



WEB COPY



W.P.No.20905 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.11.2022
Pronounced On	11.01.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.20905 of 2014

and

M.P.No.1 of 2014

V.Sundaram

... Petitioner

Vs.

1.The District Collector,
Tiruvarur.

2.The Tahsildar,
Kodavasal Taluk,
Tiruvarur District.

3.The President,
Manjakkudi Panchayat Union,
Kodavasal Taluk,
Tiruvarur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, to declare the burial ground situated at Manjakkudi Village, Kodavasal Taluk, Tiruvarur District constructed by the third respondent is arbitrary, whimsical and contrary



W.P.No.20905 of 2014

to the provisions of the Tamil Nadu Panchayat Act and consequently direct the respondents to demolish the same.

For Petitioner : Mr.S.Vijayakumar

For R1 to R3 : Mr.P.Bala Thandayutham
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Declaration, to declare the burial ground in Manjakkudi Village, Kodavasal Taluk, Tiruvarur District constructed by the third respondent as arbitrary, whimsical and contrary to the provisions of the Tamil Nadu Panchayat Act and consequently to direct the respondents to demolish the same.

2. The specific case of the petitioner is that a common communal burial ground existed in Manjakkudi Village and was being used by all members of different communities in the said village for cremation of bodies.



W.P.No.20905 of 2014

WEB COPY

3. It is further case of the petitioner that the said burial ground has been used for 100 years and there were no friction among the members of the village all along.

4. As per the averments of the petitioner, it is case of the petitioner that the burial ground for Brahmin Community has been shifted to 3 Km away from the Village. On the other hand, it is case of the third respondent that in the existing burial ground, the burial shed has been constructed after due process of law by passing the resolution under the Panchayat Act.

5. This Court, while admitting this Writ Petition, has granted an interim injunction and observed as follows:-

2.Since there cannot be different burial/cremation grounds for different communities and since it is the only place where everything get settled, the respondents shall not prevent any member of the community from using the common burial / cremation ground.



W.P.No.20905 of 2014

WEB COPY

6. The specific case of the petitioner is that the third respondent namely, the President of Manjakkudi Panchayat, has unilaterally taken a decision to shift the existing burial ground to a new location 3 kilometres away from the village for Brahmin Community alone under the “Thai Scheme 2013-14”.

7. It is submitted that the aforesaid decision has exposed the members of the Village to inconvenience inasmuch as the funeral procession has to be passed through Kaliasman Temple and Kaliyaperumal Temple very close to the houses of members of other communities.

8. It is submitted that a representation was also sent by the persons belonging to Brahmin Community and others who were likely to be affected by funeral procession passing in front of their houses on account of shifting of the burial ground. However, the third respondent has taken steps to create a separate burial ground for Brahmins alone under “Thai Scheme 2013-14” despite several representations of the persons from



W.P.No.20905 of 2014

different communities. In this connection, a reference was made to the following representations:-

- i. representation dated 10.03.2014 [from the villagers, Agragaram to the District Collector, Tiruvarur],
- ii. representation dated 25.03.2014 [from the Villagers, Manjakudi to the District Collector, Tiruvarur],
- iii. representation dated 04.04.2014 [from the Villagers (Kaliammal Temple Street Dwellers) to the District Collector, Tiruvarur] and
- iv. representation dated 10.06.2014 [from the Villagers, Manjakudi to the District Collector]

9. The above representations were sent objecting creation of the separate burial ground for Brahmins.

10. The third respondent has filed counter affidavit. In the counter affidavit, it is stated that the petitioner is not a resident of Manjakudi Village and therefore has no *locus standi* to file this Writ Petition.

11. The above submission appears to be true as the petitioner is residing at 2/16, Ganesh Avenue, First Street, Sakthi Nagar, Porur,



W.P.No.20905 of 2014

Chennai – 600 116 as is evident from a reading of the details of the address given in the affidavit.

12. Perhaps, the petitioner traces his origin from the said village and has roots in the said Village and has settled in Chennai. Therefore, it cannot be said that the petitioner has no *locus standi* to file this Writ Petition. Therefore, the preliminary objection regarding the *locus standi* is answered in favour of the petitioner.

13. The averments in the counter affidavit of the third respondent indicates that there are five burial grounds for different communities namely, (i) Brahmins, (ii) Nadars, (iii) Udaiyars, (iv) Others Backward Communities, and (v) Adi Dravidas and these communities are using these burial ground separately.

14. It is further case of the third respondent that it is untrue that the entire Village has been using a common burial ground as has been averred in the affidavit filed in support of the Writ Petition.



W.P.No.20905 of 2014

15. It is submitted that as the Executive Officer of the Panchayat, the Panchayat President of Manjakudi Village, the third respondent had placed an agenda before the said Village Panchayat Council and Grama Sabha of Manjakudi Panchayat and the agenda was discussed and the resolution was passed unanimously without any objection in the two Constitutional Bodies.

16. It is also submitted that about 50 members from the Brahmin Community living in Manjakudi Village had given their consent for construction of a separate burial ground with a shed for Brahmins in the place. It was thus constructed.

17. It is further submitted that a survey was conducted in the Village as per the guidelines of the State Government of Tamil Nadu regarding the amenities required under the aforesaid scheme and on the basis of the said survey, a new shed was constructed in the place of the existing burial ground for the Brahmins by the Rural Development Department with the approval of the then District Collector.



W.P.No.20905 of 2014

WEB COPY

18. Based on the requirements, the shed was constructed for the benefit of persons belonging to the Brahmin Community.

19. It is further submitted that the burial ground was used for a long period by the persons belonging to the Brahmin Community and in the said land alone, the shed has been constructed with a view to fulfill the basic amenities under “Thai Scheme 2013-14” by providing roads, drinking water facility etc.

