

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. No.22394 of 2021

S.Amirthavalli

Petitioner

-Vs-

- 1 The District Collector,
Coimbatore District.
- 2 The Tahsildar,
Pollachi Taluk
- 2 The Block Development Officer,
Pollachi Taluk.
- 4 The Village Administrative Officer,
Eripatti and MarampudungiGoundan Pudur,
Pollachi Taluk.
- 5 The President,
Eripatti Panchayat Union,
Pollachi Taluk.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to take necessary steps to preventing illegal activities of corpses on the track-road situated in Survey No.37 of Eripatti Village by considering the petitioner's representation dated 18.08.2021.

For Petitioner : Mr.B.Thirumalai

For Respondents : Mr.U.Baranidharan
Government Counsel for R1, R2 and R4

Mr.C.Jayaprakash
for R3 and R5

ORDER

This writ petition has been filed for issue of writ of mandamus directing the respondents to stop the burial/cremation of the dead bodies in a road track in S.No.37 at Eripatti Village, Pollachi Taluk.

2.The case of the petitioner is that her husband was the owner of the properties situated in S.Nos.34/C, 34/C1 and 34/D, by virtue of a registered Partition Deed, dated 15.12.1998. The further case of the petitioner is that the access to the property is through a road track situated in S.No.37. According to the petitioner, this is a Government poramboke land and it has been used for a very long time.

3.The grievance of the petitioner is that persons belonging to certain communities started burying/cremating dead bodies in the road track at S.No.37. The representation made by the petitioner in this regard did not

evoke any response. Left with no other alternative, the present writ petition has been filed before this Court seeking for appropriate directions.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

5. The learned Government Counsel submitted the written instructions received from the 2nd respondent. It is seen from the written instructions that the subject property in S.No.37 belongs to the Highways Department. There is already a place which is specifically notified as a burial ground. However, persons belonging to the lower caste are not allowed to access the burial ground and as a result of the same, they have been cremating the dead bodies in the property for more than 25 years. It is further stated that such cremation does not cause any hindrance to anyone and they are able to freely use the road track to access their properties.

6. It is further stated that the notified burial ground is situated at S.F.No.104/A, Eripatti Village and it is only 1 KM from Marampudungi Goundan Pudur village. The residents belonging to this

village are cremating the dead bodies only in the burial ground situated at S.F.No.104/A. Therefore, already a communication has been sent to the 3rd respondent on 18.10.2021 to the effect that persons belonging to all the communities must be permitted to use the burial ground situated at S.F.No.104/A.

7.The learned Government Counsel appearing on behalf of the 3rd respondent submitted that the communication has been received from the 2nd respondent and necessary steps will be taken to ensure that the cremation takes place in the burial ground situated at S.F.No.104/A, irrespective of the community. The learned Government Counsel also brought to the notice of this Court the provisions of the Tamil Nadu Village Panchayats (Provisions of burial and burning grounds) Rules, 1999.

8.In the considered view of this Court, there is no requirement to go into the right of the petitioner over the road track situated at S.No.37. The only issue involved in the present case is that cremation is taking place in a location which has not been notified as a burial ground in accordance with the Tamil Nadu Village Panchayats (Provisions of burial and burning grounds) Rules, 1999.

9.It is quite unfortunate that even at the time of death, the caste factor does not seem to leave a person. It attaches itself till the person is ultimately cremated. In view of the same, there is a loathsome practice that is prevalent in many villages where persons belonging to the marginalized sections are not even allowed to use the burial ground. As a result of the same, persons belonging to this community are forced to cremate the dead bodies in some other place which has not been notified as a burial ground. Such a practice should be immediately stopped and everyone must be give an access to the burial ground irrespective of the caste or community to which they belong. Even at this length of time, the curse of the caste system is so prevalent particularly in villages and it piggyback even at the time of birth and does not even seem to leave even at the time of cremation. Alas we live in such sorry state of affairs.

10.There is no doubt in the mind of this Court that insofar as the cremation of dead bodies are concerned, everyone must be allowed to cremate the dead bodies in the place which is notified as a burial ground irrespective of the caste or community to which he or she belongs. If the cremation is prevented by anyone on the ground that the person concerned belongs to a marginalized section, immediate action must be

taken in accordance with law and such persons must be punished. Only if stringent actions are taken and the perpetrators of such crime are brought to book, such condemnable practices can be brought under control. This Court expects that such stringent action will be taken by the authorities across Tamil Nadu wherever they find that the cremation of dead bodies are not allowed based on caste. It must be borne in mind that Article 21 of the Constitution of India has now been read to the extent that even a decent burial is considered to be fundamental right. Such a fundamental right must enure to all irrespective of the caste or creed to which one belongs. This should be borne in mind by the authorities and a complete revamp on the attitude of the people must be brought forth by taking stringent action against persons who follow such inhuman practices.

11. In view of the above discussion, there shall be a direction to the respondents to ensure that the cremation of the dead bodies be permitted in the burial ground situated at S.F.No.104/A, Eripatti Village, Pollachi Taluk, irrespective of the caste or creed to which he or she may belong. The cremation or burial of the dead bodies should not be allowed in any other places than those places which are specifically notified as a burial and burning ground under the relevant Rules.

12.This writ petition is disposed of with the above direction. No Costs. A Copy of this order shall be marked to a)The Secretary to Government, Rural Development and Panchayat Raj Department and b)The Director General of Police to ensure stringent action as and when a situation arises.

22.10.2021

Index : Yes
Internet : Yes
Speaking Order/Non-Speaking Order
ssr

To

- 1 The District Collector,
Coimbatore District.
- 2 The Tahsildar,
Pollachi Taluk
- 2 The Block Development Officer,
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- 5 The President,
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N.ANAND VENKATESH, J.

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