



W.P.No. 10337 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	05.09.2024
PRONOUNCED ON	25.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10337 of 2024

S. Jaya

.... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.

2. The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

3. The Additional Health Officer,
Greater Chennai Corporation,
General Health Department,
Ripon Buildings,
Chennai – 600 003.

4. The Zonal Officer,
Zone – 7, Chennai Corporation,
Ambattur, Chennai – 53.

5. The Deputy Director of Health Service,
(Public Health),
Krishnankoil @ Nagercoil,
Kanyakumari District.

.... Respondents



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Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in Na.Ka.No.14/0308/2024 dated 23.01.2024 and quash the same and direct the respondents to permit the petitioner to exhume the body of the petitioner's husband namely I.Austin buried at Ambattur Corporation graveyard within the 4th respondent zone and to rebury at his native place as per protestant Christian rites in the family graveyard located at New S.Nos.599/24, 25 & 26 (Vembadivillai), Kallukoottam Village, Kalkulam Taluk, Kanniyakumari District, at the cost of the petitioner forthwith.

For Petitioner : Mr.Ravikumar Paul
Senior Counsel
for Mr.P.Ebenezer Paul

For R1 & R5 : Mrs.M.Sneha
Special Counsel for Health Department

For R2 to R4 : Mr.P.T.Rama Devi
Standing Counsel

ORDER

This Writ Petition has been filed challenging the order passed by the third respondent dated 23.01.2024, thereby rejected the request made by the petitioner seeking permission to exhume the body of her husband buried at Ambattur Corporation graveyard to rebury at his native place as per protestant Christian rites.



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2. The petitioner's husband, while he was working as an Assistant in this Court, was affected with COVID-19. Immediately, he was admitted in the Government Rajiv Gandhi Hospital, Chennai. Unfortunately, due to heart attack, he died on 15.08.2020. His native place is Vembadivillai, Kallukootam Village, Kalkulam Taluk, Kanyakumari District and his entire family members are residing there. They have a common graveyard in their own land and the bodies of their family members were buried there. After demise of her husband, the petitioner sought for permission from the respondents to take his corpse to their native place for burial as per the last wish of the petitioner's husband. However, the petitioner was denied permission stating that the COVID-19 patients body cannot be carried to a long distance and that there is every possibility of spreading of the said virus. Therefore, without consent of the petitioner and her family members, her husband body was buried at Ambattur Corporation graveyard. During burial, the petitioner and her family members were not allowed to perform rituals/prayers in accordance with the Christian rites and customs. Therefore, it caused great hardship and irreparable pain to the petitioner and her family members.

3. In fact, after demise of petitioner's husband, her mother-in-law



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died on 28.05.2021 and her body was taken to their native place and buried there. Thereafter, the second and third waves of COVID-19 came and as such the petitioner did not seek any request to exhume and rebury her husband's corpse in their native place. Therefore she waited till recuperation of COVID-19 and made a representation on 12.01.2024 seeking permission to exhume her husband body and to rebury the same at their native place. It was rejected on the ground that there is no provision to exhume the buried body under law.

4. The learned Senior Counsel appearing for the petitioner would submit that the order impugned in this writ petition is clear violation of Articles 14, 21 and 25 of the Constitution of India. The petitioner and her family members were not allowed to perform rituals/prayers in accordance with the Christian rites, while burying her husband body. They have owned graveyard in their native place, in which, the bodies of her entire family members were buried for the purpose of subsequent prayers on every death anniversary. There is absolutely no prejudice would be caused to anybody if the body of petitioner husband is exhumed to rebury in their native place at her own cost. Now almost 4 years have completed from the date of burial. Therefore, only bone remains may be available and as such there is no possibility of any health hazard issue to anybody while exhuming the remains of the petitioner's husband



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body. He relied upon the Judgment of this Court in W.P.No.7620 of 2020 dated 31.03.2021. He also produced photographs showing that the graveyard in which the body of the petitioner's husband was buried is in a dilapidated condition and no one is there to maintain it. Therefore, the petitioner and her family members could not offer any prayer in the graveyard on the date of his demise.

