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WP(MD)Nos.17424 of 2022 & 1809 & 18899 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)Nos.17424 of 2022 &1809 and 18899 of 2023 &
WMP(MD)Nos.15697 and 1602 of 2023**

WP(MD)No.17424 of 2022

Fathima

... Petitioner

Vs

- 1.The District Collector,
Office of the District Collector,
Trichy District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Srirangam, Trichy.
- 3.The Tahsildar,
Office of the Tahsildar,
Manapparai, Trichy District.
- 4.The Superintendent of Police,
Office of the Superintendent of Police,
Trichy District.
- 5.The Inspector of Police,
Puthanatham Police Station,
Trichy District.
- 6.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakkathi Nagar, Chennai.



7. The Superintendent of Waqf,
Office of the Waqf Superintendent,
No.8/124, 2nd Floor,
Quide – Millath Road, Palakkarai, Trichy.

8. Rahmathullah,
The President,
Ahle Sunnathwal Jamath Palliwasal,
Puthanatham, Manapparai Taluk,
Trichy District.

9. Syed Mohamed Rabeek,
The Secretary,
Ahle Sunnathwal Jamath Pallivasal,
Puthanatham, Manapparai Taluk,
Trichy District.

10. Shaj Mohamed,
The Treasurer,
Ahle Sunnathwal Jamath Pallivasal,
Puthanatham, Manapparai Taluk,
Trichy District.

11. The Secretary to Government,
Municipal Administration,
Chennai.

12. The Secretary to Government,
Rural Development Department,
Chennai.

... Respondents

[R11 and R12 are impleaded vide order dated 29.09.2023]

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondent No.1 to 7 to conduct enquiry based on the petitioner's representation dated 25.04.2022 and take



necessary action against respondents No.8 to 10 in respect of ex-communication of the petitioner's husband and her family and also not permitted to bury the dead body of her husband died on 21.02.2022 in the Ahle Sunnathwal Jamath Pallivasal, situated at Puthanatham, Manapparai Taluk, Trichy District.

For petitioner : Mr.Balaji.A
For Respondent : Ms.D.Farjana Ghousia,
Nos.1 to 3,11 & 12 Special Government Pleader
For Respondent : Mr.P.Kottaichamy,
Nos.4 and 5 Government Advocate
For Respondent : Mr.S.A.Ajmal Khan
No.6
For Respondent : Mr.S.Chandrasekar
Nos.8 to 10
For Respondent : No appearance
No.7

WP(MD)No.1809 of 2023

A.Mohamed Rabeek Raja

... Petitioner

Vs

- 1.The District Collector,
Office of the District Collector,
Trichy District.
- 2.The Superintendent of Police,
Office of the Superintendent of Police,
Trichy District.
- 3.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Manapparai Sub-Division, Trichy District.
- 4.The Inspector of Police,
Office of the Inspector of Police,
Puthanatham Police Station,
Trichy District.



5.R.Rahumathullah,
The President,
Ahle Sunnathwal Jamath Palliwasal,
Puthanatham Post, Manapparai Taluk,
Trichy District.

6.Nijamudeen

7.Arif

8.Syed Jaffar Ali

9.The Chief Secretary,
Tamil Nadu Wakf Board,
Vallal Seethakathi Nagar,
Chennai.

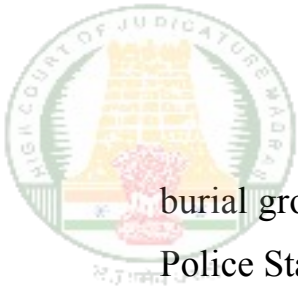
10.The Secretary to Government,
Municipal Administration,
Chennai.

11.The Secretary to Government,
Rural Development ,
Chennai.

.... Respondents

[R-9 is *suo motu* impleaded vide Court Order dated 28.01.2023 and R-10 and R-11 are *suo motu* impleaded in WP(MD)No.1809 of 2023]

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondent No.1 to permit the petitioner and his family members to execute burial of the deceased father namely Abubakkar, son of Kuppai Pitchai Rawuthar aged 70 years following their faith from Quaran and Hadees and offering prayers in their own Thowheed Jamath



burial ground in respect of Survey No.272/7B situated at backside to Puthanatham Police Station, Manapparai Taluk, Trichy District which is used as burial ground to bury their members and consequently direct to provide adequate protection to the petitioner and his family members.

