97 of the Goa Panchayat Raj Act, 1994, the petitioner seeks the following reliefs as set out in prayer clauses (a) and (b) of the said Petition. Prayer clauses (a) and (b) of Para 49 of the petition, read thus :

(a) Pass a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondents, more particularly the Village Panchayat of Morjim, to operationalize the existing public crematorium at Tembwada - Morjim and make it functional for the use by all members of general public - irrespective of caste, creed, gender, etc.;

Or in the alternative

(b) To direct the Respondents, particularly the Village Panchayat of Morjim, to accept the offer of donation of land admeasuring 500 sq. mts., forming part of property bearing Survey No.96/1 (part) of village Morjim, and forthwith use the same as a public crematorium for the benefit of the general public.

4. Mr. Vernekar, Learned Counsel for the petitioner submits that a serious and grave problem has arisen in Village Morjim, in as much as,

in the absence of any functional public crematorium in the said Village, the villagers are constrained to cremate dead bodies of their near and dear ones in private properties belonging to third parties or in undesignated public properties. Learned counsel submits that a crematorium is shown on Government land at Tembwada-Morjim, i.e. survey No.119 of Village Morjim, admeasuring around 1800 square metres, for the past several years and the same is also shown in the Regional Plan for Goa-2021 ('RPG-2021') for the Village —Morjim, however, that is only on paper. He submits that till such time, the said crematorium is made operational, the existing crematorium at Tembwada, Morjim, adjoining Survey No. 119, which is on Government land and also identified in RPG-2021 as public crematorium, be made available for use by all members of the general public, irrespective of caste, creed, gender, etc. Learned Counsel relied on the extract of the said Regional Plan showing land reserved for crematorium and the photographs of the existing crematorium at Tembwada —Morjim. It is the grievance of the petitioner, that the existing crematorium situated on Government property be made available for use by persons of all class, creed, gender etc., who wish to cremate dead bodies according to their customs, religious beliefs or last wishes. According to the learned Counsel for the petitioner, an

overwhelming portion of the land, shown in RPG-2021 as crematorium, is presently lying unutilized and that a small portion thereof, is being allowed to be used, for reasons unknown, only for cremation of persons residing in the immediate vicinity/local fisherman community. It is submitted that the general public residing in village -Morjim are not allowed to be cremated there.

5. Learned Counsel for the petitioner further submits that although burial of dead bodies is generally resorted to by the Christians as per their religious beliefs, there are some persons even within the Hindu community, who bury dead bodies according to their peculiar customs or belief systems. Similarly, there are some persons from the non-Hindu community as well, who prefer to cremate bodies of their beloved deceased persons. He submits that all those who wish to cremate their near and dear ones, ought to be permitted to do so, at the existing crematorium at Tembwada, Morjim. Mr. Vernekar submits that even prior to the emergence of the Covid-19 Pandemic and even during and post Covid, there have been intermittent cases of local tension, social discord and even law and order situation, whilst conducting last rites of landless persons, in the properties of other private individuals, who raised strong objections to such cremations in their private properties.

6. Learned Counsel submits that it is the duty of the Respondent No.4 —Panchayat to ensure that the existing crematorium at Tembwada, Morjim, is made available for use by all members of the general public, who wish to cremate their near and dear ones. He submits that the petitioner's family had offered to donate 500 square metres of land to the respondent No.4-Panchayat, for a public crematorium, however, the said offer was not accepted. Learned counsel submits that even today, the said offer stands valid.

7. According to Mr. Vernekar, learned Counsel for the petitioner, denial of use of the existing crematorium at Tembwada, Morjim, for the use of general public, severely impairs their right to a decent and honourable cremation. He submits that there were incidents where the people of village Morjim had cremated dead bodies in private properties since they were not permitted to cremate, in the said public crematorium. He submits that the general public is also entitled and has a right to use such public crematorium which is on Government land and that denial of the same, is contrary to the spirit and the decision of the Apex Court in the case of *Parmanand Katara vs. Union of India*, reported in *1989 (4) SCC 286*. He submits that in the said judgment, the Supreme Court has expressly recognized that the right to life and dignity extends not only to a living person, but also to his dead body

and even such persons are entitled to protection of their fundamental rights under Article 21 of the Constitution of India. The Petitioner has annexed photographs showing cremation taking place in a private property, in an open place for want of a public crematorium, open to all. Learned Counsel for the petitioner, during the course of hearing, also tendered the Minutes of the Meeting dated 13/10/2021 convened by the Deputy Collector & SDM, Pernem. The same were taken on record.

