



WEB COPY



W.P.No.16447 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

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

W.P.No.16447 of 2022
and WMP.No.15733 of 2022

Ganesan

... Petitioner

Vs.

- 1.The District Collector,
Collector Office,
Salem Main Road,
Dharmapuri District 636 705
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Harur,
Dharmapuri 636 903
- 3.The Tasildhar,
Harur Taluk Office,
Dharmapuri District 636 903
- 4.The Superintendent of Police,
Office of the Superintendent of Police,
Dharmapuri District 636 810
- 5.The Deputy Superintendent of Police,
DSP Office, Harur,
Dharmapuri District 636 810
- 6.The Inspector of Police,
Morapur Police Station,
Dharmapuri District
- 7.The Joint Director Health Department,
Office of the Joint Director Health Department,
Dharmapuri District
- 8.Village Administrative Officer,



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VAO Office,
Gurubarahalli Village,
Dharmapuri District
9.Pandarinathan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent vide his proceedings in Na.Ka.No.C1/3587/2022 dated 26.04.2022 pertaining to 9th respondent records, petitioner records and Village Administration Officer, Gurubarahalli records were given before the first respondent subsequently passed the impugned order Na.Ka.No.C1/3587/2022 for directing to replace the bury deceased body namely kavitha who is the wife of the petitioner from the present place to crematorium of the gurubarahalli village by jointly 3rd and 7th respondents with required precaution kept and also further directed the second respondent to supervise to that quash the same.

For Petitioner : Mr.N.Siva

For Respondents

For R1 to 6 : Mr.S.J.Mohamed Sathik,
Government Advocate

For R7 : Mr.K.Tippu Sultan,
Government Advocate

For R9 : Mr.M.D.Thirunavukkarasu

ORDER



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This writ petition has been filed challenging the order passed by the first respondent dated 26.04.2022 thereby directed to exhume the petitioner's wife's body which was buried in the patta land belongs to the ninth respondent herein and to bury the body in the allotted burial ground.

2. In this regard, the Hon'ble Full Bench of this Court held in the writ appeal in WA.No.1037 of 2023 dated 20.07.2023 in the case of ***Jagadeeswari and others Vs. Babu Naidu and others*** as follows:

29. When we look at Rule 7(1) of Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules 1999, we find that it is analogous to the Kerala Rules 5(i) which was interpreted the way it should be.

30. Both Rules 5 and 7 of the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules 1999 start with a negative clause. Rule 5 prohibits new place for burying or burning the dead without license obtained from village Panchayat. Rule 7 prohibits burning or burying any corpse, in any place, within 90 meters of the dwelling place or source of drinking water supply. The place licensed as burial and burning ground is exempted from the 90 meters



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restriction. Rule 5(1) does not indicate that the place where a body is buried or burnt, will not carry the character of burial ground or burning ground. If, single body is burnt or buried and the land owner has no intention to allow burial of body in future. Whoever prefers a new place whether private or public to be used for burying or burning the dead, license from the Panchayat is a pre-requisite. Thus, it is very clear that except the place which has already been registered under Rule 4 or a new place where license is obtained following the procedures contemplated under Rules 5(2) (3) and (4), no body can be buried or burnt in the place which is neither been registered or granted license.

31. That apart, it is also to be noted that Rule 6 mandates the village Panchayat to maintain a register at its office showing places which are provided, registered or licensed under Rules 3 to 5. The framers of the Rules were conscious of the fact that there may be violation of Rule 7 (1). Therefore, the Rule prescribes punishment for contravention of Rule 7(1) but, prosecution shall be instituted only on written sanction by the Executive Authority of the village Panchayat concerned.

32. The outcome of the above analysis of the Rules and case laws leads to the conclusion, that the condition of 90 meters restriction found in Rule 7(1) cannot be



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construed as right to bury body anywhere and everywhere. Burial or burning body is subject to the other provisions in the Rules. The conditions of distance restriction from the water body, cannot be read in isolation unmindful of the purpose of the Rules and other provisions thereunder.

33. The Division Bench in P.Muthusamy's case has not declared that body can be buried anywhere other than registered or licensed place in a village Panchayat. The Division Bench had only recognized the custom prevailing in that particular village. The observation made in the Muthusamy's case, is restricted only to the facts of that case and it cannot have application in rem.

34. Moreover, after Rules, 1999 came into force, any burial in the place other than the place already registered or licensed as burial ground, goes in contravention to Rule 7(1). Any body buried in contravention to the Rules 5 and 7, is to be exhumed and buried in the designated place. If such violation is brought to the notice within the reasonable time and despite notice to exhume the body for to be buried in the designated place not adhered by the person concerned,



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the body is to be exhumed by the authority and collect the costs from the person who is cause for that illegal burial. The exhumed body must be buried in the designated place, taking into consideration the public health. Person who defies the law and refuses to exhume the body, cannot take umbrage in the delay of enforcing the law and make the Court 'fait accompli'. Accordingly, the order of reference is answered in negative.

3. Though in view of the above judgment, the petitioner has to pay, by way of interim order in this writ petition, now two years period has gone and as such, the order dated 26.04.2022 impugned in this writ petition cannot be executed due to expiry of nearly three years from the date of burial of the petitioner's wife's body i.e. 13.11.2021.

4. In view of the above observations, this writ petition is closed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.04.2024

Internet: Yes
Index: Yes/No



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Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

lok

To
1.The District Collector,
Collector Office,
Salem Main Road,
Dharmapuri District 636 705
2.The Revenue Divisional Officer,
Office of the Revenue Divisional Office,



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- Harur,
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- 3.The Tasildhar,
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- 4.The Superintendent of Police,
Office of the Superintendent of Police,
Dharmapuri District 636 810
- 5.The Deputy Superintendent of Police,
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- 6.The Inspector of Police,
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