

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON	PRONOUNCED ON:
11.07.2023	20.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
AND**

THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1037 of 2023

- 1.Jagadheeswari
- 2.Sandeep
- 3.Gopi
- 4.Sekar
- 5.Markendayan

.. Appellants

Vs.

- 1.B.Babu Naidu
- 2.The District Collector,
Thiruvallur District,
Thiruvallur.
- 3.The Assistant Director (Panchayat),
Collectorate, Thiruvallur,
Thiruvallur District.



4. The Revenue Divisional Officer,
Thiruthani,
Thiruvallur District.

5. The Revenue Tahsildar,
Pallippattu Taluk Office,
Pallipattu, Thiruvallur District.

6. The Village Panchayat President,
Nochili Village, Pallipet Taluk,
Thiruvallur District.

7. The Inspector of Police,
Pothatturpet Police Station,
Pothatturpet, Thiruvallur District.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 28.04.2023 passed by the learned Single Judge in W.P.No.10908 of 2023.

For Appellants : Mr.N.G.R.Prasad
for Mr.L.Dhamodharan

For Respondents : Mr.T.Mohan, Senior Advocate
for Mr.P.Krishnan, for R1

Mr.P.Muthu Kumar, State Govt. Pleader
Assisted by Mr.Karthik Jagannath,
Government Advocate for R2 to R5 & R7

Mr.K.Elango, for R6



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ORDER

Dr. G. JAYACHANDRAN, J

“Whether, under the Rules of 1999, the burial can take place at a place other than the designated land, more particularly when the designated land exists in the village?”

Is the order of reference for which this Full Bench is constituted.

2. For answering the order of reference, the genesis of the dispute needs to be understood. Hence, the same is narrated in a nutshell.

Thiru.Narashimmulu Naidu, a resident of Vijayamambapuram, Nochili Village, Pallipet Taluk, Tiruvallur District died at Chennai on 01.04.2023. On the next day, he was buried in his village which is in a portion of the land comprised in S.F.No.201/3. The said land is classified as 'Dry Land' as per the revenue records. It stands in the name of one Ramesh Naidu, S/o.Chengalvaraya Naidu *vide* Patta No. 119. The said Ramesh Naidu died 10 years ago and his wife Shantha and two sons are residing in Chittor, State of Andhra Pradesh.

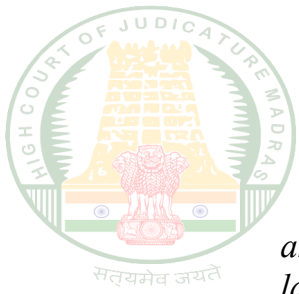


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3. W.P. No.10908 of 2023 was filed by one B.Babu Naidu, who claims to be the neighbouring land owner, seeking issuance of writ of mandamus directing the District Collector, Thiruvallur, and other officials to take action against the wife and children of Narashimmulu Naidu for burying the dead body in the place other than the place designated for burying and burning dead persons. He also prayed for an order to exhume the body and bury the same in the designated burial ground situated at S.No. 205, Vijayamambapuram, Nochili Village, Pallipet Taluk, Thiruvallur District.

4. Learned Single Judge, after considering the Tamil Nadu Panchayats Act, 1994 and the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rule, 1999, allowed the writ petition and passed the following direction:-

“32....this Court directs the 1st respondent to take appropriate action through respondents 2 to 6 to exhume the body, which has been buried in S.F. No.201/3 by respondents 7 to 11 and bury the remains of the dead body in the designated existing burial ground at S.F. No.205/1. The said act shall be undertaken and completed by the official respondents within a period of one week from the date of receipt of a copy of this order. Further, the 6th respondent is directed to provide necessary police force for the purpose of maintaining law

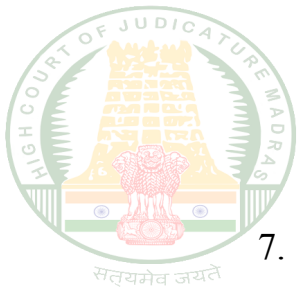


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and order at the time of exhumation and burial of the body so that no law and order problem is created in the said village by the private respondents and the persons action on their behalf. The cost towards the exhumation of the dead body from S.F. No.201/3 and burial at S.F. No.205/1...”