8. Mr. Nitin Sardesai, learned Senior Advocate appearing for the respondent no.4-Village Panchayat tendered preliminary reply on behalf of respondent no.4-Village Panchayat. The same was taken on record. In the said reply, respondent no.4 has categorically denied that the said crematorium at Tembwada, Morjim is being allowed to be used only for cremation of persons residing in the immediate vicinity or local fishing community. Learned Senior Counsel submits that the existing facility can be used by all, irrespective of caste, creed, gender etc, whoever wishes to cremate the dead.

9. We have heard learned Counsel for the respective parties. As noted above, the grievance of the petitioners is that the existing public crematorium situated at Tembwada, Morjim on Government property, is not being permitted to be used for cremation of all persons. According

to the petitioners, the said existing public crematorium situated on Government land, ought to be made available to all persons in general, for cremating the dead bodies, according to their customs, religious beliefs or last wishes. It is not in dispute that land at Tembwada, Morjim, admeasuring 1800 sq. mtrs. is reserved for a public crematorium and that the same is on Government land and is also marked on the RPG-2021 as such. It appears that land adjoining Survey No. 119 is being used for cremation of dead persons. Admittedly, the said portion on which cremation takes place is Government land and the same is also identified in RPG-2021. Infact, respondent No.4-Village Panchayat of Morjim has categorically denied that the said existing crematorium at Tembwada, Morjim which is a public crematorium, is being used only for cremation of persons residing in the immediate vicinity or the local fishing community. Infact, in paragraph 5 of the said reply, respondent No.4 has stated that the existing crematorium at Tembwada, Morjim is open to persons of any caste, creed, gender, etc. for the purposes of cremation of dead bodies and that there is no discrimination made on the basis of caste, creed, gender etc., as alleged by the petitioner. According to the respondent No.4-Village Panchayat, it is not possible to utilize the entire area of the crematorium at Tembwada-Morjim (Survey No. 119), as earmarked on the RPG-2021,

as the same is in close proximity of the turtle nesting site, however, the existing crematorium which is on government land, can be used by all, irrespective of caste, creed, gender, etc.

10. It appears that a meeting was conveyed in the office of the Deputy Collector and SDM Office, Pernem on 12/10/2021. The Minutes of the Meeting held on 13/10/2021, convened by the Deputy Collector and SDM, Pernem reflects that the same was attended, amongst others, by the local MLA, Government officials and some local representatives. In Para 9 of the said minutes, it is recorded as under:

“The Dy. Collector & SDM, Pernem brought to the notice of the members present that the corpse of death persons should be respected and the final rites is to be carried out as per the religious rituals without any differences among in the society. So also the Dy. Collector & SDO, Pernem brought to the notice of the Block Development Officer Pernem and Secretary/Sarpanch Village Panchayat that the provision in the Article 14 r/w Article 21 of the Constitution shall not be violated by any individual/citizen, while performing the final rites and therefore till the identification of dedicated place of public crematorium, the final rites of any individuals be performed at the existing crematorium at Tembwaddo so that the sentiments of the family members are respected.”

11. It is thus evident, that, both, the Village Panchayat i.e. the respondent No. 4 as well as the Government authorities have

categorically acknowledged that the existing crematorium at Tembwada, Morjim, can be utilized by all persons, irrespective of caste, creed, gender, etc.

12. As noted above and which is not in dispute, is that the existing crematorium stands on Government land. Thus, there can be no restrictions on the basis of caste, creed, gender etc. on who can be permitted to use the public crematorium, for the same would run contrary to the mandate of the Constitution, in particular, Articles 14 and 21. Infact, the respondent No.4-Village Panchayat has categorically denied that persons from any class, creed, gender, etc. are restricted from using the same. The Deputy Collector and SDM has also taken a stand that Article 14 r/w Article 21 shall not be violated by any individual, whilst final rites are performed at the existing crematorium at Tembwada.

