



W.P.(MD)No.20796 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 02.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.20796 of 2024

Ellakan

... Petitioner

Vs

1. The District Collector,
Thoothukudi District.

2. The Tahsildar,
Thiruchendur Taluk,
Thoothukudi District.

3. The Commissioner,
Kayalpattinam Municipality,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, by directing the respondents no. 2 and 3 to pass an appropriate orders notifying their identified place as Cemetery in Tsunami Colony / Kudiyiruppu, Kayalpattinam Municipality, Thoothukudi District in the light of the recommendation made by the 3rd respondent vide his letter dated 28.11.2023 within the time stipulation as prescribed by this Court.

For Petitioner : Mr. R.Anand

For respondents : Mr.A.Kannan (R1,R2)
Additional Government Pleader
Mr.V.Nirmal Kumar (R3)



W.P.(MD)No.20796 of 2024

WEB COPY

ORDER

This Writ Petition has been filed seeking a direction to the respondents no.2 and 3 to pass an appropriate order notifying their identified place as Cemetery in Tsunami Colony / Kudiyiruppu, Kayalpattinam Municipality, Thoothukudi District in the light of the recommendation made by the 3rd respondent vide his letter, dated 28.11.2023.

2.Heard Mr.R.Anand, learned counsel appearing for the petitioner, Mr.A.Kannan, learned Additional Government Pleader appearing for R1 & R2 and Mr.V.Nirmal Kumar, learned counsel appearing for R3. Perused the materials available on record.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself. Considering the nature of issue, counter is not required in this writ petition.

4. The case of the writ petitioner is that the petitioner is the President of Tusunami Colony. They all belong to Christian religion. Due to Tusunami effect, they were rehabilitated into Tusunami colony. There are nearly 150



W.P.(MD)No.20796 of 2024

families living in that area. However, no place has been notified by the Government to bury the dead body. Some of the dead bodies were buried in the place, which has been objected by the 3rd respondent and thereby, filed a writ petition before this Court in W.P(MD) No.11671 of 2024. This Court has allowed the same on 14.06.2024 directing the respondents to take a decision since the dead body in question was buried quite sometime back.

5.It is the contention of the learned counsel for the petitioner that the 3rd respondent/Commissioner, Kayalpattinam Municipality has also sent a notice to the 2nd respondent to identify the area for Cemetery to Mangalvari Tusunami Colony people. However, the same has not been considered. Hence, this petition has been filed.

6.The learned Additional Government Pleader appearing for the respondents 1 & 2, on instructions, submitted that till the identification of land by Government, the people in Tusunami Colony are informed to bury the dead bodies at Singithurai. The distance between the said Tusunami Colony and Singithurai is only 2 kms. However, the people at Tusunami Colony seeks a place for Cemetery within their vicinity. Hence, prays to dismiss the petition.



7. In this regard, it is relevant to refer the decision of Full Bench of this Court in **2023 (2) WLR 159 (Jagadeeswari Vs. B.Babu Naidu)**, wherein, it has been categorically held that dead body must be buried only in the place designated as burial or burning ground as per Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999. Similar provision is also incorporated under Section 172 of Tamil Nadu Urban Local Bodies Act, 1998. The said provision is extracted hereunder:

“172. Burial and burning grounds and crematoria.

(1) Every owner or person having the control of any place used as burial or burning ground or crematoria on the date of commencement of this Act, shall if such place has not already been registered, apply to the commissioner to have such place registered within such time and in such manner as may be prescribed.

(2) No new place for the disposal of the dead whether public or private shall be opened, formed, constructed or used unless a licence has been obtained from the Commissioner on an application made in accordance with such rules as may be prescribed.

(3) No person shall bury or burn any corpse except in a place which has been registered, licenced or provided as aforesaid.

(4) The council shall provide and maintain places to be



WEB COPY



W.P.(MD)No.20796 of 2024

used as burial or burning grounds or crematoria either within or outside the municipal limit and may charge and levy rents and fees for the use thereof as may be fixed by the council :

Provided that where burial or burning grounds or crematoria are to be provided outside the municipal limit, previous concurrence of the Government shall be obtained :

Provided further that the municipality shall itself undertake the burial or cremation of any unclaimed dead body at its own expense.”

8.The said provision also forbids burial of a dead body in a non-licensed site. Therefore, as far as the burial of dead body is concerned, the same should be done in a place earmarked and identified by the Government. Only on the ground of convenience, the parties cannot seek a request. While notifying the burial ground so many parameters including the ground reality has to be considered by the Authorities.

9.It is the contention of the respondent that already dispute arose with regard to the burial of dead body. In this regard, the contention of the learned Additional Government Pleader is fortified by the fact that burial of the bodies has already been objected by the third parties, which resulted in filing of Writ petition



W.P.(MD)No.20796 of 2024

in WP(MD) No.11671 of 2024, wherein, this Court has also clearly held that burial cannot be permitted in an non-notified area.

10.In such view of the matter, the Authorities are directed to take a call in this matter and decide if there is any land fit for declaring as Cemetery / Burial ground and take a decision in this regard. However, the Authorities cannot be directed as a matter of right to identify a particular land. It is for the Authorities concerned to take note of the fact that such area should not cause any hazardous to other human, ground reality of the particular area and if there is any objection raised by the 3rd parties should be taken note by the Authorities. Such decision shall be taken by the Authorities concerned within a period of three months from the date of receipt of copy of this order.

11.With the above direction, this writ petition stands disposed of.
There shall be no order as to costs.

02.09.2024

NCC : Yes/No
Index : Yes/No
PNM



W.P.(MD)No.20796 of 2024

To

1. The District Collector,
Thoothukudi District.

2. The Tahsildar,
Thiruchendur Taluk,
Thoothukudi District.

3. The Commissioner,
Kayalpattinam Municipality,
Thoothukudi District.



WEB COPY



W.P.(MD)No.20796 of 2024

N.SATHISH KUMAR, J.

PNM

ORDER IN

W.P.(MD)No.20796 of 2024

02.09.2024