



W.P. No. 28809 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 21.11.2023**

**CORAM**

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

**W.P. No. 28809 of 2023**

**and**

**W.M.P. No. 28419 of 2023**

R.Suresh Babu

... Petitioner

-VS-

1. The State of Tamil Nadu,  
Represented by its Secretary to Government,  
Department of Public Health,  
Fort St George,  
Chennai – 600 009.
2. The Commissioner,  
Greater Chennai Corporation,  
Ripon Building,  
Chennai – 600 003.
3. Tamil Nadu Pollution Control Board,  
Represented by its Chief Environmental Engineer,  
76, Mount Salai, Guindy,  
Chennai.
4. Zonal Health Officer,  
Public Health Department,  
Zone- 7, Ambattur,  
Greater Chennai Corporation,  
Chennai – 600 053.

... Respondents

**Prayer:-** Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records of order bearing No. Z.O.7/Z.H.O.7/3386/2023 dated 31.07.2023



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passed by the 4<sup>th</sup> Respondent and quash the same as illegal and to consequently direct the respondents to close down the cremation shed situated behind plot No. 73, Old Survey No. 236/3A Part, T.S.No. 3 Part, Ward I, Block 68, Padi Village, Ambattur Taluk, Tiruvallur District.

For Petitioner : Ms. Gopika Nambiar

For Respondents : Mr. S.Arumugam  
Government Advocate (for R1)

Mrs. P.T.Ramadevi,  
Standing Counsel (for R2 & R4)

Mr. Shanmugavel (for R3)

### **ORDER**

Heard Ms. Gopika Nambiar, Learned Counsel appearing for the Petitioner, Mr. S.Arumugam, Learned Government Advocate appearing for the First Respondent, Mrs. P.T.Ramadevi, Learned Standing Counsel appearing for the Second and Fourth Respondent, Mr. Shanmugavel, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had made a representation dated 15.02.2023 for removal of an illegal cremation shed admeasuring an extent of 1550 sq. ft. situated at Plot No. 73, Old Survey No. 236/3A, T.S.No. 3 Part, Ward I, Block 68, Padi



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Village, Ambattur Taluk, Thiruvallur District, on the banks of the Coovam River, which was directed to be disposed by order dated 15.03.2023 in W.P.

No. 7834 of 2023 passed by this Court on merits and in accordance with law.

Thereafter, the Second Respondent by Proceedings in Z.O.7/Z.H.O.7/3386/2023 dated 31.07.2023 rejected that representation observing that the said burial ground has been in existence for the past 40 years and the flat where the Petitioner was residing was recently developed and he cannot have any objections regarding the same, which is challenged in this Writ Petition.

3. Before proceeding further, reference has to be made to Sections 318 to 326 of the Chennai City Municipal Corporation Act, 1919, which are extracted below:-

**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.



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**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 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



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crematoria either within or with the sanction of the State Government without the limits of the city and may Charge and 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 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



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.

Further, Section 172 of the Tamil Nadu Urban Local Bodies Act, 1998, which has come into force with effect from 13.04.2023, provides as follows:-

**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;



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- (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.

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, which view is



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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).

The Second and Fourth Respondents, who have not disputed that the land mentioned by the Petitioner adjacent to his property is used as a burial ground, have not produced any material to show that it has the requisite license or registration under the relevant statutory provisions. As such, the impugned order passed by the Fourth Respondent, which is not in accordance with law, cannot be sustained.

4. That apart, the Third Respondent whose official has inspected the site on 27.10.2023 has filed a report dated 21.11.2023 in which it has been stated as follows:-

*“3. It is respectfully submitted that the existing cremation shed situated behind plot No. 73, Old Survey No. 236/3A part, T.S.No. 3 Part, Ward 1, Block 68, Padi Village, Ambattur Taluk, Chennai District was inspected by the TNPCB official on 27.10.2023 and the details of inspection are as follows:-*

*(i) It is respectfully reported that presently the Cremation Shed is being maintained by Greater Chennai Corporation & records related to the burning of human*





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

- (i) the impugned Order No. Z.O.7/Z.H.O.7/ 3386/2023 dated 31.07.2023 passed by the Fourth Respondent is set aside;
- (ii) though there is no dispute that the property, which has been hereto used as burial ground, belongs to the Greater Chennai Corporation, its right to continue to do so cannot be permitted without strictly following the relevant statutory provisions;
- (iii) 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 orders 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; and
- (iv) it shall be incumbent upon the Second and Fourth Respondents to ensure that the requisite license or registration under Section 172 of the Tamil Nadu Urban Local Bodies Act, 1998, for using the said place as burial ground or burning of corpses, is obtained on fulfilling the stipulated conditions.



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**WEB COPY** In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

21.11.2023

Index: Yes/No

NCC: Yes/No

**Note: Issue order copy by 26.02.2024.**

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To

1. The Secretary to Government  
Department of Public Health,  
Fort St George,  
Chennai – 600 009.
2. The Commissioner,  
Greater Chennai Corporation,  
Ripon Building,  
Chennai – 600 003.
3. Chief Environmental Engineer,  
Tamil Nadu Pollution Control Board,  
76, Mount Salai, Guindy,  
Chennai.
4. Zonal Health Officer,  
Public Health Department,  
Zone- 7, Ambattur,  
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Chennai – 600 053.



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**P.D. AUDIKESAVALU, J.**

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