



W.P. No. 1545 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1545 of 2023

S.Sivadas Ravi

... Petitioner

-VS-

1. District Collector
Chengalpet District Collector Office
GST Road, Chengalpattu District – 603001.

2. Assistant Director (Panchayats)
Vembakkam, Chengalpattu – 631 501.
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records in respect of impugned order Letter Reference No. Che/Mu/Na.Ka/771/2022/A3OOE(OO) dated 15.10.2022 issued by the Second Respondent, quash the same and direct the Second Respondent to remove the said manual crematorium located in Survey No. 211 abutting petitioners property located at Survey No. 12 of Irubulgramam Village, Seiyur Taluk, Achirapakkam SRO, Chengalpattu District.

(Prayer amended vide order dated 01.09.2023 made in W.M.P. No. 23860 of 2023 in W.P. No. 1545 of 2023 by the Court)

For Petitioner : Mr. K.V.Bhashyam Chari

For Respondents : Mr. U.Baranidharan, AGP



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ORDER

Heard Mr. K.V.Bhashyam Chari, Learned Counsel for the Petitioner and Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he and his elder brother, viz., Raghu, are the joint owners of the agricultural land measuring an extents of 3.33 acres in Survey Nos. 12 and 13 situate at No. 06, Irubulgramam Village, Seiyur Taluk, Achirapakkam, Kanchipuram District, and cremation of dead bodies of persons belonging to Mudaliar Community is taking place in the land adjacent to that property without requisite licence and registration under the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds Rules), 1999 (hereinafter referred to as 'the Rules' for short). As there was no response to the representation dated 15.02.2021 made by him to the Second Respondent in that regard, he had filed the Writ Petition in W.P. No. 10501 of 2021 before this Court in which an order dated 24.08.2021 was passed directing a decision to be taken thereon after considering that representation within six weeks from the date of receipt of its copy.



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3. It has been brought to notice that in furtherance to the said order, the Second Respondent by Proceedings in Se. Mu. Na. Ka. No. 771/2022/A3VuE(Voo) dated 15.10.2022 after inspecting the site, informed the Petitioner that the cremation is taking place in lake poramboke land as per the revenue records in respect of which the Petitioner does not have any right and as there are no houses situated at a radius of 90 metres around that place, it does not affect the general public. The said order is challenged in this Writ Petition.

4. At this juncture, it must be noticed that Section 110 of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act' for short), mandates that subject to the provisions of that Act and the Rules made thereunder, it shall be the duty of the Village Panchayat, within the limits of its funds, to make reasonable provision for carrying out the requirements of the Panchayat Village in respect of the following matters:-

(f) the opening and maintenance of burial and burning grounds.



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Section 242(xxxi) of the Act confers power on the Government to make rules:-

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as to the provision of burial and burning grounds; the licencing of private burial and burning grounds; the regulation of the use of all grounds so provided or licenced, the closing of any such grounds; and the prohibition of the disposal of corpses except in such grounds or other permitted places.

In the exercise of the said powers, the Government of Tamil Nadu by G.O. Ms. No. 213, Rural Development (C-4), dated 05.10.1999 has made the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999, and the relevant provisions read as follows:-

- 4. Registration of burial and burning grounds.-** (1) Every owner or other person having the control over any place used as a place for burying or burning of the dead shall, if such place is not already registered under the Act or any other Act, apply to the Village Panchayat to have such place registered.
- (2) If it appears to the Village Panchayat that there is no owner or person having the control of such place, the Village



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Panchayat shall assume such control and register such place or may, with the sanction of the Assistant Director (Panchayats) close it.

5. Conditions for opening of burial and burning ground.-

(1) No new place for burying or burning the dead, whether private or public, shall be opened, formed, constructed or used, unless a licence has been obtained from the Village Panchayat on application.

(2) Such application for a licence shall be accompanied by the plan of the place for which licence is required showing the locality, boundary and extent thereof, the name of the owner or person or community interested therein, the system of management and such further particulars as the Village Panchayat may require.

