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W.P.No.25773 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.25773 of 2023

and

W.M.P.No.25204 of 2023

1. Durai Babu
2. B.Akshaya
3. V.Santhanam

... Petitioners

Vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Assistant Director (Panchayat),
Collectorate, Kancheepuram,
Kancheepuram District.
3. The Revenue Tahsildar,
Uthiramerur Taluk,
Uthiramerur, Kancheepuram District.
4. The Village Panchayat President,
Sithamalli Village,
Maruthuvanpadi Village Panchayat,
Uthiramerur Taluk, Kancheepuram District.
5. The Village Administrative Officer,
Maruthuvanpadi Village, Marutham,
Uthiramerur Taluk, Kancheepuram District.



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6. The Inspector of Police (Law & Order),
Uthiramerur Police Station,
Maduranthagam Circle,
SH-118, Bukkathurai-Uthiramerur Road,
Kancheepuram District.

7. Varathan (Died)
8. V.Bakthavachalam
9. Chinnamma
10. V.Perumal

... Respondents

*(R8 to R10 are substituted as Lrs of
deceased R7, as per order dated 26.02.2024
in W.M.P.No.30281 of 2023 in W.P.No.25773 of 2023)*

PRAYER: Writ Petition filed under Article 226 of Constitution of India,
praying for issuance of Writ of Mandamus directing the respondents 1 to 6 to
take stern action against the respondent No.7 for burying the dead body of his
wife in the patta land belonging to the petitioners herein in S.No.15/1C,
Maruthuvanpadi Village and Panchayat in pursuance of our complaints dated
2.5.23, 3.5.23, 6.5.23 and 12.06.2023 and relocate the same in the common
burial ground for Sithamalli Village by considering our complaints and ensure
the protection of the petitioners' right to property.

For Petitioners	: Mr.Vijayakumari Natarajan
For Respondents	: Mr.U.Baranidharan, AGP for R1 to R5
	: Mr.L.Baskaran, GA (Crl.Side) for R6
	: No appearance for R8 to R10
	: R7 Died

ORDER



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The petitioner has filed this petition seeking to direct the respondents 1 to 6 to take stern action against the seventh respondent for burying the dead body of his wife in the patta land belonging to the petitioners herein in S.No.15/1C situated at Maruthuvanpadi Village and Panchayat in pursuance of their complaints dated 02.05.2023, 03.05.2023, 06.05.2023 and 12.06.2023 and relocate the same in the common burial ground for Sithamalli Village by considering their complaints and also to ensure the protection of the petitioners' right to property.

2. Though the names of the private respondents were printed in the cause list, considering the period of pendency of this writ petition, it is taken up for final disposal based on the materials available on record.

3. It is the case of the petitioner that they are the owners of the property in S.No.15/1C of an extent of 10 acres situated in Maruthuvanpadi Village Panchayat. The petitioners are living in Chennai and they occasionally visit their land. However, Sithamalli Village is a small hamlet having about 30 houses with around 150 people as population. When the petitioners visited the said land on 30.04.2023, there were traces and signs of burial of dead body.



When they inquired the said Village, they were told that one Alamelu who is the wife of the seventh respondent of Sithamalli Village expired on 23.02.2023 and her body was buried in the land which belong to the petitioners. Whiles, the petitioners made a complaint before the District Collector on 12.06.2023, pursuant to which an enquiry notice dated 12.07.2023 was sent calling for the petitioners to appear for an enquiry on 21.07.2023 and the petitioners have also attended the said enquiry. Though enquiry was conducted, no action has been taken by any of the authorities. Hence, the present writ petition has been filed seeking the aforesaid relief.

4. The learned counsel for the petitioner submits that the issue is no longer *res integra*. The Division Bench of this Court in the case of ***Muthuswamy and Others Vs. District Collector and others*** in ***W.A.No.909 and 916 of 2014*** dated ***21.11.2022*** had held that in the worst case, even if there is no burial ground, and even as a matter of customary practice, no patta land could be used as a burial ground, and no authority has the power to grant any approval to use the patta land as a burial ground and that if no burial ground is available in a place, then the appropriate authority shall submit a report identifying a Government land, which could be used for burial ground.



He further submits that though several complaints have been given to the respondents, however, the respondents have not taken any action to exume the dead body from the petitioner's Punjai land. Hence, he prayed for passing appropriate orders.

5. The learned Additional Government Pleader appearing for the respondents 1 to 5 upon instructions submitted that the villagers are generally known to be burying the bodies for few generations in the said property.

6. The grievance of the petitioner is that the burial of dead bodies in a patta land of third parties is illegal and that a private property cannot be notified as burial or cremation ground unless the procedure contemplated under the Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules 1999 are followed. However, as already held by the Full Bench of this Court in the case of *Jagadheeswari and others Vs. B.Babu Naidu and others* reported in *2023 SCC Online Mad 4773* the burial of bodies in places other than designated grounds is not allowed after the Tamil Nadu Village Panchayats (Provisions of Burial and Burning Grounds) Rules, 1999, came into force. The relevant portion of the said decision is extracted



hereunder:

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, 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.*



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7. In view of the categorical decision rendered by the Full Bench of this Court, this Court thinks it appropriate to issue a direction to the first respondent to take immediate steps to prevent the burial of dead bodies in the petitioners' land in future. The first respondent is further directed to identify the bodies which are buried within three months prior to this order and exhume the same from the petitioners land as expeditiously as possible.

8. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.09.2024

RAP

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

To:

1. The District Collector,

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Kancheepuram District,
Kancheepuram.

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2. The Assistant Director (Panchayat),
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M.DHANDAPANI,J.

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W.M.P.No.25203 of 2023

in

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M.DHANDAPANI., J.

In view of amendment to the Court
fee rules, this petition is allowed, subject to

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payment of single Court fee, within a period
of two weeks, from the date of receipt of a
copy of this order, if not already paid.

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(2/2)

RAP