5. The fourth respondent filed a counter and the learned Special Counsel appearing for the Health Department submitted that the petitioner's husband died due to COVID-19 on 15.08.2020 & therefore, the body of the petitioner's husband was not handed over to the petitioner or her family members. It was buried at Ambattur Corporation graveyard. After a period of four years, the petitioner submitted a representation seeking permission to exhume the body of her husband to rebury the same in their native place. There is no specific provision of law in India relating to the exhumation of the body except under Section 176(3) of Cr.P.C. Therefore, the request made by the petitioner was rejected. In support of his contention, she relied upon the Judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.6544 of 2022*** in the case of ***Mohammed Latief Magrey Vs. The Union of Jammu and***



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Kashmir, in which, the Hon'ble Supreme Court of India held that once the body was buried after performing all the rituals and prayers as per their religious rites and customs, the body should not be disturbed unless there is a strong showing of necessity that disinterment is within the interests of justice.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. In the case on hand, admittedly, the petitioner and her family members were not allowed to perform rituals/prayers while burying the body of her husband as per Christian rites. Of course, the petitioner's husband died due to COVID-19 and as such no one was allowed to do any last rites/prayers by touching the body during burial. In a similar nature, a person who died due to COVID – 19 was buried in a cemetery by observing the Christian ceremonies. In the Judgment relied upon by the learned Senior Counsel for the petitioner, this Court had held that Article 21 of the Constitution of India includes the right to have a decent burial. Further held that after considering the guidelines issued by the World Health Organization, it is clear that while burying the dead body, in the context of COVID-19, there is no evidence of a person having become infected from exposure to the bodies of the persons who died from



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COVID-19 and as such the persons who died due to COVID-19 can be buried or cremated. Therefore, this Court intends to set aside the order rejecting the request made by the petitioner for exhumation of her husband's body from Velangadu burial ground and rebury the same at their native place.

8. In the case on hand, now four years have lapsed after burial of the the petitioner's husband body who died due to COVID-19. Even as per the guidelines issued by the World Health Organization and the Scientific reports, there is no evidence of persons having become infected from exposure to the bodies of the person who died from COVID-19. Further, the people who died due to COVID-19 can be either buried or cremated. There is absolutely no health hazard issue or any legal impediment if the body of the petitioner's husband is exhumed in order to perform last rituals/prayers in accordance with Christian rites and customs. That apart, after four years, the remains of the body will only be bones. Therefore, it is easy to exhume the remains of the body of the petitioner's husband and it would not cause any health hazard issue. Further, due to COVID-19, the petitioner's husband was not given a decent burial as enshrined under Article 21 of the Constitution of India. The right to dignity and fair treatment under Article 21 of the Constitution is not only available to a living person but also to his body, after his death. This Court



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respects the emotions and sentiments expressed by the petitioner as the wife of the deceased. Therefore, the impugned order passed by the third respondent cannot be sustained and it is liable to be quashed.

9. Accordingly, the impugned order passed by the third respondent dated 23.01.2024 is hereby quashed. The second respondent is directed to permit the petitioner to exhume the body of the petitioner's husband viz., I.Austin, buried at Ambattur graveyard within the jurisdiction of the fourth respondent zone and to rebury the remains of her husband at their native place as per their rites in the family graveyard located at New S.Nos.599/24, 25 & 26 Vembadivillai, Kallukoottam Village, Kalkulam Taluk, Kanniyakumari District within a period of two weeks from the date of receipt of a copy of this order on condition that

(i) the exhumation will be done in the presence of the third and fourth respondents at the cost of the petitioner ;

(ii) the remains of the body of the petitioner's husband shall be taken to their native place in a sealed cover without causing any health hazard to anybody immediately after exhumation ;



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(iii) the exhumation of the petitioner's husband body shall be done

without causing any damage to the adjacent corpses ;

(iv) the exhumation shall be done with the aid of police protection to avoid law and order issue if any ;

(v) the fourth respondent shall ensure the correct graveyard of the petitioner's husband to be opened with the assistance of the petitioner.

10. In the result, this writ petition stands allowed. No costs.

25.09.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

Lpp

G.K.ILANTHIRAIYAN. J.

Lpp

To

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.

2. The Commissioner,
Greater Chennai Corporation,



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Ripon Building,
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Pre-delivery order in
W.P.No.10337 of 2024

25.09.2024