13. Considering the aforesaid and the stand of the respondent-authorities, we direct the authorities to ensure that the existing public crematorium is permitted to be used by all, irrespective of caste, creed, gender, etc. Needless to state, that if necessary, in case of law and order, the authorities are at liberty to take appropriate steps, so as to maintain the sanctity of the place. It is also the duty of the authorities to raise

legal awareness with regard to the same, amongst the villagers, to prevent any untoward incident. Accordingly, we direct the respondent No.4- Village Panchayat and the Deputy Collector and SDM of Pernem, to raise legal awareness amongst villagers of Tembwada, Morjim, so as to prevent any untoward incident and for ensuring that peace, harmony and brotherhood is maintained.

14. The Supreme Court, whilst considering the application of Article 21 of the Constitution vis-a-vis, the right to decent burial, in the case of ***Ramsharan v. Union of India*** reported in ***AIR 1989 SC 549***, has observed as under:

" ... life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture...and protection of that...in its full measure would certainly come within the encompass of an expanded concept of Article 21 of the Constitution of India."

15. Similarly, the Supreme Court in the case of ***Pt. Parmanand Katara, Advocate v. Union of India*** reported in ***(1995 (3) SCC 248)*** has held that the "*right to dignity and fair treatment*" which is granted under Article 21 of the Constitution, is not only available to a living person, but also to his body after his death. Right to a decent burial, commensurate with the dignity of the individual, is recognized as a facet

of the right to life guaranteed by Article 21 of the Constitution.

16. In *Ashray Adhikar Abhiyan Vs Union of India & Ors.*, reported in *[(2002) 2 SCC 27]*, a letter was addressed to the then Hon'ble Chief Justice of India by the members of the Petitioner organization making a Complaint that homeless persons, when they died, are not cared for and are not given a decent burial, thereby, violating the right of a deceased homeless person to a decent burial. The letter was treated as a Writ Petition. The Apex Court reiterated that the dignity of the dead must be maintained and respected. Moreover, it extended the right to the homeless deceased person to have a decent cremation according to the religious customs to which one belongs to. It also established a corresponding duty on the State to ensure that decent cremation is served to the person.

17. Infact, the National Human Rights Commission (NHRC) in 2021 called for an enactment of specific legislation for the purpose of upholding the dignity and protecting the rights of the dead. The Commission's first major recommendation to enact a specific legislation to protect the rights of the dead, stems from its recognition that the right to life, fair treatment, and dignity, derived from Article 21 of the Constitution, extends not only to living persons but also to their dead

bodies. Infact, having regard to the number of deaths during Covid-19 and the challenges in the management of the dead bodies, the Commission issued advisory for upholding the dignity and protection of the rights of the dead. Amongst the several recommendations, one of the recommendation was to encourage the use of electric crematoriums, in order to avoid the health hazards emerging from the emission of smoke from burning pyres in large numbers.

18. It is thus evident, that the right to life enshrined in the Constitution of India includes the right to live with dignity. Living with dignity includes not only the dignity of a person when he or she is alive, but dignity following his or her death. Right to live a dignified life extends upto death, including a dignified procedure post death *i.e.* dignified disposal of the dead body. Disposal of a human body whether by cremation or otherwise, is expected to be done with due respect and solemnity that it deserves.

19. Thus, cremation and disposal of a person's dead body carries some rights with himself or herself. The phrase 'dignified procedure of death' in an expansive manner includes dignified disposal of the human remains of the deceased. The mortal remains of a deceased person must be treated with care, decency, respect and dignity.

20. The photographs of the area (Exhibit 'A Colly') where cremation takes place i.e. the existing crematorium, reveals the pathetic condition of the said public crematorium. It is far from honourable. It does not even remotely meet the standards of a decent cremation, a right of an individual, even in death. Although not prayed, we cannot be oblivious to what is seen in the photograph *i.e.* the condition of the crematorium. There is no shed, no platform, no funeral pyre, where the dead body is kept. The crematorium does not even have any place for people attending the crematorium to sit. There is complete lack of basic amenities, such as water, electricity, etc. The existing crematorium appears to be an open piece of land, with a partial compound wall on two sides. The crematorium is not protected on other two sides by walls, for protection of bodies, after the final rites, from stray animals.