For petitioner : Mr.Jinnah. S.M.A
For Respondent : Ms.D.Farjana Ghousia,
Nos.1, 10 & 11 Special Government Pleader
For Respondent : Mr.P.Kottaichamy,
Nos.2 to 4 Government Advocate
For Respondent : Mr.V.Janaki Raman
No.5
For Respondent : Mr.V.Nagendiren
Nos.6 and 7
For Respondent : No appearance
Nos.8 and 9

WP(MD)No.18899 of 2023

Mohamed Rashith

... Petitioner

Vs

- 1.The District Collector,
Office of the District Collector,
Trichy District.
- 2.The Superintendent of Police,
Office of the Superintendent of Police,
Trichy District.
- 3.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Manapparai Sub-Division,
Trichy District.



WP(MD)Nos.17424 of 2022 & 1809 & 18899 of 2023

4. The Inspector of Police,
Office of the Inspector of Police,
Puthanatham Police Station,
Trichy District.

5. M.K. Sahul Hameed
The Secretary,
Ahle Sunnathwal Jamath Palliwasal,
Puthanatham, Manapparai Taluk,
Trichy District.

6. UPM. Rahmathullah

7. Arif

8. Nijamudeen

9. Syed Jaffar Ali

10. The Superintendent of Wakf,
Trichy Wakf Board, Trichy,

11. The Secretary to Government,
Municipal Administration,
Chennai.

12. The Secretary to Government,
Rural Development ,
Chennai.

.... Respondents

[R-10 is *suo motu* impleaded vide order dated 04.08.2023 and R11 and R12 are impleaded vide order dated 29.09.2023 in WP(MD)No. 18899 of 2023 and WMP(MD)No.15697 of 2023]

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondent No.1 to permit the



petitioner and his family members to execute burial of the petitioner's deceased father namely one Sikkandar Bathusha, son of Pitchaikani aged 52 years following their faith from Quran and Hadees and offering prayers in their own Thowheed Jamath burial ground in respect of Survey No.272/7B situated at backside to Puthuanatham Poilce Station, Manapparai Taluk, Trichy District Which is used as a burial ground to bury their members and consequently direct to provide adequate protection to the petitioner and his family members.

For petitioner : Mr.S.Mohamed Ali Jinnah
For Respondent : Ms.D.Farjana Ghousia,
Nos.1,11 & 12 Special Government Pleader
For Respondent : Mr.P.Kottaichamy,
Nos.2 to 4 Government Advocate
For Respondent : Mr.Mr.S.Chandrasekar
Nos.5 and 6
For Respondent : Mr.V.Nagendiren
Nos.7 and 8
For Respondent : No appearance
Nos.9 and 10 : Mr.T.Lajapathi Roy,
Senior Counsel, Amicus Curie

COMMON ORDER

The writ petition in WP(MD)No.18899 of 2023 is filed seeking a direction to bury the deceased one Sikkandar Bathusha, petitioner's father, who died on 01.08.2023. The petitioner appears to be the follower of the Tamil Nadu Thowheed Jamath. The respondent No.5, Ahle Sunnathwal Jamath is maintaining



a common burial ground for Muslims at Puthanatham Village. The Sunnathwal Jamath is adopting a different practice. Subsequent to the interim order of this Court in this writ petition, the body of the petitioner's father was buried in the Sunnanthwal burial ground.

2.During the course of hearing it was reported that two other similar writ petitions are pending before this Court in WP(MD)Nos.1809 of 2023 and 17424 of 2022 and therefore, this Court by order dated 18.08.2023 has directed to post all these three writ petitions together for hearing.

3.The writ petition in WP(MD)No.17424 of 2022 is filed for a direction to the respondents 1 to 7 to take action against the respondents 8 to 10 for ex-communicating the petitioner's husband and her family and also for not permitting to bury the dead body of her husband in their own burial ground, based on the petitioner's representation dated 21.02.2022.

