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Writ Petition No.12438 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.12438 of 2023

Susanna K.

D/o.Charles Norman

... Petitioner

Vs.

- 1.The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai - 600 003.
- 2.The Revenue Divisional Officer (RDO),
Chennai South Revenue Division,
Little Mount, Kotturpuram,
Chennai - 600 032.
- 3.The District Collector,
Office of the District Collectorate,
Thoothukudi - 628 101, Thoothukudi District.
- 4.The Revenue Divisional Officer (RDO),
Thiruchendur Revenue Division,
Thiruchendur - 628 215.
Thoothukudi District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent herein to consider and pass an order on the representation made by the petitioner dated 30.12.2022 to enable the petitioner to transfer her



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maternal grandfather's (Mrs.S.K.Immanuel) mortal remains from Chennai St.Andrews Church (The Krik) Cemetery to petitioner's Ancestral family burial ground located in her ancestral village in Christ Church, Mavadipannai Village, Thenthiruperai, Eral Revenue Taluk, Thiruchendure Revenue Division, Thoothukudi District, within the time framed fixed by this Court.

For Petitioner : Mr.S.Lakshmanasamy

For Respondents : Mr.C.Selvaraj
Additional Government Pleader

ORDER

This writ petition has been filed for a direction to the first respondent to consider the representation made by the petitioner on 30.12.2022 wherein the petitioner has sought for transfer of the mortal remains of the maternal grandfather of the petitioner from St.Andrews Church, Chennai, to the ancestral family burial ground located at Thoothukudi district.

2. The case of the petitioner is that her maternal grandfather Immanuvel died on 22.07.1987 when he was taking treatment at Christian Medical College Hospital, Vellore. The final rites of her



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maternal grandfather was done at St.Andrews Church and his mortal remains were laid to rest at the St.Andrews Cemetery at Chennai.

3. The granddaughter of the said Immanuvel has approached this Court seeking for a direction to the first respondent to allow the mortal remains of her maternal grandfather to be relocated to the ancestral village at Thoothukudi.

4. Heard Mr.S.Lakshmanasamy, learned counsel for petitioner and Mr.C.Selvaraj, learned Additional Government Pleader, appearing for respondents.

5. The mortal remains of the maternal grandfather of the petitioner was laid to rest on 22.07.1987 at St.Andrews Cemetery, Chennai. It is nearly 36 years since this event had taken place. The petitioner, who is the granddaughter wants to fulfil the last wishes of her father and hence, she is seeking for the transfer of the mortal remains of her maternal grandfather from Chennai to Thoothukudi.



6. There is no dispute with regard to the fact that the beliefs with regard to the burial of a dead body involves sentiment of family members and normally, the Court respects the same. If any such rites had been conducted against the wishes of the family members and a request is made, normally the authorities as well as the Court try to accommodate such a request since it involves family sentiments. That apart, Section 349 (22) of the Chennai City Municipal Corporation Act, 1919 deals with regulation of burial and burning grounds. In the light of this provision, regulations have been framed. Regulation Nos.14 and 15 are extracted hereunder:

"14. Conditions for re-opening a grave.- No non-masonry grave or masonry grave unprovided with the separate air-tight compartment prescribed in by-law 12 shall be re-opened within 14 years after the burial of a person above 12 years of age or within 8 years after the burial of a child under 12 years of age, to bury another member of the same family unless a layer of earth not less than one foot thick be left undisturbed over the previously buried coffin. If on opening any grave, any soil is found to be offensive such soil shall be left undisturbed. There shall never be less than three feet of earth between the topmost coffin and the grave.

15. Conditions for disinterring a body.- No body that has not been duly embalmed and enclosed in an air-tight coffin shall be disinterred without the permission of the Commissioner. Such permission may be granted on the following conditions:-

- (a) The grave should be well soaked a day before the disinterment with a solution of perchloride of mercury of the strength of 1 in 1,000.



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- (b) While the grave is being disturbed, it should be frequently sprinkled with mercury lotion of the above strength.
- (c) The persons of the grave diggers should be washed before and after the disinterment with a solution of perchloride of mercury of the strength of 1 in 5,000.
- (d) A medical subordinate should be present at the disinterment in order to ensure that the above precautions are taken."

7. On going through the above regulations, it is seen that there is no scope for transferring the mortal remains from one place to another and what has been provided is only to enable the burial at the same place of any member of the same family. The above regulations do not provide for shifting the mortal remains from one place to another.

8. The petitioner has approached this Court after nearly 36 years after the last rites were performed to the maternal grandfather. At this length of time, it will not be feasible to issue directions to the respondents to permit the mortal remains to be shifted to Thoothukudi. Orders which are incapable of compliance should not be passed under Article 226 of the Constitution of India. Even though this Court respects the sentiments of the petitioner, it is not possible to accede to the request made by the petitioner.



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N.ANAND VENKATESH, J

gm

In the light of the above discussion, this writ petition is dismissed. No costs.

21.04.2023

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order

gm

To

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