



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2024

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.33624 of 2024
and W.M.P.No.36406 of 2024

Thanigaivel

.. Petitioner

Vs.

- 1.The District Collector,
Salem District.
- 2.The Revenue Divisional Officer,
Mettur, Salem District.
- 3.The Tahsildar,
Mettur Taluk Office,
Salem District.
- 4.The Block Development Officer,
Nangavalli Panchayat Union,
Mettur Taluk, Salem District.
- 5.The Village Administrative Officer,
Periyasorgai Village,
Mettur Taluk,
Salem District.
- 6.The Panchayat President,
Periyasorgai Village Panchayat,
Mettur Taluk,
Salem District.

.. Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents 4 to 6 prevent from burying the dead bodies by any of the person in and around the common passage bearing Survey No.330/23 situated at Boomirettipatti, Periyasoragi Village, Mettur Taluk, Salem District.

For Petitioner	.. Ms.G.Ambika
For Respondents	.. Mr.N.Naveen Kumar Government Advocate for R1 to R3 and R5 Mr.R.Siddharth Government Advocate for R4 and R6

ORDER

This writ petition has been filed in the nature of mandamus seeking a direction against the respondents 4 to 6 preventing them from burying dead bodies of any person in and around the common passage bearing Survey No.330/23 at Boomirettipatti, Periyasoragi Village, Mettur Taluk, Salem District.

2.In the affidavit filed in support of the writ petition, it had been stated that aforementioned land viz., Survey No.330/23 at Boomirettipatti, Periyasoragi Village, Mettur Taluk is classified as unused pathai poramboke. It is the grievance of the writ petitioner that the particular land is being used as a burial ground and that act is not prevented by the respondents.



3. In the affidavit filed in support of the writ petition it had also been further stated that the 2nd respondent, the Revenue Divisional Officer, Mettur at Salem District had conducted an enquiry in this issue and had passed an order in Na.Ka.No.10569/05/D dated 25.03.2006 and allotted 'Mandhaiveli Porambokke land' measuring to an extent of 0.35 acres out of 0.90.5 Acres of land comprised in S.No.324/6 also situated at Boomirettipatti, Periyasoragi Village, Mettur Taluk, Salem District, as burial ground.

4. It is therefore contended by the learned counsel for the petitioner that since a notified area had been specified for usage of burial ground, the pathai porambokke cannot be used as a burial ground. The fact that S.No.330/23 is an unused pathai porambokke is admitted in the written instructions forwarded by the Block Development Officer in Mandhaiveli at Salem District to the Additional Government Pleader.

5. There are earlier precedents relating to this aspect. In Cont.P.(MD) No.1435 of 2023 in W.P.(MD) No.2576 of 2023 in *M.Ramesh vs. Radhakrishnan, Inspector of Police, Annavasal Police Station, Pudukottai District and others*, a learned single Judge while examining the issue of burial grounds and using a non-notified burial ground for cremation purposes had stated as follows in Paragraph No.5:



5.It is quite unfortunate that ever after the death, caste continues to haunt. My attention is drawn to the decision of the Hon'ble Full Bench of Madras High Court reported in 2023 (4) CTC 481 (Jagadheeswari V.B.Babu Baidu). The Hon'ble Full Bench had held that the body must be buried only in a notified burial ground and if in any non-notified burial ground, it has been buried, the body must be exhumed and buried in a designated place.

6.A learned Single Judge in W.P.No.22394 of 2021 in *S.Amirthavalli vs. The District Collector, Coimbatore District and others*, by an order dated 22.10.2021 had stated as follows:

8.In the considered view of this Court, there is no requirement to go into the right of the petitioner over the road track situated at S.No.37. The only issue involved in the present case is that cremation is taking place in a location which has not been notified as a burial ground in accordance with the Tamil Nadu Village Panchayats (Provisions of burial and burning grounds) Rules, 1999.

9.It is quite unfortunate that even at the time of death, the caste factor does not seem to leave a person. It attaches itself till the person is ultimately cremated. In view of the same, there is a loathsome practice that is prevalent in many villages where persons belonging to the marginalized sections are not even allowed to use the burial ground. As a result of the same, persons belonging to this community are forced to



cremate the dead bodies in some other place which has not been notified as a burial ground. Such a practice should be immediately stopped and everyone must be give an access to the burial ground irrespective of the caste or community to which they belong. Even at this length of time, the curse of the caste system is so prevalent particularly in villages and it piggyback even at the time of birth and does not even seem to leave even at the time of cremation. Alas we live in such sorry state of affairs.

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11. In view of the above discussion, there shall be a direction to the respondents to ensure that the cremation of the dead bodies be permitted in the burial ground situated at S.F.No.104/A, Eripatti Village, Pollachi Taluk, irrespective of the caste or creed to which he or she may belong. The cremation or burial of the dead bodies should not be allowed in any other places than those places which are specifically notified as a burial and burning ground under the relevant Rules.

7. In W.A.No.1037 of 2023 in *Jagadheeswari vs. B.Babu Naidu and others* by judgment dated 27.07.2023, a Division Bench of this Court had examined the entire issue and stated as follows:

5. The Full Bench decided the issue and held as under:

32. The outcome of the above analysis of the Rules and



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case laws leads to the conclusion, that the condition of 90 meters restriction found in Rule 7(1) cannot be 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.

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.”

6. In the light of the judgment of the Full Bench, the matter in controversy has been set to rest. The judgment of the learned Single



Judge is required to be upheld. The appellants shall exhume the dead body from S.F.No.201/3 and bury the same in S.F.No.205/1, as directed by the learned Single Judge, within a period of seven days from today.

The rest of the directions issued by the learned Single Judge shall operate.

8.In view of the pronouncements which are binding, a mandamus is issued that the 4th and 6th respondents should ensure that S.No.330/23 which is an unused pathai porambokke, is not used as a burial ground, unless respondents pass an order notifying the said place as a burial ground. If they are so notified, they must pass necessary orders in the manner known to law and after giving opportunity for all affected persons of being heard.

9.This writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

26.11.2024

Index:Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation:Yes/No
ssr

To

1.The District Collector,



Salem District.

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C.V.KARTHIKEYAN,J.

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