



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27625 of 2023

and

W.M.P(MD)No.23735 of 2023

S.Jamal Mohideen

... Petitioner

v.

1.The District Collector,
Tirunelveli District.

2.The Superintendent of Police,
Tirunelveli District.

3.The Superintendent of Wakf,
Tirunelveli District.

4.The Inspector of Police,
Pathamada Police Station,
Tirunelveli District.

5.Syed Meeran

6.The Tamil Nadu Wakf Board,
Rep.by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
George Town, Chennai – 600001.

... Respondents

(6th respondent is suo motu impleaded
vide order dated 20.11.2023)



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the first respondent to permit the petitioner and his family members to execute burial of petitioner's deceased wife namely J.Habiba Beevi, wife of S.Jamal Mohideen aged 51 years following fait from Quran and Hadees in the common burial ground belongs to the first respondent at Malukka Maliyar Sunnathwal Jamath, Pathamadai & Kesavasamuthiram, Pathamadai Taluk, Tirunelveli District.

For Petitioner : Mr.SMA.Jinnah

For Respondents : Mr.K.Balasubramani

Special Government Pleader for R1

Mr.A.Albert James for R2, R4

Mr.S.A.Ajmal Khan for R3 and R6

ORDER

Heard both sides.

2.The writ petitioner's wife passed away last evening. The only question that calls for consideration is the manner of burial of her body. Dispute has arisen because the petitioner belongs to Tamil Nadu Thowheed Jamaat. The "Kabristhan" is run and managed by Sunnat – ul- Jamaat. The members of Thowheed Jamaat and Sunnat – ul – Jamaat disagree on the rites and customs to be followed at the time of burial. The jurisdictional police



convened peace meeting but the issue could not be resolved. The writ petition was taken up by way of lunch motion. The fifth respondent could not be served notice. However, the local police facilitated conversation with him over WhatsApp. Considering the urgency, I am not in a position to go into the merits of the matter. The counsel for the petitioner relied on certain earlier orders and insisted that interim direction can be given for burial in the "Kabristhan" maintained by the fifth respondent. I am not inclined to accept the said request. Granting interim relief will amount to allowing the main writ petition itself. That cannot be done without formal notice being served on the fifth respondent. It would not be proper on the part of the writ court to ride roughshod over the customs and practices traditionally followed by the fifth respondent. I, therefore, relegate the matter to the Tamil Nadu Wakf Board. I am conscious that the Wakf Board had already passed a resolution mandating that the facility of burial should not be denied. In this case, the fifth respondent is not refusing the burial facility. He is only insisting that the traditional practice should be followed. In fact, the father of the deceased is also a member of the Sunnat-ul-Jamaat. The jurisdictional police also state that in the peace meeting, members of the Sunnat-ul-Jamaat from Tirunelveli Town are only present. In Pathamadaai Village, more than thousand families of Sunnat-ul-Jamaat are present. It is for this reason that I decline to go into the merits of the matter today itself. Since the learned counsel for the petitioner



is insisting on a disposal, I direct the Chief Executive Officer of the Tamil Nadu Wakf Board to take a call in the matter tonight itself. He shall have a virtual conference over Zoom or WhatsApp with the writ petitioner, the fifth respondent and render his decision in writing. It shall be communicated through e-mail or any other mode. He can seek the assistance of revenue and police authorities. Section 50(2) of the Wakf Act, 1995 states that it shall be the duty of every Mutawalli to carry out the directions of the Board. I am conscious that the Chief Executive Officer cannot be equated with the board. But in the special facts and circumstances of the case, the Chief Executive Officer of the Board shall take a call in the matter.

3.This writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

20.11.2023

Index : Yes / No
Internet : Yes/ No
skm

To

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- 2.The Superintendent of Police, Tirunelveli District.



3.The Superintendent of Wakf,
Tirunelveli District.

4.The Inspector of Police,
Pathamadaai Police Station,
Tirunelveli District.

5.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sarang St,
Vallal Seethakathi Nagar,
Seethakadi Nagar, George Town,
Chennai – 600001.



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G.R.SWAMINATHAN, J.

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