21. In this context, it would be apposite to quote the words of Oscar Wilde - *“Death must be so beautiful. To lie in the soft brown earth, with the grasses waving above one’s head, and listen to silence. To have no yesterday and and no tomorrow. To forget time, to forget life, to be at peace.”*

22. The existing crematorium is a far cry from the aforesaid quote. It does not have proper facilities for cremation of dead bodies.

Cremation takes place anywhere, being an open land, with no area specifically designated for lighting funeral pyres, which is a solemn act. The existing crematorium does not even have the most basic facilities, such as water, electricity, platform for funeral pyre, shed over the said platform, sitting arrangement for persons attending the cremation, etc. What must be happening during monsoons, in the absence of a shed over the funeral platform, is best left unsaid. It must be a sordid tale. The crematorium is not even enclosed on all sides by a compound wall, so as to prevent stray animals from entering the crematorium. These facilities, we may say, are basic facilities, which are in consonance with the rights of the dead, to be honourably cremated and a right to be cremated with dignity, even in death. We are at pains to observe that no such facilities exist.

23. Accordingly, we deem it appropriate to direct the respondent No.4-Village Panchayat to make available the following facilities to the existing crematorium at Tembwada, Morjim;

- (i) Water; (ii) Electricity; (iii) Platform for funeral pyre; (iv) Shed over the said platform; (v) Sitting arrangement for persons attending the cremation and (vi) Compound wall on all sides of the crematorium with a gate, as expeditiously as possible and in

any event, by 31st May, 2022 (before the commencement of monsoon). We also direct the respondent No.4 to plant trees within the compound wall of said crematorium at Tembwada, Morjim alongside the compound wall, for let there not only be dignity in death, but also beauty in death. It is always open for the Respondent No.4-Village Panchayat to have more facilities than stated aforesaid, as may be necessary and essential.

24. Learned Senior Advocate appearing for the Respondent No.4-Village Panchayat states that for obtaining necessary water and electricity connections, the respondent No.4-Village Panchayat will start the said process within four weeks from today *i.e.* will file necessary applications for getting water and electricity connections. Statement accepted. Ms. Maria Correia, learned Additional Government Advocate assures the Court, that the said applications *i.e.* seeking water and electricity connections will be processed by the authorities as expeditiously as possible. In the facts, we deem it appropriate to direct the appropriate authorities, competent to deal with the said applications *i.e.* seeking water and electricity connections, to consider the same, as expeditiously as possible, and in any event, within eight weeks from the date of receipt of the said applications from the respondent No.4-Village Panchayat.

25. Although, prayer clause (b) is in the alternative, during the course of arguments, learned Counsel for the petitioner submitted that the petitioner had also offered to donate land admeasuring 500 sq. metres, forming part of the property bearing Survey No. 96/1(part) of Village Morjim for its use only as a public crematorium for the benefit of general public. He submits that although the said offer was refused by respondent No.4-Village Panchayat, the said offer stands good even today. Learned counsel for the petitioner submits that prayer clause (b) be treated as in addition to prayer clause (a). Learned Senior Counsel appearing for the Village Panchayat, during the course of submissions, submitted that the Village Panchayat will reconsider their decision and consider accepting the offer of donation of 500 sq. metres of land made by M/s. Mangesh Projects, a partnership firm, comprising of Mr. Sameer Lad and Mr. Raghunath Lad. Mr. Sardesai, learned Senior Counsel assures the Court, that the said piece of land offered by the petitioner if taken by the respondent No.4-Village Panchayat, will be used only as a public crematorium for the benefit of the general public. We accept the statement of the learned Senior Counsel appearing on behalf of respondent No.4-Village Panchayat, Morjim.

26. Before we conclude, we may observe that trees are cut down to light funeral pyres. This cutting of trees, in the long run, will have a

cascading impact on the environment. Hence, the respondent No.4- Village Panchayat/State authorities may also consider the viability of constructing an electric crematorium, in the Village, so that, the villagers have an option to cremate their near and dear ones, by either of the two methods.

27. Rule is made absolute on the aforesaid terms and the petition stands disposed of. There shall be no order as to costs.

28. All concerned to act on the authenticated copy of this judgment.

29. Matter to be listed for recording compliance of the directions given to the authorities, on 13th June 2022.

M.S. JAWALKAR, J.

REVATI MOHITE DERE, J.

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