5. Being aggrieved, Jagadeeshwari, W/o late Narashimmulu Naidu and others preferred writ appeal in W.A.No.1037 of 2023. After hearing the counsels, the First Bench of this Court consisting the Hon'ble Chief Justice and Hon'ble Justice P.D.Audikesavalu, found that the Division Bench of this Court in the case of ***P.Muthusamy and another v. B.Vennila and Others*** in ***W.A.Nos.909 and 910 of 2014***, had delivered a judgment on 21.11.2022, without specific reference to Rules 4 and 5 of Tamil Nadu Panchayats Act, 1994 and the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999, though it has extensively discussed and interpreted Rule 7. Hence, the interpretation of Rule 7 of the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999, by the Division Bench in the case of ***P.Muthusamy and another***, cited supra, needs reconsideration.

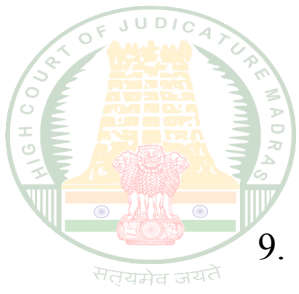
6. As a consequence, the question, “*whether, under Rules 1999, the burial can take place at a place other than the designated land, more particularly when the designated land exists in the village?*” was referred to Larger Bench.



7. Mr. N.G.R. Prasad, learned counsel appearing for the appellants, in

his own inimitable style submitted that the question is not worth for reference to a Larger Bench since the Division Bench in the case of *P.Muthusamy and another*, supra, in an identical factual scenario has gone into the law in *extenso* and reversed the order of the learned Single Judge, which issued mandamus directing the official respondents to exhume the dead body buried in the land classified as Cart Track (Vandhi Pathai Poramboke), for it to be buried in the designated place.

8. Learned counsel for the appellants further submitted that Rule 7 of the Rules of 1999 has to be read disjointly. Rules 4 and 5 have no application to the facts in case since the land in which, the deceased, Narashimmulu Naidu buried, is not an existing place of burial already registered as burial ground, under Rule 4. It is a new place 90 meters away from the dwelling place or source of drinking water supply. There is no prohibition under any law to bury a body in the patta land with the consent of the land owner, provided it is buried 90 meters away from the dwelling place or source of drinking water supply. When law does not prohibit an act of burying a body in a land of his choice, subject to the restriction found in Rule 7, the writ petitioner can have no grievance or cause of action to invoke the writ jurisdiction.



9. Per contra, Mr. T.Mohan, learned Senior Counsel for the first respondent submitted that Rule 7, which commence with an universal negative clause, cannot be read in isolation but, to be read along with the provisions preceding to Rule 7. The expression used in Rule 7 makes it unambiguously clear that no person shall bury or burn any corpse at a place other than the place licensed as a burial and burning ground. The 90 meters restriction is a condition to be read along with Rules 4, 5 and 7 and not in isolation. Rules are to be read as a whole in harmony, consistent with and in a manner complimenting each other and avoid a construction which would defeat the very purpose of the Rule.

10. Learned Senior Counsel further submitted that Rule 4 deals with registration of burial ground which was in existence prior to the Act and Rules came into force. Rule 4 mandates registration of places used for burying or burning dead bodies. Whereas, Rule 5 deals with conditions for opening of burial and burning ground. This Rule restricts new place for burying or burning the dead, whether private or public, which shall not be opened unless license is obtained from the village Panchayat on application. The combined reading of Rules 4 and 5, goes to show that after the Rule came into force in the year 1999, dead body can



be buried or burnt either in the place which is registered as burial ground or place licensed to bury or burn any corpse. If at all any person wants to use any land either private or public to bury or burn the dead, it shall be only on satisfying the conditions mentioned in Rule 5 and not otherwise.

11. Referring to the Division Bench judgment in *P.Muthusamy's* case, the learned Senior Counsel submitted that it is a case where the body was buried in the year, 2013. Then, alleging that the body was buried not in a place designated under the Act, but in the land classified as 'Cart Track' situate adjacent to the land owned by the writ petitioner, he has approached this Court through writ petition. According to the writ petitioner, while burial ground for backward caste community situated at Survey No.238/4 of the Navakurichi Village, Attur Taluk, Salem District, instead of burying the body of the respondent's mother in S.No.238/4, it was buried in land bearing Survey No. 237/1A.

