



W.P. No. 5280 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

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

W.P. No. 5280 of 2021

1. Rajarajeswari Dhanesh (deceased)
2. C.S.Dhanesh, S/o. Late C.S.Dhanesh
3. Sangeetha Vishnu Prasad, D/o. Late C.S.Dhanesh
4. Mrinalini Dhanesh, D/o. Late C.S.Dhanesh ... Petitioners

-VS-

1. The Commissioner
Corporation of Chennai
Ripon Building
Chennai – 600003.
2. The District Collector
No.62, Rajaji Salai
Fourth Floor
Chennai – 600 001.
3. The Revenue Divisional Officer
South Chennai Division
Guindy, Chennai – 600 032.
4. The Tahsildar
Sholinganallur Taluk
Sholinganallur
Chennai – 600119.
5. V.V.Venkatnarayanan ... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents herein to remove the cremation shed and burial ground from the survey number 2/15 (cremation shed) and 2/19A, situated at Nainar Kuppam, Raja Street, Uthandi, Chennai – 600 119.

For Petitioners : Mr. S.Prem Auxilian Raj

For Respondents : Mr. R.Ramanlal, AAG
For Mrs. P.T.Ramadevi, SC (R1)

Mr. U.Baranidharan, AGP (RR2 to 4)

ORDER

Heard Mr. S.Prem Auxilian Raj, Learned Counsel for the Petitioners, Mr. R.Ramanlal, Learned Additional Advocate General assisted by Mrs. P.T.Ramadevi, Learned Standing Counsel appearing for the First Respondent and Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Second to Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. Since the Original Petitioner, viz., Rajarajeswari Dhanesh, died on 13.05.2021 after the filing of the Writ Petition, her legal representatives, viz., C.S.Dhanesh, Sangeetha Vishnu Prasad and Mrinalini Dhanesh, have been



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substituted as the Petitioners in the Writ Petition in her place by order dated

19.09.2023 in W.M.P. No. 66 of 2022 passed by this Court.

3. It is the case of the Original Petitioner that the lands measuring an extent of 0.30 ares in Survey No. 2/15 and an extent of 0.7.50 ares in Survey No. 2/19A situated at Nainar Kuppam, Raja Street, Uthandi, Chennai – 600119 (hereinafter referred to as 'the property' for short), belonged to her father, viz., V.V.Venkatasubramanian, and on his demise on 05.03.2013, it had devolved upon the Original Petitioner and the Fifth Respondent, who are his daughter and son respectively. As the said property was unauthorizedly used for cremation and burial of corpses by the local villagers, the Original Petitioner had made a representation dated 19.02.2021 to the First to Fourth Respondents to remove the illegal cremation shed/burial ground in the property, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.

4. The First to Fourth Respondents resist the contention of the Petitioners by pointing out that the father of the Original Petitioner, viz., V.V.Venkatasubramanian, had orally permitted for the cremation and burial of corpses in the property and the Petitioners, who claim title through him, are estopped from seeking to prevent the same at this distance of time.



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5. Before proceeding further, it requires to be noticed that the location of the property was initially within the limits of Uthandi Panchayat and it was subsequently merged with the Corporation of Greater Chennai by G.O. Ms. No. 97, Municipal Administration and Water Supply Department dated 19.07.2011 issued by the Government of Tamil Nadu. In other words, the property had been governed by the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Panchayats Act' for short), and the Rules made thereunder till its inclusion within the limits of the Corporation of Greater Chennai, when the provisions of Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as 'the CCMC Act' for short), became applicable and has thereafter been superseded with effect from 13.04.2023 by the Tamil Nadu Urban and Local Bodies Act, 1998 (hereinafter referred to as 'the TNULB Act' for short).

6. It would be relevant here to highlight that Section 110 of the Panchayats Act 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 its requirements in respect of the following matters:-



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

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

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



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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 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.



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(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
- (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.



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(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.

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



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- (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 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



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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 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 has been provided in Sections 318 and 326 of the CCMC Act as follows:-

318. Registration or closing of ownerless places for disposal of dead.-- If it appears to the commissioner that there is no owner or person having the control of any place used for burying, burning, or otherwise disposing of the dead, he shall assume such control and register such place, or may, with the sanction of the council, close it.