20. It is further submitted that some of the members of Agraharam had been intimated regarding the construction of the burial ground shed and they have given their consent to build a permanent structure for burial without disturbing any portion of people living in Manjakudi Village. That apart, it is submitted that passing of funeral procession through one or more streets where temples were located was unavoidable as there is no area left open in the village to have a separate passage. It is therefore prayed for dismissal of this Writ Petition.



W.P.No.20905 of 2014

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the first to third respondents.

22. There are disputed questions of facts. The prayer of the petitioner is wide and veiled. It is not clear how the petitioner is aggrieved. Though the petitioner is seeking for a common burial ground, it is not clear as what is the motive for filing this Writ Petition.

23. The counter affidavit filed by the third respondent was also not clear. The third respondent has also not clarified the position in the additional counter barring technical defence that a new shed has been put up in the land which was used as a burial ground identified during Ryotwari Settlement several decades back and there is no question of separation of burial ground at this point of time.

24. Originally, this case was reserved for orders on 11.10.2022. Thereafter, this case was listed on 07.11.2022 for pronouncing order. However, due to the ambiguity of the averments in the counter affidavit



W.P.No.20905 of 2014

filed by the third respondent, the order could not be pronounced on that day. Therefore, the case was adjourned to 11.11.2022 with direction to the third respondent Panchayat President to file an additional counter affidavit. Thereafter, this case was listed on 11.11.2022 for further arguments. Meanwhile, the third respondent Panchayat President filed an additional counter affidavit on 21.11.2022. Finally, the case was again reserved for orders on 22.11.2022.

25. A reference was made to the Table in Paragraph No.3 of the additional counter affidavit which are reproduced below:-

Sl. No.	Revenue Village	R.S.No. in which the burial ground exists at	Extent	People who are using the burial ground
1	Manjakudi	169/4	3 Ares	Manjakudi Adi Dravidar Street People
2	Manjakudi	114/18	1 Ares	Manjakudi Agraharam People
3	Manjakudi	118-3	3 Ares	Manjakudi OBC People

26. It is submitted that the land in RS.No.14/18 has been classified as burial ground as per the revenue records which is being used by the Brahmins. It is further submitted that as the Adi Dravidars are residing



W.P.No.20905 of 2014

nearby the above burial ground and considering the health point of view, the burial ground shed was put up on the southern side of the residential area of the Brahmins only. There is no intention for separation of the burial ground. It is submitted that under misconception and due to the motive between the petitioner and the third respondent, the petitioner has filed this Writ Petition.

27. In this Writ Petition, this Court is concerned with the burial ground in Panchayat area. Section 116 of the Panchayat Act, 1994 is subject to the provisions of the other provision of the said Act and the rules made thereunder. As per the aforesaid provision, two or more village panchayats;

- i. *may construct and maintain water-works for supply of water for washing and bathing purposes from a common source and **may also provide a common burial and burning ground,** and*
- ii. *may entrust to the panchayat union council with its consent and on such terms as may be agreed upon, the management of any institution or the execution or maintenance of any work.*



W.P.No.20905 of 2014

28. A burial ground and cremation ground in a Panchayat has to be in consonance with the provisions of Tamil Nadu Panchayats Act, 1994 read with relevant Rules as it stood then. Presently, the Tamil Nadu Combined Development and Building Rules, 2019 has come into force.

29. Neither the provisions of the Tamil Nadu Panchayats Act, 1994 or the Tamil Nadu Combined Development and Building Rules, 2019 which is currently in force nor the Constitution of India sanctions a separate cremation ground or a burial ground based communal stratification of person. In fact, for two or more Villages, there can be a common burial ground and cremation ground under the Act.

30. Thus, there cannot be a separate burial ground and cremation ground for different communities. In fact, in bigger cities and urban cities, electric and other form crematorium have been installed. The facilities are available for all communities though for person belonging to some of the other religions such as Islam and Christianity, burials are in the property managed by the Mosques and Churches respectively.



W.P.No.20905 of 2014

31. The third respondent is therefore directed to take steps to shift the existing burial ground to the periphery of the Village by identifying a land with the revenue authorities if the existing burial ground causes inconvenience to the residents.

32. There has to be a proper planning and identification of area for being used as burial ground and cremation ground, so that, the residents are not forced to witness morose funeral procession on day to day basis in front of their house.

33. The respondents are directed to ensure that common burial ground is identified for cremation or burial of dead persons among the Hindu Communities. Considering the fact that some of the communities follow the ritual of burying the dead persons and some of the communities follow the rituals of cremating the dead persons, such areas may be earmarked for burial ground with a separate area for cremation of dead persons without any communal stratification. A proper step may be taken in this direction to ensure that there is no friction at the burial ground and funeral processions are allowed to be passed through streets



W.P.No.20905 of 2014

in a somber manner with minimal disturbance to residents of the village.

This exercise by the respondent in conjunction with the District Revenue Authorities shall be completed within a period of six months from the date of receipt of a copy of this order.

34. This Writ Petition stands disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

11.01.2023

Internet : Yes/No

Index : Yes / No

Jen

To

1.The District Collector,
Tiruvarur.

2.The Tahsildar,
Kodavasal Taluk,
Tiruvarur District.

3.The President,
Manjakkudi Panchayat Union,
Kodavasal Taluk,
Tiruvarur District.



WEB COPY



W.P.No.20905 of 2014

C.SARAVANAN, J.

Jen

Pre-Delivery Order in
W.P.No.20905 of 2014
and M.P.No.1 of 2014

11.01.2023