



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.02.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR  
AND  
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P(MD)NO.1017 OF 2022  
and  
W.M.P(MD)No.856 of 2022**

Stephen Jebaraj

:Petitioner

.VS.

- 1.The District Collector,  
Tirunelveli District,  
Tirunelveli.
- 2.The Block Development Officer,  
Manur Taluk,  
Tirunelveli District.
- 3.The President,  
Vannikonendhal Panchayat,  
Tirunelveli District.
- 4.The Tahsildar,  
Manur Taluk,  
Tirunelveli District.

(The fourth respondent is suo motu impleaded as per order of this Court, dated 15.02.2023) : Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the impugned



WEB COPY

order, dated Nil, on the file of the third respondent and to quash the same and further to direct the third respondent to grant permission to use the land in Plot Nos.202, 203 and 204 situated in S.No. 508/3, Vannikonendhal Village, Maanur Taluk, measuring to an extent of 10 cents belonging to the AG Church as burial ground for the members of the Misba AG Church, Vannikonendhal.

|                            |                                          |
|----------------------------|------------------------------------------|
| For Petitioner             | :Mr.K.Jeyamohan                          |
| For Respondent-1           | :Mr.G.Thilak Kumar<br>Govt.Pleader       |
| For Respondents<br>2 and 3 | :Mr.A.K.Manickam<br>Special Govt.Pleader |

### **ORDER**

\*\*\*\*\*

**(Order of the Court was made by D.KRISHNAKUMAR,J)**

This Writ Petition is filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the impugned order, dated Nil, on the file of the third respondent and to quash the same and further to direct the third respondent to grant permission to use the land in Plot Nos.202, 203 and 204 situated in S.No.508/3, Vannikonendhal Village, Maanur Taluk, measuring to an extent of 10 cents belonging to the AG Church as burial ground for the members of the Misba AG Church, Vannikonendhal.



WEB COPY

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The Petitioner is a Pastor in AG Church, Vannikonendhal and he purchased a piece of land for the purpose of burial ground for the families and members of the AG Church in S.No.508/2, measuring an extent of 10 cents in Vannikonendhal Village. The Petitioner has made a request to the third respondent/Panchayat President seeking approval as per the rules in existence and the same has been rejected stating that the said land is very close to the drinking water tank, dwelling house. Challenging the said order, the Petitioner has filed the present Writ Petition for the relief as stated supra, contending that there is no dwelling house and drinking water tank within the prohibited distance, as stated by the Petitioner. Therefore, the impugned order requires consideration of this Court, for passing orders granting permission to the Petitioner for using the said land as a burial ground.

4. The learned Government Pleader appearing for the first respondent/The District Collector, Tirunelveli has strongly objected to the contentions of the Petitioner. He would further state that



WEB COPY

the Panchayat President has passed an order, which is perfectly in order and when the said land is used as a burial ground, which is very close to the public park, Anganwadi Centre, Drinking water tank and dwelling houses, it will affect the general public at large. Therefore, stating valid reasons, the application the Petitioner has been rejected and refused to grant licence to the Petitioner to use the said land as a burial ground. Therefore, the said order is perfectly in order and it does not call for any interference by this Court and prayed for dismissal of the Writ Petition.

5.The point for consideration that arose for consideration in this Writ Petition is whether the order impugned herein suffers from lack of sufficient reasons and whether it is in order?

6.The learned counsel for the Petitioner relying upon Rule 7(1) of the Tamil Nadu Village Panchayats(Provision of burial and burning grounds)Rules, 1999 which states that "***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 licensed as a burial and burning ground***". According to the Petitioner, there is no



WEB COPY

dwelling house or source of drinking water within a distance of 90 metres. The third respondent, without taking note of the ingredients of Rule 7(1) of the above said Rules, had passed an non-speaking order, without any survey being conducted by the official respondents to substantiate their rejection order, had rejected the claim made by the Petitioner. Further, the Petitioner has not been provided with an opportunity of hearing to putforth his case and an opportunity to place the relevant materials in support of his claim for using the said land as a burial ground.

7.A perusal of the impugned order passed by the third respondent shows that it is based on the objections of the farmers and other villagers, not to grant permission to use the said land as a burial ground in Plot Nos.202, 203 and 204 situated in S.No. 508/3, Vannikonendhal Village, Maanur Taluk. But the said order did not disclose the fact that the Petitioner has been provided with an opportunity of hearing to submit his explanation and to produce the relevant documents in support of the said claim,before passing such an order.

8.Therefore, we are of the view that based on the objections



WEB COPY

of the farmers in the said locality, the third respondent had passed an order rejecting the claim made by the Petitioner. The third respondent ought to have granted an opportunity to the Petitioner and to produce the relevant documents in support of their claim before passing such an order. We, therefore, satisfied that the order impugned herein is passed by the third respondent without providing an opportunity of hearing to the petitioner and as such, the impugned order is liable to be set aside and accordingly, this Court passes the following order:

(1)the order impugned in this Writ Petition, dated Nil, passed by the third respondent is hereby quashed;

(2)the third respondent/Panchayat President is directed to furnish the copy of the order to the Petitioner within a period of two weeks from the date of receipt of a copy of this order;

(3)the third respondent is further directed to furnish the copy of any other documents, if any, available with him.

(4)On receipt of the above said documents, the Petitioner is



WEB COPY

directed to submit his explanations to the third respondent within a period of four weeks from the date of receipt of such documents;

(5)further, the Petitioner is directed to approach the Tahsildar, Maanur Taluk, Tirunelveli District to survey of the land in question with the help of a qualified Surveyor to survey the said land and also regarding the distance of the Petitioner's land from the nearby dwelling houses, drinking water tank, public park and Anganwadi Centre and the report of the Tahsildar shall also be furnished to the third respondent/Panchayat President;

(6)the report of the Tahsildar, Manur Taluk, Tirunelveli District shall be furnished to the Petitioner at the earliest, without any delay;

(7)the third respondent/Panchayat President shall also made a request to the Tahsildar, Manur Taluk, Tirunelveli District to measure the property in question to ascertain the distance of the aforesaid place from the dwelling house, publi park, Anganwadi Centre and Drinking Water tank, as per the provisions contained in Rule 7(1) of the Tamil Nadu Village Panchayats(Provision of burial



and burning grounds) Rules, 1999 and to take a decision in this regard;

(8) the third respondent/Panchayat President is directed to consider the report of the Tahsildar, Manur Taluk, Tirunelveli District and the explanation offered by the Petitioner, the objections from any quarters of the village ie., farmers or any other public and the same has to be considered and to pass appropriate orders, as early as possible, preferably within a period of two weeks from the date of receipt of above documents.

(9) the third respondent/Panchayat President is also directed to provide an opportunity of hearing to all the interested parties in the subject-matter in issue, before passing the final order.

9. With the above directions, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

**[D.K.K.,J.]                      [L.V.G,J.]**  
**15.02.2023**



Index:Yes/No  
Internet:Yes/No  
NCC:Yes/No

vsn

To

- 1.The District Collector,  
Tirunelveli District,  
Tirunelveli.
- 2.The Block Development Officer,  
Manur Taluk,  
Tirunelveli District.
- 3.The President,  
Vannikonendhal Panchayat,  
Tirunelveli District.
- 4.The Tahsildar,  
Manur Taluk,  
Tirunelveli District.



WEB COPY



**D.KRISHNAKUMAR, J.**

**AND**

**L.VICTORIA GOWRI, J.**

vsn

**ORDER MADE IN**

**W.P(MD)NO.1017 OF 2022**

**and**

**W.M.P(MD)No.856 of 2022**

**15.02.2023**