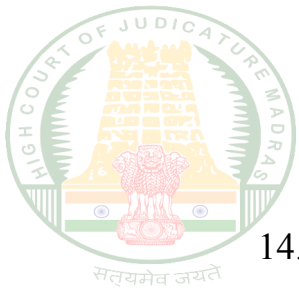
12. The writ petition was resisted by the private respondents and it was contended by the respondents that it is a customary practice in the village to bury the dead body in S.No.237/1A, though it is not designated as a burial ground,



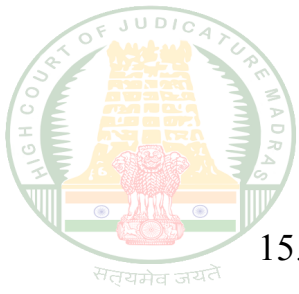
several dead bodies have already been buried on the southern side of the 'Cart

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13. In that case, the learned Single Judge after getting a report from the Advocate Commissioner appointed by the Court, concluded that the body was buried in the land classified as 'Cart Track' and therefore, directed the official respondents to exhume the body and shift it to the designated burial ground. The order of the learned Single Judge dated 04.07.2014 came to be challenged in W.A.Nos.909 and 910 of 2014. After 8 years, the judgment was passed on 21.11.2022, wherein the Division Bench, taking note of the fact that as per the customs prevailing in the said village, dead bodies are buried in the places other than place designated for the purpose. Since there is no express bar or prohibition under the Panchayat Act or Rules framed thereunder, unlike Chennai City Municipal Corporation Act and Tamil Nadu District Municipalities Act, which have a specific bar to bury or burn body other than designated place, the Division Bench allowed the writ appeal and set aside the order of the learned Single Judge.



14. However, the Division Bench had qualified its order stating that the fact that there is no prohibition, cannot be used as a license to bury or dispose of dead body anywhere and everywhere. Wherever, there are designated places for burial and burning of corpse, burial and burning must be restricted to those designated places unless, there is a custom in the village or area concerned use any other place for burial or a burring of the corpse. Therefore, the learned Senior Counsel appearing for the private respondents/writ petitioner submitted that it is not the case of the appellant that it is the custom in that village to bury the corpse in S.No.201/3, nor it is the case of the appellant that several bodies were already buried in the said survey number assuming the character of a registered place. Admittedly, Narashimmulu Naidu is the first person buried in the said land which is classified as 'Dry Land'. While the designated burial ground is hardly 90 meters away, the appellants had come out with an unreasonable justification that the pathway to the designated burial ground is being drenched and therefore, access to the burial ground is being deprived. Therefore, she has buried her husband corpse in the land of Late.Ramesh Naidu after getting consent from his wife Shanta.



15. Learned counsels appearing on either side, to buttress their submissions, had referred to the following judgments:-

i) (2007) 6 MLJ 264 (T.Ramesh Vs. District Collector, Ramanathapuram District)

ii) 2008 (3) LW 61 (A.Palaniappan Vs. The Collector, Namakkal & Others)

iii) 2014 SCC Online Mad 10969 (Palani Vs. District Collector, Mettur & Others)

iv) 2021 SCC Online Mad 1284 (Anandhi Simon Vs. State of Tamil Nadu, Rep., by Chief Secretary to Govt. & Others)

v) 2022 SCC Online Ker 1142 (Mathew Vs. State of Kerala)

vi) 2022 LiveLaw (SC) 756 (Mohammad Lateif Margrey Vs. The Union Territory of Jammu and Kashmir & Others)

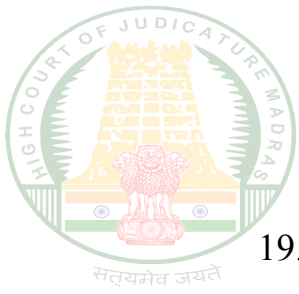
16. Mr. N.G.R. Prasad, learned counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in the case of *Mohammed Lateif Margrey Vs. The Union Territory of Jammu and Kashmir and Others* reported in *2022 7 Supreme 714*, wherein the Hon'ble Supreme Court had an occasion to consider the prayer of exhuming the body of a slain militant for the purpose of religious rituals. The Supreme Court in that judgment, had negated the plea stating that disinterment of body of slain militant for the purpose of religious



rituals is scuffled with dignity of the dead person. If the body is highly putrefied, then, it may pose a risk to public health and hygiene. Therefore, declined the request for exhuming the body.

17. Relying upon the said reason for refusal to exhume the body, learned counsel, Mr. N.G.R. Prasad submitted that the Act does not prohibit burying body in a non designated place and the only prohibition is, it should not be within 90 meters from the dwelling place or source of drinking water supply. Therefore, the deceased must be allowed to stay where he was laid by his kith and kin.