4.The writ petition in WP(MD)No.1809 of 2023 is filed for a writ of mandamus directing the respondent 1 / the District Collector to permit the petitioner and his family members to bury the body of his father in Thowheed Jamath burial ground.



5.The respondents have also filed their counter affidavits in all the writ petitions objecting the claim of the petitioners on the ground that the Thowheed Jamath and the Ahle Sunnathwal Jamath are following different customs and therefore the petitioners are not having any right to bury the deceased bodies in the burial ground being maintained by the Ahle Sunnathwal Jamath Pallivasal.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.Admittedly the Thowheed Jamath and The Sunnathwal Jamath are two inter-religious sects. Both these Jamaths are having their own customs and practise. There is a common burial ground in the area maintained by the Sunnathwal Jamath. The petitioners are members of the Thowheed Jamath and they are having separate burial grounds in S.No.272/7B. However, this burial ground cannot be used because of the objections of the nearby residents on the ground that it is very near to their residence.

8.The 1st respondent District Collector has filed his counter affidavit in WP(MD)No.18899 of 2023 stating that one Inthris, son of Ibrahim who followed



the faith of Thowheed Jamath died on 21.02.2022. At the time of his burial in the common burial ground maintained by the Sunnath Jamath, they seriously objected that they could not bury the body as per the prayer and rituals of Thowheed Jamath. Therefore a peace committee meeting was conducted on 22.02.2022 at Puthanatham Police Station in the presence of the Additional Superintendent of Police, Tiruchirappalli District. The Muslims belonging to the Thowheed Jamath insisted to bury the dead body in a land purchased by them, bearing S.F.No.272/7B. On 26.02.2022 another peace committee meeting was conducted in the Taluk Office at Manapparai headed by the Tahsildar on 26.02.2022 and it was resolved that at the time of burying a dead body in the common burial ground maintained by Sunnath Jamath offering of prayer and rituals of Sunnath Jamath should be followed. But the same was not accepted by the Muslims belonging to the Thowheed Jamath and they boycotted the peace committee meeting. Thereafter on 15.03.2022 a peace committee meeting was again convened by the Revenue Divisional officer, Srirangam and it was resolved that at the time of burying a dead body in the common burial ground maintained by Sunnath Jamath offering of prayer and rituals of Sunnath Jamath should be followed, but the people of Thowheed Jamath did not accept the decision of the Revenue Divisional Officer, Srirangam and they preferred an appeal before the District Collector,



Tiruchirappalli and as such, on an enquiry the District Collector, Tiruchirappalli directed the Muslim people of Thowheed Jamath to approach the Tamil Nadu Waqf Board to redress their grievances.

9.It is further stated in the counter that one Umath Salma, wife of Abdul Samath, who followed the faith of Thowheed Jamath died on 13.06.2022. Regarding the burial of the dead body, a peace committee meeting was conducted on the same day at Puthanatham Police Station, but no amicable solution was reached. Therefore on 14.06.2022 another peace committee was convened by the Tahsildar, Manapparai, wherein the representatives of Sunnathwal Jamath, Thowheed Jamath and the Waqf Board have participated, wherein it was decided to follow the order of this Court passed in WP(MD)No.12019 of 2022 dated 14.06.2022. The said writ petition was filed by another son of the deceased Umath Salma by name Sheik Abdulla. But the people of Thowheed Jamath did not accept the decision. Then on the same day the District Revenue Officer, Tiruchirappalli conducted an enquiry in Manapparai Taluk Office, but all ended in vain. However, the body of Umath Salma was brought to Madurai by her sons and relatives and was buried in Madurai.



