



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2022

CORAM :

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. (MD) No.13958 of 2020

and

W.M.P. (MD) 11623 of 2020

C. Sasikumar

...Petitioner

Vs.

1. The District Collector,
Kanyakumarai District,
At Nagercoil.

2. The Sub Collector/The District Revenue Officer,
Padmanabhapuram,
Kanyakumari District.

3. The Tahsildar,
Thiruvattaru Taluk,
Kanyakumari District.

4. Thirpparappu Selection Grade Town Panchayat,
Rep by its Executive Officer,
Thirpparappu,
Kanyakumari District.

5. Church of St. Antony,
Rep by its Parish Priest,
Rev. Sudarson
Nagacodu,
Kulasekaram Post,
Kanyakumari District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent made in Na.Ka.Aa2/MC 03/2020 dated 14.09.2020 and quash the same as its is passed without jurisdiction and consequently close the existing burial ground to an extent of 49 cents in survey no.172/3, Thumbakode A Village, Thiruvattaru Taluk, Kanyakumari District.



For Petitioner: Mr.H. Velavadhas
For R1 to R3 : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor
For R5 : Mr.S.Louis
For R4 : Mr.A.Karthik

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ORDER

Challenge is to the order passed by the 5th respondent, wherein, he has passed an order of restraining the petitioner from creating any problem while the dead bodies being buried in the place owned by the fifth respondent.

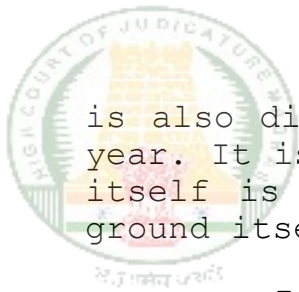
2. It is the case of the petitioner that without being licence obtained from the Municipality, the dead bodies have been buried in the place which was very near to the Village Temple.

3. That being so, the learned Executive Magistrate has no power to grant such a licence and no authority to pass any civil related orders. Hence the above proceeding passed by the learned Executive Magistrate is without jurisdiction and hence, he sought to quash the order, dated 14.09.2020.

4. The learned counsel for the fifth respondent submitted that the fifth respondent had purchased the land in the year 1994 measuring an extent of 49 cents and handed over the same for burial ground for the community people and first dead body was burried in the year 2000. Therefore, particular community has been continuously burrying the dead bodies in that place.

5. The petitioner purchased an extent of 6.5 cents only in the year 2003 and creating trouble. Hence, he opposed the writ petition and prayed for dismissal of the same and it is his contention that the distance between the temple and the grave-yard is only 1 k.m. Hence, he oppose for the burrial of the dead bodies in that place.

6. Now dealing with the order passed by the Executive Magistrate, the Executive Magistrate has passed an order under Section 116 of Cr.P.C. Section 116 deals with the enquiry as to the truth of information. Any enquiry as contemplated under section 116 has to be completed within a period of six months from the date of commencement and if such enquiry is not so completed, the proceeding under the chapter shall on the expiry of the said period, stand terminated. Unless for special reasons to be recorded in writing, the Magistrate otherwise directs. This is the mandate of provision under sub clause (6) of 116 of Cr.P.C. The Executive Magistrate passed an order and merely observing that as many dead bodies have been already buried, till the writ petition is disposed of by this Court, there shall not be any disturbance by the petitioner and it



is also directed that the order shall continue for a period of one year. It is seen that such an interim order for a period of one year itself is contrary to Section 116(6) of the Cr.P.C. On the above ground itself, the order cannot be sustained in the eye of law.

7. During the submissions, when the Court has posed a query as to whether any license has been obtained to dispose or burial of the dead bodies in the place owned by the fifth respondent, it is stated that no such permission whatsoever has been obtained.

8. It is not disputed by both side that the place is situated in a Town Panchayat, where the District Municipalities Act, applies.

9. Section 278 of the Tamil Nadu District Municipalities Act, 1920 reads as follows :

278. Registration or closing of ownerless places for disposal of dead .-

(1) Every owner or person having the control of any place used at the date of the coming into operation of this Act, as a place for burying, burning, or otherwise disposing of the dead shall, if such place be not already registered, apply to the Council to have such place registered.

(2) If it appears to the Council that there is no owner or person having the control of such place, it shall assume such control and register such place, or may, with the sanction of the [State Government], close it.

and Section 279 contemplates that no new place for the disposal of the dead, whether public or private, shall be opened, formed or constructed, or used unless a licence has been obtained from the Council on application.

10. It is only the licence, which can be granted or refused either by the Council or by the Council can also has postpone the grant of a licence until the objections to the site have been removed or any particulars called for by it have been furnished, as per section 279(3).

11. From the above provisions, it is clear that if a burial ground is to be formed, there must be a proper license, as contemplated under law. Therefore, one cannot take law in their own hand and violate the law and convert the place as a burial ground. Only on proper license, any place can be used as a burial ground. Now the order of the Executive Magistrate itself indicates that more than 32 dead bodies have been buried as on 07.05.2000. Therefore, this Court is of the view that without any licence being obtained in this regard, the said place cannot be used as a burial ground.



12. For the reasons stated above, the order of the learned Executive Magistrate impugned herein is set aside and the writ petition is allowed, with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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At Nagercoil.
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3. The Tahsildar,
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+1 CC to M/s.S.LOUIS, Advocate (SR-10727[F] dated 08/03/2022)

W.P. (MD) No.13958 of 2020

and

W.M.P. (MD) No.11623 of 2020

04.03.2022

RM

MS/18.03.2022/4P.5C