



W.P(MD)No.15394 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.15394 of 2023

Parvathi

... Petitioner

Vs.

- 1.The District Collector,
Tenkasi District,
Tenkasi.
- 2.The District Revenue Officer,
Tenkasi District,
Tenkasi.
- 3.The Revenue Divisional Officer,
Tenkasi,
Tenkasi District.
- 4.The Tahsildar,
Sivagiri Taluk,
Tenkasi District.
- 5.The Block Development Officer,
Vasudevnallur Panchayat Union,
Tenkasi District.
- 6.The President,
Ramanthapuram Village Panchayat,
Vasudevanallur Panchayat Union,
Tenkasi District.

7.Paul Androse

... Respondents



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PRAYER :-

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Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 3 and 4 to take necessary steps to exhume the body of Gana Soundaraja Shellappa, S/o.Gurusamy and bury it in the common burial ground in view of representation dated 24.04.2023 within the stipulated time.

For Petitioners : Mr.M.Jothi Basu
Advocate.

For R1 to R4 : Mrs.D.Farjana Ghoushia
Special Government Pleader

For R5 and R6 : Mr.P.Subbaraj
Special Government Pleader

ORDER

The writ petition has been filed in the nature of a mandamus seeking a direction to the respondents 3 and 4 namely the Revenue Divisional Officer, Tenkasi and Tahsildar, Sivagiri in Tenkasi District, to take necessary steps to exhume the body of Gnana Soundaraja Chellappah, S/o.Gurusamy and bury it in a common burial ground. The Petitioner had given a representation on 24.04.2023. The aforementioned Gnana Soundaraja Chellappa is the father of the seventh respondent herein. The writ petition is disposed of even without issuing notice to the seventh respondent.



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2. The grievance of the petitioner is that she is the neighbour of the seventh respondent. The father of the seventh respondent died on 22.02.2023 according to the affidavit, and on 22.03.2023, according to the proceedings of the fourth respondent / Tahsildar. At any rate, the father died. After about 2 days of mourning, the seventh respondent had apparently buried the body in their own backyard. The petitioner is deeply aggrieved by that. Since as neighbour, she was of the apprehension that since a dead body was buried next door, her peaceful enjoyment of her property is affected. In this connection, she had given a representation to the respondents to exhume the body and to bury it in the burial ground. A reply had been given by the fourth respondent/ Tahsildar, who had after making due enquiry stated that the seventh respondent had buried his father's body in his own house and had given an undertaking that he would not put up a stone in that said place.

3. However, learned counsel for the petitioner had widened the scope of the writ petition, by placing reliance on the rules, particularly the Tamil Nadu Village Panchayat (Provisions of Burial and Burning Grounds) Rules, 1999. The learned counsel stated that every burial and burning ground should be registered in accordance with Rule 4. If any person wants to use that particular place as a burying or burning place of dead bodies, then he must apply for permission and register the said place. Rule 5 relates to opening of burial and



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burning grounds and the conditions thereof. Rule 6 relates to maintenance of registers. Rule 7 relates to the place for burial and burning grounds. Rule 7(1) states that no person shall bury or burn any corpse in any place within 90 meters of a dwelling place or source of drinking water supply other than a place licensed as a burial and burning ground.

4. It had also been stated that information must be given of every burial at a place. It had also been stated that there must be previous sanction of the Assistant Director (Panchayats) of such burial or burning of the corpse. It had also been stated that if anybody contravenes any of these provision, then they shall be punishable with fine and the quantum has also been given. It had also been provided that no prosecution shall be instituted for contravention of any of the provisions without written sanction for Executive Authority of the village panchayat concerned.

5. It is thus seen that, if according to the petitioner, the seventh respondent had unlawfully and to the detriment of the petitioner, buried his father's body in his own place, then the petitioner also should take recourse to the rules and give necessary complaint and seek prosecution of the said seventh respondent. They are separate proceedings by themselves. For prosecution, previous sanction of the Executive Authority of the village panchayat, is



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required. That procedure will have to be gone through. Thereafter a finding will have to be given that this particular burial, was in contravention of the rules. After obtaining such an order alone can any further relief be sought for exhumation of the body. Filing a representation without seeking prosecution or before getting any order that the seven respondent had been actually prosecuted of an offence, for contravention of aforementioned rules, and seeking exhumation of the body is not the proper step. The Court cannot presume that there has been contravention of the Rules. The petitioner should proceed in manner known to law, get necessary orders, relating to violation or contravention of the aforementioned rules and official authorities must acknowledge that there has been contravention of the rules and thereafter seek further relief as sought in this writ petition. The writ petition is pre-mature. Liberty is given to the petitioner to proceed in the manner known to law in accordance with rules and thereafter seek further remedy.

6. Giving that particular remedy to the petitioner herein, this writ petition is disposed of. No costs.

28.06.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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C.V.KARTHIKEYAN, J.

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To

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