10. This Court in a similar situation in WMP(MD)No.1602 of 2023 in

WP(MD)No.1809 of 2023 by order dated 28.01.2023 has passed the following order:

“The last remains of the deceased Abubakkar should be buried at the Sunnathawal Jamath Pallivasal maintained by the Wakf Board. One cannot force a ritual upon another, when that individual does not have faith in that ritual. In this case, the members of the petitioner's family has been following the rituals prescribed by the Thowheed Jamath. Unfortunately, the only burial ground available at Puthanatham Village for Muslim Community is the burial ground maintained by the Sunnathawal Jamath Pallivasal, which is under the control of the Wakf Board. All the rituals that are to be performed before the burial shall be carried on at the Thowheed Jamath where the body is kept and the burial alone shall be made at the burial ground of the Wakf Board maintained by the Sunnathawal Jamath Pallivasal. The petitioner shall conduct himself that no untoward incident take place. The second respondent, through the third respondent, shall take all necessary precautions and provide police protection to carry out the burial as directed above.”

11. The District Collector has taken a stand that the issue regarding the burial of dead bodies in the above common burial ground creates frequent law and order problem in the locality. Since the two groups of people are adopting different type of prayers and rituals for burial of a dead body, it is necessary that the interference of Tamil Nadu Waqf board would bring permanent and peaceful solution in this



issue to avoid any law and order problem in the future regarding the dispute of burial of dead bodies in the common Sunnathwal Jamath burial ground situated in Natham Survey No.559/30 at Puthanatham village.

12.The 5th respondent in WP(MD)No.18899 of 2023 has filed a common counter affidavit for all the writ petitions stating that these writ petitions are filed by the members of the Tamil Nadu Thowheed Jamath and this Jamath is of a recent origin, whereas the 5th respondent Jamath is a 200 years old Jamath following 1400 years of old customs and usage. The ancestors of the writ petitioners were the member of their Jamath. Each Jamath propagates their own ideology and having separate Mosques for their worship and separate burial grounds for each Jamath. The Thowheed Jamath is also having a separate burial ground. The writ petitioners are not the members of the 5th respondent Sunnathwal Jamath and therefore, they cannot claim it as a matter of right to bury the members of Thowheed Jamath in the Sunnathwal Jamath burial ground.

13.The 5th respondent further claims that the customs of burial of corpse in the burial ground of Sunnathwal Jamath, are that the family members of the deceased must inform the death of their deceased family members and get permission from the respondent's Jamath for burial of corpse. The respondent's



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Jamath will send their own persons to take the wooden infrastructure from their Jamath to the place of the dead, the details of the death of the deceased, the name of the deceased, relationship, date and time of burial will be announced through a speaker kept in the pallivasal and those details will also be displayed in their notice board and maintain a public record for transparency. No such transparent procedure is followed in the Thowheed Jamath. Before such burial the Chief Imam of the pallivasal will worship the corpse in the Kabarsthalam and joint prayers will be performed twice in the pallivasal by chanting Dua and after following such procedures as per the customs and usage, the body will be buried. Whereas the Thowheed Jamath simply takes the corpse with the married women and women folks to the burial and bury the corpse, which is totally against the customs and usage hitherto followed in the village and the members of the Sunnathwal Jamath. Further with regard to the allegations of ex-communication levelled in WP(MD)No.17424 of 2022 are concerned since the writ petitioner and the family members joined Thowheed Jamath disconnecting from the Sunnathwal Jamath, they have to get the benefit from their Jamath and they cannot claim it from the 5th respondent Jamath. The Thowheed Jamath is not registered under the Wakf Act, 1995. If the writ petitioner is having any grievance, she has to agitate the grievance only before the Tamil Nadu Wakf Board.



14.The 5th respondent has referred to the order of this Court passed in

WP(MD)No.12019 of 2022 dated 14.06.2022, wherein it has been held as follows:

“3.Mr.N.Mohideen Basha, learned Standing Counsel, who accepts notice on behalf of the respondents 1 to 3, referred to the Revenue Divisional Officer-s Report, in Na.Ka.No.A1/1056/2021, dated 15.03.2022, wherein, the dispute between the two groups has been recorded and due to the different dispute, there have been commotion and law and order issue. Thereafter, it was resolved before the Revenue Divisional Officer and all the Islam people, members of Pallivasal, are permitted to offer prayers and to bury the dead bodies of their people by following their customs in usage in the Ahle Sunnathwal Jamath Pallivasal, Puthanatham. If the petitioner is agreeable to the same, he should not create any law and order problem or involve any commotion.