319. Licensing of places for disposal of dead.--No new place for the disposal of the dead, whether public or private, shall be opened formed, constructed, or used unless a licence has been



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obtained from the commissioner on application.

(2) Such application for a licence shall be accompanied by a plan of the place to be registered, showing the locality, boundaries and extent thereof, the name of the owner or person or community interested therein, the system of management and such further particulars as the commissioner may require.

(3) The commissioner may, with the sanction of the council.---

- (a) grant or refuse a licence, or
- (b) postpone the grant of a licence until his objections to the site have been removed or any particulars called for by him have been furnished.

320. Provision of burial and burning grounds and crematoria within or without the city by the corporation.--

(1) The council may, and shall if no sufficient provision exists, provide places to be used as burial or burning grounds or crematoria either within or with the sanction of the State Government without the limits of the city and may Charge and



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levy rents and fees for the use thereof.

(2) if the corporation provide any such place without the limits of the city, all the provisions of this Act and all by-laws framed under this Act of the management of such places within the city shall apply to such place and all offences against such provisions or by-laws shall be cognizable by the presidency magistrates as if such place were within municipal limits.

321. Register of registered, licensed and provided places and prohibition of use of other places.--(1) a book shall be kept at the municipal office in Which the places registered, licensed or provided under section 318, section 319 or section 320, and all such places registered, licensed or provided before the commencement of this Act, shall be recorded, and the plans of such places shall be filed in such office.

(2) Notice that such place has been registered, licensed or provided as aforesaid, shall be affixed in English and in Tamil to some conspicuous place at or near the entrance to the burial or burning ground or other place as aforesaid.

(3) The commissioner shall annually publish a list of all



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places registered, licensed, or provided as aforesaid or provided by the Government.

(4) No person shall bury, burn or otherwise dispose of any corpse except in a place which has been registered, licensed or provided as aforesaid.

322. Report of burials and burnings.---The person having control of a place for disposing of the dead shall give information of every burial, burning or other disposal of a corpse at such place to the officer, if any, appointed by the commissioner in that behalf.

323. Prohibition against making of vault or grave in place of worship.--No person shall make a vault or grave or cause any corpse to be buried within the walls of or underneath any place of public worship:

Provided that in the case of an existing vault, the commissioner may, subject to the general or special orders of the State Government, authorize the burial in such vault of near



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relatives of the family to whom it belongs.

324. Prohibition against use of burial and burning grounds

dangerous to health or overcrowded with graves.--- (1) If

the commissioner is of opinion---- (a) that any registered or licensed place for the disposal of the dead or any place provided for such disposal by the council or by the State Government is in such a state or situation as to be or to be 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 public burial or burning ground or other place as aforesaid another convenient place duly authorized for the disposal of the dead exists or has been provided for the persons who would ordinarily make use of such place, he may, with the consent of the council and the previous sanction of the State Government, give notice that it shall not be lawful after a period to be named in such notice, to bury, burn or otherwise dispose of any corpse at such place.



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(2) Every notice given under sub-section (1) shall be published and a translation thereof in Tamil shall be affixed to some part of such place.

(3) After the expiry of the period named in such notice, it shall not be lawful to bury, burn or otherwise dispose of a corpse at such place except with the permission of the commissioner.

325. Prohibition in respect of corpses.---No person shall---

(a) bury or cause to be buried any corpse or part thereof in a grave whether dug or constructed of masonry or otherwise in such manner that the surface of the coffin or the surface of the body where no coffin is used, is at a less depth than five feet from the surface of the ground; or

(b) build or dig or cause to be built or dug any grave in any burial ground at a less distance than two feet from the margin of any other existing grave; or

(c) without the sanction in writing of the commissioner or an order in writing of a magistrate, re-open a grave already occupied; or



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- (d) convey or cause to be conveyed a corpse or part thereof to any burial or burning ground, and not cause the burial or burning of the same to commence, within six hours after its arrival at such place; or
- (e) when burning or causing to be burnt a corpse or part thereof permit the same or any part thereof or its clothing to remain without being completely reduced to ashes; or
- (f) carry through any street a corpse or part thereof not decently covered; or
- (g) while carrying a corpse or part thereof within the city leave the same in or near any street for any purpose whatever; or
- (h) remove, otherwise than in a closed receptacle, any corpse or part thereof kept or used for the purpose of dissection.

