



W.P.(MD)No.6796 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)No.6796 of 2022

T.Robinson

... Petitioner

vs.

1.The District Collector,
Kanyakumari District at Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram, Thuckkalai.

3.The Superintendent of Police,
Kanyakumari District at Nagercoil.

4.The Inspector of Police,
Pudukkadai Police Station, Kanyakumari District.

5.T.Sunny

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to exhume the petitioner's brother's (Samraj) corpus from frontside of the petitioner's house bearing Door No.8/165A of Painkulam Village Panchayat situated in Re.Survey No.25/9 of Painkulam Village, Killiyur Taluk, Kanyakumari District and to burry in the family graveyard



W.P.(MD)No.6796 of 2022

admeasuring 1.6 cents comprised in Re.Survey No.25/5 of Painkulam Village, Killiyur Taluk, Kanyakumari District within a stipulated period that may be fixed by this Court.

For Petitioner	:Mr.S.Sivakumar
For R1 and R2	:Mr.S.Shajibino
	Special Government Pleader
For R3 and R4	:Mr.K.Gnanasekaran
For R5	:Mr.Ananth C.Rajesh

ORDER

It is an unfortunate case relating to death of a mentally challenged individual.

2.This Writ Petition seeks for a Mandamus to exhume the body of one Samraj, who has been buried in a house property at Door No.8/165A at Painkulam Village Panchayat in Re.Survey No.25/9 of Painkulam Village, Killiyur Taluk, Kanyakumari District and to bury the body at the family burial ground in R.S.No.25/5 of the very same village.

3.A couple by name, Thankappan and Muthabaranam, were residing in Painkulam Village. From their wedlock, they had four children. They are



W.P.(MD)No.6796 of 2022

WEB COPY

(1)Cicil Raj

(2)Samraj

(3)Robinson

(4)T.Sunny

4.Thankappan was the owner of the property situated in Door No. 8/165A at Painkulam Village Panchayat, Killiyur Taluk, Kanyakumari District. He had executed a “WILL” in favour of his wife, Muthabaranam. The WILL is a registered document in Doc.No.32/1998. He passed away on 05.06.1998.

5.On his death, Muthabaranam became the absolute owner of the property. She continued to reside therein. She executed a WILL bequeathing an extent of 19.526 cents in R.S.No.25/9 of Painkulam Village in favour of his son Sunny. Subsequently, she registered a sale deed for the very same property in his favour.

6.By way of another “WILL”, she bequeathed her remaining holdings in favour of her remaining three sons, namely, Cicil Raj, Samraj



W.P.(MD)No.6796 of 2022

and Robinson. She imposed a condition that Robinson would have to take care of Cicil Raj and Samraj. This was on account of the fact that the aforesaid persons were not in a position to take care of themselves, as they were mentally challenged. Subsequently, Muthabaranam passed away on 19.09.2010. In quick succession, Cicil Raj too passed away on 25.02.2012. Samraj passed away on 21.02.2022. This is the death, which has given the cause of action for the present Writ Petition.

7.Samraj admittedly passed away on the aforesaid date in the evening hours at about 04.45 pm. The Writ Petitioner was away at Tiruvananthapuram, where he settled to pursue his professional duty of Lawyer. On coming to know about the death of his brother, he rushed to Painkulam. He painfully came to know that his other brother, the fifth respondent, had buried Samraj in the premises bearing Door No.8/165A at Painkulam Village Panchayat. Immediately, he lodged a complaint with the Inspector of Police, Pudukkadai Police Station, Kanyakumari District. The Police did not take any action. Hence, he filed the present Writ Petition.



W.P.(MD)No.6796 of 2022

8.His pleadings is that Samraj's body has been buried in the family house, after demolishing a staircase in the residential house. It has to be exhumed and buried in the family graveyard set apart by his father at R.S.No.25/9 at Painkulam Village Panchayat, Killiyur Taluk, Kanyakumari District.

9.This Court has issued notice to the respondents. The fifth respondent has entered appearance and has filed a counter affidavit. In his counter affidavit, he has accepted the fact that Cicil Raj and Samraj were mentally challenged and were not capable of taking care of themselves. He also admitted that Samraj died on 21.02.2022 and he had also admitted the WILL executed by Muthabaranam on 01.02.2008 and the conditions imposed thereunder. He pleaded that though the Writ Petitioner had to maintain his brothers, he did not do so. He points out that the Writ Petitioner shifted his residence to Kerala. He admitted that Samraj was buried within the premises of the residential property covered by the WILL, dated 01.02.2008.



W.P.(MD)No.6796 of 2022

WEB COPY

10.The justification given for the said burial is that it was the last wish of Samraj and that the villagers wanted the burial to take place in the said property. He accepted that a complaint had been lodged by the Writ Petitioner to the fourth respondent. He accepted that he appeared for an enquiry before the fourth respondent and gave his explanation and that the complaint was closed. He added that there is no law available to exhume the dead body from a private land and bury in other private land and therefore, sought for dismissal of the Writ Petition.

11.I heard Mr.S.Sivakumar, learned Counsel for the petitioner, Mr.S.Shaji Bino, learned Special Government Pleader appearing for R1 and R2, Mr.G.Gnanasekaran, learned Government Advocate appearing for R3 and R4 and Mr.Ananth C.Rajesh, learned Counsel for the fifth respondent.

12.It was the polished wish of the mother Muthabaranam that her two sons, who are mentally challenged, were to be taken care of by the Writ Petitioner. While the Writ Petitioner pleads that he had taken care



W.P.(MD)No.6796 of 2022

of them, the fifth respondent argues that the mentally insane challenged were not taken care of by him and Samraj died due to poverty and ill-health. Whether the allegations and counter allegations are true or not, the point remains that even post Samraj's death, there has been no peace.