18. Mr. Mohan, learned Senior Counsel contrarily submitted that an act done in violation of the Rule, cannot be condoned for the reasons submitted by the appellants. The restrictions and prohibitions for burying dead body involve public health, hygiene and also the dignity of the dead person. The appellants had defyed the rules by burying the body of Late.Narashimmulu Naidu in the non-designated place in the midst of protest by the local residents. Having buried the man in a place not permitted, the appellants cannot turn around and say that the dignity of the dead person will be affected if exhumed.



19. None of the judgments cited on either side, including *Muthusamy's* case say, it is an absolute right to bury a body in a place other than designated place and the same is legally permissible. For specific reason stated in each those cases, Courts have denied exhumation of the body. Otherwise, in unequivocal term, Courts have held that Rules 4, 5 and 7 of the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules 1999 though not expressly prohibit the burying of corpse in non-designated place, implicitly the restrictions and conditions prohibit such burial. Even, if anybody wish to bury a body in a non-designated place, it shall be only in compliance with Rule 5 and not otherwise.

20. Rule 4 is in respect of places used as place for burying or burning of dead, prior to the Act and Rules came into force, it is mandatory for the owner of the land to register with Panchayat. If no owner or person having control of such place, makes application, then the village Panchayat itself shall assume control and register such place, or may, with the sanction of the Assistant Director (Panchayat) close it.



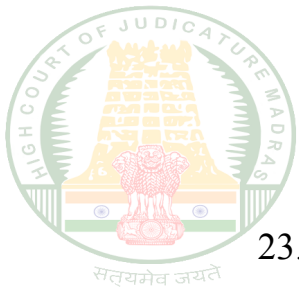
21. As rightly claimed by Mr. N.G.R. Prasad, learned counsel for the appellants, the place where the body of Narashimmulu Naidu buried on 02.04.2023 is not a place of burial already registered with the village Panchayat. Till date, the person who owns the land and controls the land viz., Shanta had not given any request for registering the place as burial ground. In fact, it is the contention of the appellants that burying one corpse in the private land will not make the land a burial ground. This Court reminded of the saying, 'Single Swallow will not make it summer'. But then, how many swallow will make a summer?

22. The heading for Rule 5 - “conditions for opening of burial and burning ground”, is relied upon by the learned counsel, Mr.N.G.R.Prasad to say a place a single body buried is different from a burial ground. Rules 5(1) and (2) read as below:-

“5. Conditions for opening of burial and burning ground.-

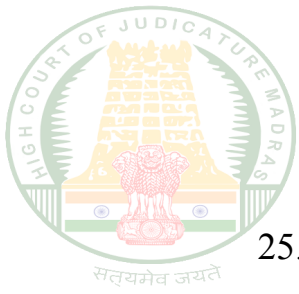
(1) No new place for burying or burning the dead, whether private or public, shall be opened, formed, constructed or used, unless a licence has been obtained from the Village Panchayat on application.

(2) Such application for a licence shall be accompanied by the plan of the place for which licence is required showing the locality, boundary and extent thereof, the name of the owner or person or community interested therein, the system of management and such further particulars as the Village Panchayat may require.”



23. The contention of Mr. N.G.R. Prasad, learned counsel appearing for the appellants is that burying Narashimmulu Naidu, in S.No.201/3 owned by Shanta, W/o.Ramesh Babu will not tantamount to opening of new place of burial, which requires the condition imposed in Rule 5 to satisfy this argument is not sustainable. The interpretation of a Rule is to be from the words employed in the provision. The heading to the Chapter or a provision in the Chapter may be the key to the provision but not the provision. If the provision is unambiguous, the heading cannot be used to refer anything contrary to the provision.

24. In *T.Ramesh Vs. District Collector, Ramanathapuram District* reported in (2007) 6 MLJ 264, after extracting the provisions of Rules 5 and 7, this Court declined to exhume the corpse buried in the play ground of the School, stating its reasoning that the corpse already buried cannot be removed at this juncture, because the petitioner has slept over the matter for more than a year and woke up only after the burial of the fourth respondent's wife. The learned Single Judge, while allowing the corpse to remain in the place where it is buried, yet had imposed condition on the respondents who buried the body in an unauthorised place and directed the District Collector to protect the property from burying dead bodies in future.



