



W.P(MD)No.1445 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.1445 of 2024

Albin Jose

... Petitioner

-Vs-

1.The District Collector,
Kanyakumari District,
Kanyakumari.

2.The Revenue Divisional Officer,
Padmanabhapuram Division,
Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

4.The Superintendent of Police,
Kanyakumari District.

5.The Inspector of Police,
Iranial Police Station,
Kanyakumari District.

6.Raja

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the



W.P(MD)No.1445 of 2024

WEB COPY

respondents 1 to 3 to take necessary steps, action against the 6th respondent to bury the body of Mr.Xavious Kumar in the notified cemetery ground and not in the premises of the “St. Michael Adhithoothar Church” situated at Mylode, Kanyakumari District by considering the petitioner's representation dated 21.01.2024.

For Petitioner	: Mr.G.Sailendrababu
For Respondents	: Mr.D.Gandhi Raj Spl. Govt. Pleader (for R1 to R3)
	Ms.M.Aasha Govt. Advocate (crl. side) (for R4 and R5)

ORDER

This writ petition is filed seeking for issuance of a Writ of Mandamus directing the respondents 1 to 3 to take necessary steps, action against the 6th respondent to bury the body of Mr.Xavior Kumar in the notified cemetery ground and not in the premises of the “St. Michael Adhithoothar Church” situated at Mylode, Kanyakumari District, by considering the petitioner's representation, dated 21.01.2024.



W.P(MD)No.1445 of 2024

2. The petitioner is the Treasurer of a Church, namely, “St. Michael Adhithoothar Church” situated at Mylode, Kanyakumari District. One Mr.Xavier Kumar, who is one of the members of the above Church had caused number of unwanted disputes with the other members of the Church and hence, the said Xavier kumar was attacked by some of the villagers on 20.01.2024, due to which, he died on the same day and FIR was also registered in Crime No.38 of 2024 on the file of the 5th respondent police. According to the petitioner, the Church has in no way connected with the above occurrence. But the 6th respondent and some of his associates by taking advantage of the situation are trying to cause some issues in their village and they are trying to bury the body of the deceased in the premises of the Church with an intention to create dispute between the Church members and all the village people. But the village people objected the same and asked to bury in the village common burial ground.

3. In this regard, the petitioner has made a complaint to the 5th respondent in CSR No.102 of 2024 dated 20.01.2024 and also sent a representation to all the respondents stating that they have no objection to bury the body in the village common cemetery and till date no one is



W.P(MD)No.1445 of 2024

permitted to bury inside the premises of the Church. Hence, he approached this Court.

4. From the FIR, it is seen that the person, namely, Xavier Kumar was murdered by nearly 13 accused persons including FR Benitto, Paris Priest Murasancode and it was registered at 14.30 hours. This Court took up this matter as “Lunch Motion” today (23.01.2024) and directed the Special Government Pleader to get instructions and he, on instructions, submitted that a complaint was lodged in CSR.No.102 of 2023 dated 21.01.2024 and they have not stated anything about the murder and they only stated about the attack made by some third party and found him dead. He also submitted that the Revenue Divisional Officer conducted a Peace Committee Meeting and made resolution in Na.Ka.A2/316/2024 dated 22.01.2024 that they would bury the body after getting permission from Bishop and the members also have no objection to bury the body in the premises of the Church and also they would give a job to the wife of the deceased and the members of the diocese and the family members also signed in the resolution before the Sub Divisional Magistrate and Revenue Divisional Officer, Padmanabhapuram. He has also produced a copy of the said resolution



W.P(MD)No.1445 of 2024

dated 22.01.2024.

WEB COPY

5. The learned Special Government Pleader, on instructions, submitted that it is a Roman Catholic Church and there is no such practice to bury a dead body inside the Church premises and there is a separate cemetery from 400 meters away from the said Church where they can bury the dead body. In this regard, the Tahsildar, Kalkulam Taluk, sent a communication, dated 22.01.2024 to the Special Government Pleader that the relatives and some political parties indulged into dharna, agitation, block, that the Government officials shall not take the body away from the premise for postmortem and other investigation formalities and made some demands. Taking note of the tensed situation and considering the nature of the demands laid which are all to be sorted out by the Diocese, the representatives of the Diocese viz., Fr.Jesurethanam were called for in the midnight on the occurrence date and after hearing the demands, the said Fr.Jesurethanam gave assurance on behalf of the Diocese as follows:

“1.The demand of compensation of Rs.2 Crore to the affected family will be taken to the note of the Bishop and will try to issue compensation to the affected family as requested for.



W.P(MD)No.1445 of 2024

2. With respect to the burial of the deceased body within the premises of the Church, he said that the church premise is coming under the purview of concern parish people but not under the diocese and hence Diocese has no objection if the people of the parish consented to bury the body with the church premises.

3. Regarding the job opportunity to the wife of the deceased Xavier Kumar, he assured that job will be provided to her in the educational institutions of the Diocese.”

Thereafter only, the people allowed the police to take the body of the deceased from the residential house of the Parish priest in the midnight of 20.01.2024 at around 02.30 a.m. and then postmortem was completed on the next day ie., on 21.01.2024 and the relatives refused to receive the body of the deceased stating that they will receive after compliance of the assurance given by the Fr.Jesurethnam and the situation continues till now. Hence, number of police and Revenue Department officials are engaged in maintaining the law and order situation in that area.

6. According to the respondents, no person shall bury, burn or otherwise dispose of any corpse except in a place which has been registered,



W.P(MD)No.1445 of 2024

WEB COPY

licensed or provided as per Section 281 of the said of the Tamil Nadu District Municipalities Act, 1920. According to the respondents, as per the Rules 7 of the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999, every owner or other person having the control over the place used as a place for burying or burning of the dead shall, if such place is not already registered under the Act or any other Act, apply to the Village Panchayat to have such place registered.

7. In view of the above said provisions, this Court is of the view that the dead body of the deceased cannot be buried in the Church premises. Hence, this Court directs the parties to bury the dead body of the said Xavier Kumar in the “St. Michael Adhithoothar Church cemetery” situated 400 meters away from the “St. Michael Adhithoothar Church”. The respondent police is directed to give police protection to the persons who are engaged in the burial ceremony in the above said cemetery.

8. With the above directions, this writ petition is disposed of. It is made clear that this order is passed by this Court in view of the volatile



W.P(MD)No.1445 of 2024

WEB COPY

situation in this case and not because of the petitioner's request by way of filing this writ petition. No costs.

23.01.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

PJL

Note: Issue order copy today(23.01.2024)

To

1.The District Collector,
Kanyakumari District,
Kanyakumari.

2.The Revenue Divisional Officer,
Padmanabhapuram Division,
Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

4.The Superintendent of Police,
Kanyakumari District.

5.The Inspector of Police,
Iranial Police Station,
Kanyakumari District.



WEB COPY



W.P(MD)No.1445 of 2024



WEB COPY



W.P(MD)No.1445 of 2024

V.BHAVANI SUBBAROYAN, J.

PJL

W.P(MD)No.1445 of 2024

23.01.2024