



W.P(MD)No.30053 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 15.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.30053 of 2023

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... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District.
- 2.The Revenue Divisional Officer,
Nagercoil, Kanyakumari.
- 3.The Tahsildar,
Agastheeswaram Tauk,
Kanyakumari.
- 4.The Superintendent of Police,
Kanyakumari District..
- 5.The Inspector of Police,
Manavalakurichi Police Station,
Kanyakumari District.
- 6.Rev. Fr. Jegan,
Parish Priest,
Parish House,
Punitha Valanar Church,
Pillaithoppu, Azhikal,
Kanyakumari – 629 202.



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7. Antony,
Vice President,
Punitha Valanar Church,
Punitha Valanar Church,
Pillaithoppu, Azhikal,
Kanyakumari – 629 202.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondents herein to exhume and bury the petitioner's wife in the cemetery belonging to the Punitha Valanar Church, Pillaithoppu with full customary rites along with appropriate action against the 6th and 7th Respondents for their inhumane acts.

For Petitioner : Mr.Niranjana S.Kumar

For Respondents : Mr.M.Sidharthan,
Addl. Government Pleader for R1 to R3.
Mr.A.Albert James,
Govt. Advocate (Crl. Side) for R4 & R5.

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the respondents 1 to 3 and the learned Government Advocate (Crl. Side) for the respondents 4 and 5.



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2.The writ petitioner's wife / Revitha passed away on 14.12.2023.

The petitioner is a member of Punith Valanar Church, Pillaitoppu, Azhikal, Kanyakumari District. It appears that the petitioner's brother-in-law is having some civil dispute with the sixth respondent, who is the parish priest. Citing this dispute, the sixth respondent had refused to perform the final rites and also permission to bury the dead body in the cemetery attached to the church premises.

3.Last evening, the learned counsel made a mention for emergent listing of this case. I permitted the learned counsel to move this case by way of lunch motion at 01.00 pm. I directed the learned counsel to inform the sixth respondent. The learned counsel for the petitioner had sent WhatsApp message to the sixth respondent setting out the details. The learned Additional Government Pleader also informs this Court that the sixth respondent had been duly intimated about the listing of this case. However, the sixth respondent has not chosen to enter appearance.

4.When the matter was taken up for hearing, the learned Additional Government Pleader submitted that the dead body had been buried in the



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patta land in S.No.455/2A. The petitioner is present in person. I wanted to know if the said assertion is true.

5.The learned counsel for the petitioner submitted that since the sixth respondent has refused to extend his cooperation under police escort the dead body was taken to the neighbouring church. There also permission was refused. The petitioner was told that unless the issue involving the sixth respondent is amicably settled, it is not possible to permit burial of the body in the church cemetery. Therefore, the dead body was brought back by the petitioner. The petitioner also stated that he was coerced by the administration to bury the body in the patta land.

6.The Hon'ble Full Bench in the decision reported **2023 (4) CTC 481 (Jagadheeswari v. B.Babu Naidu)** had held that a dead body can be buried or cremated only in a notified cremation ground or burial ground. Admittedly, S.No.455/2A is not a notified burial ground. Therefore, the case put forth by the petitioner stands probalilized. The learned counsel went on to state that only by way of adhoc arrangement, burial was made.



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In any event, the petitioner as a believer and practicing Christian is entitled to bury his wife's dead body as per Christian rites and customs.

7.It is well settled that right of dignity is extended even to dead persons. The sixth respondent cannot refuse burial in this case. That would be both illegal and unconstitutional. Article 25 of the Constitution of India will definitely come into play. The Hon'ble Supreme Court in the decision reported in **1989 Supp (1) SCC 251 (Ramsharan Autyanuprasi v. Union of India)** had held that a deceased person has a right to a decent burial and cremation and that right to dignity under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death. The Hon'ble Kerala High Court in the decision reported in **2016 SCC OnLine Ker 30218 (M.R. Sasidharan v. State of Kerala)** held as follows:-

“11. It is also relevant in this context to note some of the case laws on the subject. This Court in the ruling in Vareed Porinchukutty v. State of Kerala reported in 1971 KLT 204 has held that practices which are regarded by the community as part of its religion are also matters of religion and that among most of the Hindus disposal of the dead is



effected by cremation, but among Muslims, Jews and Christians, it is done by burial and right to bury dead bodies in a particular manner with particular rites and ceremonies in consecrated places is part and parcel of the practice of certain religions. That among Christians, while rites at the time of burial consists in services expressed in words, ceremonies consist in gestures or acts preceding, accompanying or following those words and that Catholics believe in the immortality of the soul and resurrection of the body and the practice of burying dead bodies with certain rites and ceremonies is an integral part of the faith and in burying dead bodies in consecrated places, they only exercise their fundamental right under Article 25 of the Constitution of India regarding practice of religion. It may be pertinent to refer to Paragraph 22 of the said ruling reported in 1971 KLT 204, which reads as follows:

“22. Practices which are regarded by the community as part of its religion are also matters of religion. Among most of the Hindus disposal of the dead is effected by cremation but among Muslims, Jews and Christians it is done by burial. Right to bury dead bodies in a particular manner with particular rites and ceremonies in consecrated places is part and parcel of the practice of certain religions. Among Christians while rites at the time of burial consist in services expressed in words ceremonies consist in gestures or acts preceding, accompanying or following those words. Catholics, it is admitted that members of the A Party are Catholics, believe in the immortality of the soul and resurrection of the body. The practice of burying dead bodies with certain rites and



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ceremonies is an integral part of the Catholic faith. In burying dead bodies in consecrated places they only exercise their fundamental right regarding practice of religion.”

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18. The Madras High in the case S. Sethu Raja v. Chief Secretary, Govt. of Tamil Nadu reported in (2007) 5 MLJ 404, has held in para 18 that by our tradition and culture, the same human dignity (if not more) with which a living human being is expected to be treated, should also be extended to a person, who is dead and the right to accord a decent burial or cremation to the dead body of a person, should be taken to be a part of the right to such human dignity.”

8. At the same time, it is not possible for this Court to issue any decree of specific performance against the sixth respondent. Certain functions cannot be ordered to be specifically performed. The case on hand is one such. The petitioner's brother is said to be an ordained catholic priest. He himself can very well perform the necessary prayers in the place where the petitioner's wife's dead body is kept. Thereafter, the coffin can be straightaway taken to the cemetery attached to the sixth respondent church and buried there. The petitioner as well as his brother



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can very well perform the prayers there and it will not be open to any person to stop the same. This is the minimum respect this Court can ensure for the dead person. I mandate the first and fourth respondents to ensure that the order of this Court is scrupulously carried out. It is their duty to ensure that the enforcement of this order is not prevented by any person.

9.The petitioner informs this Court that final rites will be carried out by him on 16.12.2023 from 10.00 am to 12.00 noon. The petitioner undertakes before this Court that he will chose a spot in the church cemetery that will not be controversial.

10.This writ petition is allowed on these terms. No costs.

15.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 15.12.2023 by 04.00 pm.



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G.R.SWAMINATHAN, J.

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