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WP(MD)Nos.2373, 3579 & 4560 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.2373, 3579 & 4560 of 2024

and

**W.M.P(MD)Nos.2373, 2385, 3526, 3527, 3529, 4393, 4395,4396,
4397 & 4398 of 2024**

in WP(MD)No.2373 of 2024 : -

Sr.Nayaga Mary

... Petitioner

Vs.

- 1.The District Collector,
Nagercoil, Kanyakumari District.
- 2.The Tahsildar, Thovalai Taluk,
Boothapandy, Kanyakumari District.
- 3.The Block Development Officer,
Thovalai Taluk, Boothapandi,
Kanyakumari District.
- 4.The Panchayat President,
Veeramarthandanpudur Village,
Sagaya Nagar Panchayat,
Kanyakumari District.
- 5.The Inspector of Police,
Aralvaimozhi Police Station,
Kanyakumari District.
- 6.The Superintendent of Police,
Kanyakumari District.

... Respondents



WP(MD)Nos.2373, 3579 & 4560 of 2024

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Respondents Nos. 1 to 4 to consider the petitioner representation dated 30.01.2024 and consequentially for a direction, directing respondent Nos. 1 to 4 to remove and the relocate the cemetery ground construction violating the Rule No. 7 of the Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999 vide G.O.(Ms).No.213, Rural Development (C4), Dated 5th October, 1999 within the time frame stipulated by this Court.

in WP(MD)No.3579 of 2024 : -

Jegadheesh

Arul Subastin

... Petitioners

Vs.

- 1.The District Collector,
Nagercoil, Kanyakumari District.
- 2.The Tahsildar, Thovalai Taluk,
Boothapandy, Kanyakumari District.
- 3.The Block Development Officer,
Thovalai Taluk, Boothapandi,
Kanyakumari District.
- 4.The Panchayat President,
Veeramarthandanpudur Village,
Sagaya Nagar Panchayat,
Kanyakumari District.
- 5.The Inspector of Police,
Aralvaimozhi Police Station,
Kanyakumari District.
- 6.The Superintendent of Police,
Kanyakumari District.

... Respondents



WP(MD)Nos.2373, 3579 & 4560 of 2024 .

in WP(MD)No.4560 of 2024 : -

Jegadheesh

Arul Subastin

Sr.Nagaya Mary

... Petitioners

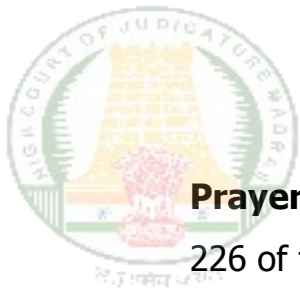
Vs.

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- 4.The Panchayat President,
Veeramarthandanpudur Village,
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Kanyakumari District.

... Respondents

Common Prayer in WP(MD)Nos.2373 of 2024 & 3579 of 2024 :

Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Respondents Nos. 1 to 4 to consider the petitioner representation dated 30.01.2024 and consequentially for a direction, directing respondent Nos. 1 to 4 to remove and the relocate the cemetery ground construction violating the Rule No. 7 of the Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999 vide G.O.(Ms).No.213, Rural Development (C4), Dated 5th October, 1999 within the time frame stipulated by this Court.



WP(MD)Nos.2373, 3579 & 4560 of 2024

Prayer in WP(MD)No.4560 of 2024 : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the first respondent vide proceedings in Na.Ka.M2/34865/2021 dated 29.10.2021 and quash the same as illegal in the light of Rule No.7 of The Tamil Nadu Village Panchayats (Provision of Burial and Burning grounds) Rules, 1999 vide G.O(Ms)No.213, Rural Development (C4) and consequentially to direct Respondent Nos.1 to 4 to remove and relocate the cremation ground construction in Survey No.488/3, Veeramarthandanputhoor Village, Thovalai Taluk, Kanyakumari District within the time frame stipulated by this Court.

In WP(MD)No.2373 of 2024 : -

For Petitioner : Mr.Anto Prince

For Respondents : Mr.S.Kameswaran,
Government Advocate for R1 to R4

Mr.A.Albert James,
Government Advocate (crl.side) for R5 and R6

In WP(MD)No.3579 of 2024 : -

For Petitioner : Mr.Anto Prince

For Respondents : Mr.S.Kameswaran,
Government Advocate for R1 & R2

Mr.C.Baskaran, Government Advocate for R3&R4

Mr.A.Albert James,
Government Advocate (crl.side) for R5 and R6



WP(MD)Nos.2373, 3579 & 4560 of 2024 .

In WP(MD)No.4560 of 2024 : -

For Petitioner : Mr.Anto Prince

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For Respondents : Mr.K.S.Selvaganesan,
Additional Government Pleader for R1 to R3

Mr.S.Kameswaran,
Government Advocate for R4

ORDER

Heard the learned counsel on either side.

2.The petitioners challenge the decision of the District Collector to locate a cremation ground for transgender persons in Survey No.488/4 in Veeranam Village. The learned counsel for the petitioners reiterated all the contentions set out in the affidavit filed in support of these writ petitions.

3.The ground of attack is that the cremation ground has been put up in violation of the distance Rule set out in The Tamil Nadu Village Panchayats (Provision of Burial and Burning grounds) Rules, 1999. My attention is drawn to Rule 7(1) in particular. The other contention is that location of the ground will pose serious health hazard to the residents in the vicinity. He also pointed out that the decision was unilaterally taken by the District Administration and that neither the village panchayat nor the residents were given any opportunity to place their objections. The



learned counsel would point out that when it has been admitted that persons are residing within 50 meters and 70 meters, the authorities ought to be directed to relocate the cremation ground. He called upon this Court to set aside the impugned proceedings and grant the relief sought for.

4.The learned Government Advocate appearing for the respondents submitted that the writ petitions are without any merit and that they deserved to be dismissed.

5.I carefully considered the rival contentions and went through the materials on record. The photographs produced before me clearly indicate that the cremation ground has already been constructed. The learned Government Advocate would point out that except cutting of ribbon, all other works are over. The ground in question has been constructed at a cost of Rs.11.27 lakhs and it is for the benefit of the transgender community.

6.This Court can take judicial notice of the fact that transgender community has been kept beyond the margins. Steps are being taken to integrate them into the mainstream. Of course, as rightly pointed out by the learned counsel for the petitioner, a separate ground for them may not



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be the right step towards inclusion. But then, before such integration takes place, their dignity and civil rights should first be acknowledged. I must therefore congratulate the District Administration for taking steps to provide separate facilities for Transgender community. I am not persuaded by the invocation of the distance Rule in this case. Of course, right to clean environment is a fundamental right guaranteed under Article 21 of the Constitution of India. But the number of transgender persons in Kanyakumari District is quite miniscule. They are said to be hardly around 40. The construction of cremation ground is more a symbolic act and it would not pose any real health hazard to the other residents. For all these reasons, I decline to sustain the objection anchored on Rule 6(2) and Rule 7 of the Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999.

7.The writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

01.03.2024

Internet : Yes/No
Index : Yes/No
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G.R.SWAMINATHAN, J.

SKM

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