325-A.Fencing, etc., of private burial ground.---The owner of, or other person having control over, any private burial ground shall fence and maintain the same properly to the satisfaction of the commissioner.



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326. Grave-digger's licence.—No person shall discharge the office of a grave-digger or other attendant at a public place for the disposal of the dead (other than a place provided by the Government) unless he has been licensed in that behalf by the commissioner.

Similar provisions are contained in Sections 172 and 173 of the TNULB Act, which are extracted below:-

172. Burial and burning grounds and crematoria.—

(1) Every owner or person having the control of any place used as burial or burning ground or crematoria on the date of commencement of this Act, shall if such place has not already been registered, apply to the commissioner to have such place registered within such time and in such manner as may be prescribed.

(2) No new place for the disposal of the dead whether public or private shall be opened, formed, constructed or used unless a licence has been obtained from the Commissioner on an



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application made in accordance with such rules as may be prescribed.

(3) No person shall bury or burn any corpse except in a place which has been registered, licenced or provided as aforesaid.

(4) The council shall provide and maintain places to be used as burial or burning grounds or crematoria either within or outside the municipal limit and may charge and levy rents and fees for the use thereof as may be fixed by the council :

Provided that where burial or burning grounds or crematoria are to be provided outside the municipal limit, previous concurrence of the Government shall be obtained :

Provided further that the municipality shall itself undertake the burial or cremation of any unclaimed dead body at its own expense.

173. Regulation in respect of carrying or disposal of corpse.

— No person shall,—

(1)(a) bury or cause to be buried any dead body in the burial ground unless 2.5 metres of depth from the surface of the ground is made and a margin of not less than



1.5 metres is allowed on both sides where the dead body is buried;

(b) without the sanction in writing of the Judicial Magistrate reopen a grave already occupied; and

(c) carry through any street a corpse or parts thereof not decently covered.

(d) retain a corpse on any premises without cremating, burying or otherwise lawfully disposing off, for more than such period and in such manner, as may be prescribed.

(2) If any place whether public or private, used as a crematorium or burial ground is found to endanger public health or if any other place is found to be overcrowded with burials or for any other reason to be recorded, the Commissioner may, with the approval of the council, close such crematorium or burial ground, by the notification in the District Gazette.

(3) Where sufficient modern crematoria are available in a municipality, the council may, by notification, ban open cremation within such municipal limit.



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It is evident on a conspectus reading of the aforesaid statutory 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 First to Fourth Respondents claim that the father of the Original had orally permitted such cremation and burial in the property, it is not their case that the said place has the requisite licence or registration as required by law. It has also been brought to notice that in respect of a neighbouring property, this Court in the decision in **Mallika Bhai -vs- Panchayat President, Uthandi Village Panchayat** (Order dated 21.11.2019 in W.P. No. 15476 of 2008) has directed to take suitable action to stop burial or cremation of dead bodies in that place, and the appeal preferred against that order has been rejected by order dated 23.03.2022 in C.M.P.No. 4846 of 2022 in W.A. S.R. 15587 of 2022 passed by the Division Bench of this Court.

7. In view of the foregoing discussion, the following order is passed:-

- (i) it shall be incumbent upon the Respondents to ensure that for using the objected place as burial ground or burning of corpses, the requisite



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licence or registration under Section 172 of the TNULB Act has been obtained on fulfilling the stipulated conditions.

- (ii) in the event of using the said property 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;
- (iii) though the cremation and burial is said to have been taking place in the property with oral permission of the then owner, such right to do so cannot be now claimed without following the relevant statutory provisions; and
- (iv) if any burial or cremation takes place in contravention of the TNULB Act, the First to Fourth Respondents and concerned authorities shall take prompt action to prevent such violations, apart from taking appropriate proceedings against the errant wrongdoers following the procedure prescribed by law.



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

costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya

To

1. The Commissioner
Corporation of Chennai
Ripon Building
Chennai – 600003.
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P.D. AUDIKESAVALU, J.

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