



W.A.No.1037 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A.No.1037 of 2023

1. Jagadheeswari
2. Sandeep
3. Gopi
4. Sekar
5. Markendayan

.. Appellants

Vs.

1. B.Babu Naidu
2. The District Collector
Thiruvallur District
Thiruvallur.
3. The Assistant Director (Panchayat)
Collectorate, Thiruvallur
Thiruvallur District.
4. The Revenue Divisional Officer
Thiruthani, Thiruvallur District.
5. The Revenue Tahsildar
Pallippattu Taluk Office
Pallipattu, Thiruvallur District.
6. The Village Panchayat President



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Nochili Village, Pallipet Taluk
Thiruvallur District.

7. The Inspector of Police
Pothatturpet Police Station
Pothatturpet Thiruvallur District.
Respondents

..

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 28.04.2023 in W.P.No.10908 of 2023.

For the Appellants : Mr.L.Dhamodharan

For the Respondents : Mr.T.Mohan
Senior Counsel
for Mr.P.Krishnan
for R1

Mr.P.Muthukumar
State Government Pleader
assisted by Mr.Kathick Jaganathan
Government Advocate
for R2 to R5 & R7

Mr.K.Elango
for R6

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Heard Mr.L.Dhamodharan, learned counsel for the appellants,
Mr.T.Mohan, learned Senior Counsel for Mr.P.Krishnan, learned
counsel for respondent 1, Mr.P.Muthukumar, learned State



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Government Pleader assisted by Mr.Kathick Jaganathan, learned Government Advocate for respondents 2 to 5 & 7 and Mr.K.Elango, learned counsel for respondent 6.

2. The writ petition was filed by the present first respondent seeking a direction against the original respondents 1 to 6 to take stern action against respondents 7 to 11 for burying the dead body of one Narashimmalu Naidu on 02.04.2023 and order to exhume the body and relocate the same in the burial ground in S.F.No.205, Vijayamambapuram, Nochili Village, Pallipet Taluk, Thiruvallur District. Learned Single Judge passed the following orders:

"32. In the aforesaid circumstances, though the petitioner has sought for a direction to the respondents to consider his representations for exhumation and burial of the body from S.f. No.201/3 to S.F. No.205/1, on an overall conspectus of the case, this Court directs the 1st respondent to take W.P. No.10908/2023 appropriate action through respondents 2 to 6 to exhume the body, which has been buried in S.F. No.201/3 by respondents 7 to 11 and bury the remains of the dead body in the designated existing burial ground



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at S.F. No.205/1. The said act shall be undertaken and completed by the official respondents within a period of one week from the date of receipt of a copy of this order. Further, the 6th respondent is directed to provide necessary police force for the purpose of maintaining law and order at the time of exhumation and burial of the body so that no law and order problem is created in the said village by the private respondents and the persons acting on their behalf. The cost towards the exhumation of the dead body from S.F. No.201/3 and burial at S.F. No.205/1 shall be recovered from the 7th respondent in accordance with law, if they do not come forward to reimburse the said cost on their own volition upon demand from the official respondents.”

3. The said order is assailed in the present appeal by the original respondents 7 to 11.

4. We had heard the matter. We came across some conflict of opinion between two Division Benches, as such, referred the matter to a Three Judge Bench (Full Bench).



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5. The Full Bench decided the issue and held as under:

32. The outcome of the above analysis of the Rules and case laws leads to the conclusion, that the condition of 90 meters restriction found in Rule 7(1) cannot be construed as right to bury body anywhere and everywhere. Burial or burning body is subject to the other provisions in the Rules. The conditions of distance restriction from the water body, cannot be read in isolation unmindful of the purpose of the Rules and other provisions thereunder.

33.

34. Moreover, after Rules, 1999 came into force, any burial in the place other than the place already registered or licensed as burial ground, goes in contravention to Rule 7(1). Any body buried in contravention to the Rules 5 and 7, is to be exhumed and buried in the designated place. If such violation is brought to the notice within the reasonable time and despite notice to exhume the body for to be buried in the designated place not adhered by the person concerned, the body is to be exhumed by the authority and collect the costs from the person who is cause for that illegal burial. The exhumed body must be buried in the designated place, taking into consideration the public health.



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Person who defies the law and refuses to exhume the body, cannot take umbrage in the delay of enforcing the law and make the Court 'fait accompli'. Accordingly, the order of reference is answered in negative."

6. In the light of the judgment of the Full Bench, the matter in controversy has been set to rest. The judgment of the learned Single Judge is required to be upheld. The appellants shall exhume the dead body from S.F.No.201/3 and bury the same in S.F.No.205/1, as directed by the learned Single Judge, within a period of seven days from today. The rest of the directions issued by the learned Single Judge shall operate.

7. Accordingly, the writ appeal stands dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.10392 and 10852 of 2023 are closed.

(S.V.G., C.J.)

(P.D.A., J.)

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Neutral Citation : Yes/No

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AND
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