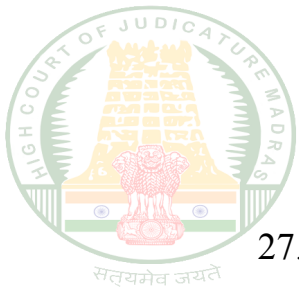
25. In another case of identical issue when came up before the learned

Single Judge in *Palani Vs. District Collector, Mettur, Salem District and Others*, reported in *2014 SCC OnLine Mad 10969*, Justice V. Ramasubramanian held as follows:-

“5. No private land can be converted into a burial ground, without a license from a local Panchayat. There is a procedure prescribed under the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules, 1999, for using a land as a burial ground. Obviously, without following the said procedure and without converting the land into a burial ground and without the license of the Panchayat, the burial appears to have taken place. Therefore, the petitioner is entitled to the relief prayed for.

6. However, the exhumation of the dead body of a person for the purpose of burying it elsewhere is a matter connected with the religious or other sentiments of parties. Unfortunately, the sixth respondent has not chosen to appear before me and contest the writ petition. Therefore, the only alternative available for me is to direct the respondents 1 to 5 to give an opportunity to the sixth respondent to do it by himself, so that his sentiments are respected and not offended.”

26. During the pandemic, when Dr.Simon Hercules died due to Covid-19 infection, the Corporation took charge of the body and buried it in Vellangadu burial ground. His wife Anandhi Simon approached this Court to issue mandamus directing the Corporation authorities to make necessary arrangement to exhume the body of Dr. Simon Hercules from Vellangadu burial ground and to bury the same at Kilpauk Cemetery, the Christian burial ground at Chennai.



27. Learned Single Judge of this Court allowed the writ petition and directed the fourth respondent / Chennai Corporation to exhume the body of Dr.Simon Hercules from Vellangadu burial ground (meant for Hindu community) and re-bury the same at Kilpauk cemetery (meant for Christian community) after following the WHO Protocol and Covid-19 Protocol issued by the State and Central Government time to time. In this case, the order of exhumation came to be passed more than a year after its burial.

28. In *Mathew vs. State of Kerala* reported in *2022 SCC Online Kerala 1142*, burial of body in a non-designated place came to be tested in the light of the Rules framed by the Kerala Government for burning and burying dead bodies. In that case, the District Collector issued a notice to the land owner, who had prepared a tomb for him to be buried after his death directing him to get the same registered under the Kerala Panchayat Building Rules and Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998. The said notice was challenged stating that the Kerala Panchayat Raj Burial and Burning Grounds Rules, 1998 is not applicable to the case where he has constructed structure in his land which could be used as a tomb in future. The contention of the petitioner that the State cannot



impose restriction on him for cremation of his own body in his own property where he is residing, was negated by the Kerala High Court stating that the Rule prohibits opening, constructing or using new burial ground without a license from the concerned District Collector.

29. When we look at Rule 7(1) of Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules 1999, we find that it is analogous to the Kerala Rules 5(i) which was interpreted the way it should be.

30. Both Rules 5 and 7 of the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules 1999 start with a negative clause. Rule 5 prohibits new place for burying or burning the dead without license obtained from village Panchayat. Rule 7 prohibits burning or burying any corpse, in any place, within 90 meters of the dwelling place or source of drinking water supply. The place licensed as burial and burning ground is exempted from the 90 meters restriction. Rule 5(1) does not indicate that the place where a body is buried or burnt, will not carry the character of burial ground or burning ground. If, single body is burnt or buried and the land owner has no intention to allow burial of body



in future. Whoever prefers a new place whether private or public to be used for

burying or burning the dead, license from the Panchayat is a pre-requisite. Thus, it is very clear that except the place which has already been registered under Rule 4 or a new place where license is obtained following the procedures contemplated under Rules 5(2) (3) and (4), no body can be buried or burnt in the place which is neither been registered or granted license.

31. That apart, it is also to be noted that Rule 6 mandates the village Panchayat to maintain a register at its office showing places which are provided, registered or licensed under Rules 3 to 5. The framers of the Rules were conscious of the fact that there may be violation of Rule 7 (1). Therefore, the Rule prescribes punishment for contravention of Rule 7(1) but, prosecution shall be instituted only on written sanction by the Executive Authority of the village Panchayat concerned.

32. The outcome of the above analysis of the Rules and 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. The Division Bench in *P.Muthusamy's* case has not declared that body can be buried anywhere other than registered or licensed place in a village Panchayat. The Division Bench had only recognized the custom prevailing in that particular village. The observation made in the *Muthusamy's* case, is restricted only to the facts of that case and it cannot have application *in rem*.

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.

(R.M.D., J) (Dr.G.J., J) (M.S.Q., J)

20.07.2023

Index : Yes/No.
Neutral Citation : Yes/No.

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