4.The petitioner undertakes in his affidavit that there will not be any commotion and they will follow the customs in usage of the Mosque and bury their mother-s dead body in a peaceful manner.”

15.Since this Court by interim order has already permitted the burial of the dead bodies, the relief sought for by the petitioners in these writ petitions no



longer subsists in these writ petitions. It is very unfortunate that even after 75 years of independence, we are not having any common burial grounds irrespective of the religion, caste, etc., Separate burial grounds are maintained for Hindus, Christians and Muslims. Among Hindus, there are separate burial grounds for schedule caste and separate burial grounds for other castes. A similar condition is prevailing in other religions as well. As per Article 25 of the Constitution, all persons are equally entitled to freedom of conscience and right freely to profess, practice and propagate religion. As per Clause (b) of Article 26 subject to public order, morality and health every religious denomination or any section thereof shall have the right to manage its own affairs. But the same is not an absolute right subject to public order, morality. If the dead body is not allowed to be buried in time, it affects the dignity of the body and also causes health hazard. The Hon'ble Apex Court in ***Mohammad Latief Magrey's Vs The Union Territory of Jammu and Kashmir and Ors*** reported in 2022/INSC/949. Further a Division Bench of this Court in WP(MD)No.8310 of 2018 [decided on 25.11.2022] held that the right to accord a decent burial or cremation to the dead body of a person should be taken to be part of the right to such human dignity.



16. There is no proper legislation for burial. The Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999 is the only rule available governing this issue. This rule has been framed under the Tamil Nadu Panchayat Act and this Rule authorises the village panchayat to grant license for opening burial ground. Rule 7(1) of the said Rule prohibits the burial of any corpse within 90 metres of a dwelling place of drinking water supply other than a place licensed as a burial ground. Rule 7(7) imposes a punishment for any contravention of these rules to an extent of penalty of 100 rupees and additional fifteen rupees for continuous breach after conviction of the first breach. This rule has not addressed the other issues which was projected in this writ petition. This rule was amended in the year 1999 and no further amendments have been made. Most of the burial grounds are not having proper road facilities crossing the water and so many other difficulties. Incidents of preventing a body to be taken on a particular road are also reported. If the dead bodies are not allowed to be buried on account of some customs or practice, it is unimaginable what would be the agony of the bereaved family. Any dead body will start to decay within 24 hours. If the bereaved family is driven to file a writ petition to get a permission for burial, it is a sad state than the demise and this needs to be addressed by the Government.



17. Therefore, this Court *suo motu* impleads the Secretary to Government, Municipal Administration and the Secretary to the Government, Rural Development as a party to these writ petitions and direct the learned Special Government Pleader to take notice for the newly impleaded respondents. The newly impleaded Secretaries have to be address this issue by enacting a comprehensive legislation and shall ensure that all are treated equally disregarding to their belief and customs.

18. The Tamil Nadu Waqf Board shall make an interim arrangement pending the legislation from the Government and shall ensure that no grieved family is driven to knock at the doors of the Courts any further in future.

19. These writ petitions are disposed of in the above terms. No costs. Consequently connected miscellaneous petitions are closed.

29.09.2023

dsk
Index: Yes / No
NCC: Yes / No.
To

1. The District Collector,
Trichy District.



WP(MD)Nos.17424 of 2022 & 1809 & 18899 of 2022

2. The Revenue Divisional Officer,
Srirangam, Trichy.

3. The Tahsildar,
Manapparai, Trichy District.

4. The Superintendent of Police,
Trichy District.

5. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Manapparai Sub-Division, Trichy District.

6. The Inspector of Police,
Puthanatham Police Station,
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Tamil Nadu Waqf Board,
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No.8/124, 2nd Floor,
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B.PUGALENDHI, J.

dsk

**WP(MD)No.17424 of 2022 and
WP(MD)Nos.1809 and 18899 of 2023**

29.09.2023