



W.P.No.25359 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:10.09.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

W.P.No.25359 of 2024

R.Raji

.. Petitioner

/versus/

1.The District Collector,  
cum Executive Magistrate,  
Collectrate, Karaikal.

2.The Sub-Collector-cum-  
Sub-Divisional Magistrate,  
Karaikal.

3.The Senior Superintendent of Police,  
Karaikal Police Headquarters,  
Karaikal.

4.The Superintendent of Police,  
Karaikal South, Karaikal.

5.The Inspector of Police,  
Karaikal Town Police Station,  
Karaikal.



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6.The Medical Superintendent,  
Karaikal Government Hospital,  
Karaikal.

7.The Regional Medical Officer,  
Karaikal Government Hospital,  
Karaikal.

.. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondents to trace and identify the mortal remains of the petitioner father Mr.Rajendran after due scientific process viz., DNA test, etc., then hand over the same and also direct the respondents to pay compensation of Rs.30,00,000/- to the petitioner's family for the mental agony and sufferings caused by the deliberate, less cautious, negligent act of the 5<sup>th</sup> to 7<sup>th</sup> respondents and further direct the 1<sup>st</sup> to 3<sup>rd</sup> respondents to take disciplinary actions against the erring officials all within a time frame to be fixed by this Hon'ble Court.

For Petitioner :Mr.K.S.Mohan Dass,  
Public Prosecutor(Pondy)  
Asst.by  
Mr.N.Dhanalatchmi

For Respondents :Mr.M.V.Ramachandramurthy,  
Addl.Public Prosecutor (Pondy)

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ORDER



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The petitioner herein is the son of one Rajendran, who gone missing, while carrying his livelihood as a coconut reaper in and around Karaikal area. Admittedly, the petitioner lastly met his father in the month of June 2024. Further, he submitted that his father was almost living as a Sanyasi and occasionally used to visit his family. On 14.08.2024, The Sub Inspector of Police attached to Karaikal Police Station met him and showed a photo of his father for identification and informed that his father expired on 22.07.2024 and his mortal remains is kept in Government Hospital at Karaikal. On the next day i.e. on 15.08.2024, when he went to the Government Hospital to receive the body for cremation, the body shown to him was not that of his father. Therefore, he refused to take the body. Meanwhile, the mortal remains of another deceased person connected with a case registered in Crime No.134 of 2024 before the 5<sup>th</sup> respondent, which came to the mortuary been swapped with the body of his father and handed over it to the family members of the said deceased in Crime No.134 of 2024. They took the body to Salem and cremated. When the petitioner refused to take the body shown to him, the police realised the swapping of the body and went to Salem, exhumed the body and brought it back to the mortuary at



2. It is the case of the petitioner that the body, which was exhumed and brought back in the mortuary, also not his father. Since the body is decomposed stage, it is unidentified, scientific process to be conducted and he must be compensated with Rs.30 lakhs for swapping of the body.

3. The learned Additional Public Prosecutor (Pondy) submitted that based on the photograph alleged to have been shown to the petitioner, the petitioner claims that his father body been swapped. The said allegation is totally imaginary and made with ulterior intention.

4. Taking into consideration of his grievance, the body buried at Salem was exhumed and shown to the petitioner herein, however, the petitioner denies that body stating that it is decomposed and unidentifiable. Out of the two unidentified bodies, one is identified by his relatives of the body and given to them. However, due to the complaint of this petitioner, the body was exhumed and brought back to mortuary.



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The petitioner now claims that the said body is also not his father.

Whether the petitioner's father is alive or dead itself is now become a question which need investigation. The petitioner, who first identified the body, based on the photograph, shown to him now denies that it is not his father's body and for that purpose, there cannot be any compensation payable to him as claimed in the writ petition.

5. The learned counsel appearing for the petitioner submitted that even dead person have a fundamental right under Article 21 of the Constitution of India and cited a judgment of the Hon'ble Supreme Court rendered in *M/s Ernakulam Medical Centre and another v. Dr.P.R.Jayasree and another reported SLP (C)No.3545 of 2020 dated 06.09.2024*, wherein the Hon'ble Supreme Court has ordered to pay Rs.25,00,000/- as compensation by confirming the order of the National Consumer Disputes Redressal Commission in a case of body swapping by the hospital authority.

6. The facts of this case would show that it is not a body swapping as alleged by the petitioner. The petitioner herein claims that



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the body of his father been swapped by the police and the hospital authority. There is two bodies in the mortuary. The petition should claim either one of the bodies as his father's mortal remains, if he believe his father is dead. Peculiar in this case he dines both the corpus. He states that the body, which was buried and exhumed, is unidentified and therefore, he could not ascertain the identity of the body. The body was exhumed only at the petitioner instance. The family of the other person at Salem, allowed to exhume the body. In fact, the family at Salem are the real affected person, because of the petitioner herein, the mortal remains is now left unclaimed.

7. The purpose of filing this writ petition and pointing out accusing finger towards the respondent police, is ultimately to seek compensation and nothing else. If two mortal remains, which are now in the hospital is not the father of the petitioner, then it is for the police to probe the whereabouts of the petitioner's father.

8. With the above observations, this Writ Petition is disposed of. No costs.



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Index:yes/no  
Neutral citation:yes/no  
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- 8.The Public Prosecutor(Pondy), High Court, Madras.



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