13.The law relating to burial or burning of a dead in Panchayat limits is governed by the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules, 1999 (hereinafter referred to as “the Burial Ground Rules).

14.As per Rule 5 of the Burial Ground Rules, no “new” place can be constructed or used for the purpose of burying or burning the dead without obtaining a licence for the said area. This Rule presupposes that prior application has to be made to the Village Panchayat and appropriate permission has to be obtained from that Authority. Neither the Writ Petitioner nor any of the respondents dispute that the property situated in Door No.8/165A at Painkulam Village Panchayat, Killiyur Taluk, Kanyakumari District, is a residential property. It is not clear from the affidavit and counter affidavit that whether the property situated in



W.P.(MD)No.6796 of 2022

R.S.No.25/9 of the same village has the benefit of such a permission from the Village Panchayat.

15.Rule 7 of the Burial Ground Rules also declares that no person shall be buried within 90 meters of a dwelling house. When the distance of 90 meters is fixed from a dwelling house, obviously it implies that no body can be buried in a dwelling house.

16.These Rules were the subject matter of interpretation by a Hon'ble Full Bench of this Court in ***Jagadheeswari and others vs B.Babu Naidu and others*** reported in ***2023-2 Writ L.R.159***. The Hon'ble Full Bench of this Court laid down the law, as follows:

“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



W.P.(MD)No.6796 of 2022

accompli'. Accordingly, the order of reference is answered in negative."

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17.The plea of Mr.Ananth C.Rajesh is that Samraj was buried in the residential property, as it was the wish of the deceased Samraj as well as the wish of the villagers. When it is not in dispute that the deceased Samraj is a mentally challenged person, I find this plea raised by Mr.Ananth C.Rajesh, as the plea in desperation. A mentally challenged person is treated in law as one incapable of taking any decision from himself. Hence, the act of a desire expressed by such a person, even assuming that such a desire was expressed, cannot be countenanced in a Court of law.

18.The plea that the villagers desire to bury Samraj in the residential property also does not hold water. If such plea were to be accepted, then it will be free for all and the entire village would be converted into a burial ground.

19.Apart from these general observations, I should point out that the power and authority to permit burial is not available with any



W.P.(MD)No.6796 of 2022

individual or group of individual. It is available only with the Village Panchayat. There cannot be any burial within a residential property, when Rule 7 of Burial Ground Rules declares that such a burial is contrary to law.

20. When these aspects were pointed out to Mr. Ananth C. Rajesh, he stated that he has no objection for the body being removed from the residential property, where it has been interred and bury in an appropriate place.

21. The petitioner did not stand by and acquiesce to the burial of his brother's property in a residential area. He protested immediately on 22.01.2022 raising suspicions over the death of his brother and also pointed out to the Police that the deceased had been buried in a house. The Police have no doubt conducted an enquiry and found that the first allegation is false. However, they owe a duty due to the Society at large to comply with the requirements of law. They should have acted with all promptness and should have taken steps to exhume the body buried in a residential house and shift it to the designated area. Unfortunately, they



W.P.(MD)No.6796 of 2022

did not do so. This Writ Petition was filed immediately before this Court in April 2022. This shows that the Writ Petitioner has acted with alacrity with the situation required. Hence, I cannot hold that there had been a delay in making the request.

22.The extract of the Full Bench judgment in the previous paragraph shows that a person who defies the law and refuses to exhume the body and bury in an appropriate place cannot plead the aspect of delay. The respondents ought to have acted immediately when an infraction of the Burial Ground Rules had been brought to their notice. Unfortunately, they failed to do so. Hence, I am constrained to interfere.

23.Though the petitioner seeks that Samraj should be buried at R.S.No.25/9 of Painkulam Village, no records have been produced before this Court to show that the Village Panchayat had accepted the said area to be a burial ground for the family. Therefore, this leaves no option but to bury the said Samraj in an area notified by the Panchayat for the said purpose.



W.P.(MD)No.6796 of 2022

WEB COPY

24. In the light of the above discussion, the Writ Petition is necessarily to be ordered. There shall be a direction to the second respondent/Revenue Divisional Officer, Padmanabhapuram, Thuckkalai, to exhume the body of the deceased, Samraj, who had passed away on 21.02.2022 from the house property in Door No.8/165A at Painkulam Village Panchayat, Killiyur Taluk, Kanyakumari District and bury the same after adhering to all Christian religious rites at the notified burial ground set apart for Christians.

25. The abovesaid exercise shall be carried out within a period of two weeks from the date of receipt of a copy of this order. The Revenue Divisional Officer shall act on the web copy of this order and he/she will not wait for a certified copy of the order to be given to him/her. All the parties are at liberty to produce the web copy of this order before the second respondent and request him/her for compliance with the order. I hope at least now, the soul of the deceased will rest in peace.



W.P.(MD)No.6796 of 2022

WEB COPY

26.In result, the Writ Petition is allowed. No costs.

27.Post the matter for reporting reporting compliance on
26.02.2025.

Index	:Yes / No	05.02.2025
Internet	:Yes / No	
NCC	:Yes / No	

Note to Registry: Upload the order copy by 06.02.2025.

cmr

To

1.The District Collector,
Kanyakumari District at Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram, Tuchukkalai.

3.The Superintendent of Police,
Kanyakumari District at Nagercoil.

4.The Inspector of Police,
Pudukkadai Police Station, Kanyakumari District.



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W.P.(MD)No.6796 of 2022

V. LAKSHMINARAYANAN, J.

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W.P.(MD)No.6796 of 2022

05.02.2025