(3) The Village Panchayat to which an application is made may-

(a) grant or, if there is valid reason to be recorded in writing, refuse to grant a licence, or



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(b) postpone the grant of a licence until the objection, if any to the site has been cleared or any particulars called for by it have been furnished.

(4) The Assistant Director (Panchayats) may cancel or modify any order passed by a Panchayat under sub-rule (3):

Provided that no order either on application or suo motu prejudicial to the appellant shall be passed without giving reasonable opportunity of being heard to the appellant under this sub-rule or sub-rule (3).

6. Registers to be maintained.- (1) A Register shall be maintained at the office of every Village Panchayat showing places provided, registered or licenced under Rules 3 to 5 and all such places provided, registered or licenced before the commencement of the Act which are used as burial or burning grounds.

(2) A notice in Tamil and in English that such place has been provided, registered or licenced as aforesaid shall be displayed on some conspicuous place at or near the entrance to the burial or burning ground.



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7. Place for burial and burning grounds.- (1) No person shall bury or burn or cause to be buried or burnt any corpse in any place within ninety metres of a dwelling place or source of drinking water-supply other than a place licenced as a burial and burning ground.

(2) The person having control of a place for burying or burning the dead shall give information of every burial or burning of a corpse at such a place to any officer appointed by the Village Panchayat for this purpose.

(3) If a Village Panchayat is satisfied-

- (a) that any registered or licenced place burying or burning of the dead is in such a state or situation as to be or likely to become dangerous to the health of persons living in the neighbourhood thereof ; or
- (b) that any burial ground is overcrowded with graves, and if in the case of a public burial or burning ground, another convenient place duly authorised for burying or burning of the dead exists or has been



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provided for the persons who would ordinarily make use of such place, it may with the previous sanction of the Assistant Director (Panchayats) give notice that it shall be not lawful after the expiry of a period of not less than two months to be specified such notice to bury or burn any corpse at such place.

(4) Every notice given under sub-rule (3) shall be published by affixture to the notice board of the Village Panchayat and by beat of drum in the village.

(5) No person shall in contravention of any notice under sub-rule (3) and after expiration of the period specified in such notice bury or burn or cause or permit to be buried or burnt any corpse at such place.

(6) The Inspector may cancel or modify any notice issued by a Village Panchayat under sub-rule (3).

(7) Whoever contravenes any of the provisions of these Rules shall be punishable with fine which may extend to one hundred rupees or in case of a continuing breach, with fine not exceeding fifteen rupees for every day during which the breach



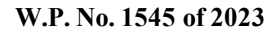
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continues after conviction of the first breach : Provided that no prosecution shall be instituted for contravening the provisions of sub-rule (1) of Rule 7 without the written sanction of the Executive Authority of the Village Panchayat, concerned.

It is mandatory from the said provisions that the place where any corpse is buried, burnt or otherwise disposed, even if it has been in existence for such use earlier, has to be registered or licensed in the prescribed manner after the Rules came into force on 05.10.1999, which view is fortified by the ruling of the Full Bench of this Court in **Jagadheeswari -vs- B.Babu Naidu** (Order dated 20.07.2023 in W.A. Nos. 909 and 910 of 2014). Though the Second Respondent claims in the impugned order that the property where cremation is taking place is Government land, it is not his case that the said place has the requisite licence or registration under the Rules.

5. In view of the foregoing discussion, the following order is passed:-
- (i) it shall be incumbent upon the Respondents to ensure that the requisite licence or registration under the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999, for using the objected place as burial ground or burning of corpses, has been



(ii) in the event of using the said land as burial ground or crematoria, the air pollution control measures provided for the emission generated during burning of human corpses under the Air (Prevention and Control of Pollution) Act, 1981, and the order and rules made thereunder shall be duly complied and necessary certificate in that regard shall have to be obtained from the pollution control authorities under those statutory provisions;

- In the result, the Writ Petition is disposed on the aforesaid terms. No



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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.05.2024.

Maya

To

1. District Collector
Chengalpet District Collector Office
GST Road, Chengalpattu District – 603001.
2. Assistant Director (Panchayats)
Vembakkam, Chengalpattu – 631 501.



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P.D. AUDIKESAVALU, J.

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