

W.P(MD)No.21560 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.11.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21560 of 2024
and
W.M.P.(MD)No.18226 of 2024

Elizabeth F.Santhi

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by the District Collector of Kanyakumari,
At Nagercoil, Kanyakumari District.
- 2.The Sub Collector of Padmanabhapuram,
At Thuckalay, Kanyakumari District.
- 3.The Superintendent of Police of Kanyakumari,
At Nagercoil, Kanyakumari District.
- 4.The Sub Inspector of Police,
Nithiravilai,
Kanyakumari District.
- 5.The Arch-Bishop of Trivandrum,
Bishop's House,
Latin Catholic Diocese of Trivandrum,
Vellayambalam, Thiruvananthapuram -10,
Kerala State - 695 010.
- 6.The Parish Priest
St.Thomas Forane Church,

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Thoothoor,
Kanyakumari District - 629 176.

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7.The Kollemcode Municipality,
Kollemcode,
Kanyakumari District - 629 160,
Rep. by its Commissioner.

... Respondents

*(R7 is impleaded vide order dated 19.11.2025 in
W.M.P.(MD)No.26192 of 2025 in W.P.(MD)No.21560
of 2024 by GRSJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing respondents 1, 2, 5 and 6 to exhume the body of the petitioner's deceased husband, L.Nelson, Son of Lazar, buried on 15.03.2022 in the burial ground of the St.Thomas Forane Church, Thoothoor, Kanyakumari District of respondents 5 and 6 and hand over the same to her within a time to be fixed by this Court to be re-buried in her own land in Re-Survey No.319/1C2 of Ezhudesam C Village, Killiyoor Taluk, Kanyakumari District.

For Petitioner : Mr.K.N.Thambi

For Respondents : Mr.D.Gandhiraj,
Spl. Govt. Pleader for R1, R2 & R7.
Mr.A.Albert James,
Govt. Advocate (Crl. Side) for R3 & R4.
Mr.N.Dilipkumar,
Standing Counsel for R5 & R6.



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ORDER

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A “grave” issue has been brought forth for adjudication. The writ petitioner's husband / Nelson who passed away on 13.03.2023 was buried in the cemetery maintained by the St. Thomas Forane Church. It is not in dispute that the petitioner's husband was a member of the said church and that the burial was done as per the usual rites and customs. While so, the petitioner now wants to exhume her husband's bodily remains and re-bury the same in her own land.

2.The Church has filed a detailed counter-affidavit. The cemetery is located in S.No.302/1A and measures 33.7 cents approximately. It is said to be in existence for over 500 years. It is located very near the seashore. According to the Church, the cemetery has been divided into four partitions (four quarters). The bodies are being buried at the depth of five feet in alcoves formed by layering new sand over the old. Paragraph Nos.G, H, I and J of the counter affidavit read as follows:-

“g. There is a likelihood that the cemetery will be fully filled with sand after all four quarters are completed. The petitioner's husband is buried in the fourth quarter. It is expected



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*that filling in the remaining portions will take another two years.
At present, burials are taking place in the second quarter.*

h. By that time, the bodies in the first quarter will have disintegrated. A fresh layer of sand, five feet in height, will then be spread. When the first quarter is filled, care will be taken to ensure that no visible signs of the buried bodies on the surface-present for the past year-are disturbed. The dates of death are duly recorded in the church registers.

i. Relatives of the deceased are permitted to maintain markers and perform religious observances for one year. After one year, the markers are removed. In our church, crosses are not placed at burial sites to conserve space.

j. Initially, a five-foot layer of sand was placed over the existing ground. When preparing burial pits, ditches of about five to six feet in depth are made. Each burial space accommodates a body within an area measuring approximately five feet in length and four feet in width. Over time, the sand will compact and settle, making it increasingly difficult to bury bodies unless additional sand is added. Therefore, regularly replenishing the sand has become essential. Announcement will be made in the church in connection with this.”

The learned counsel representing the church would contend that as per Canon Law, once a body is buried in the cemetery, normally it is not



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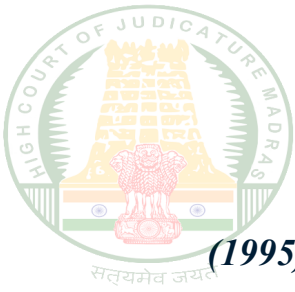
allowed to be exhumed.

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3.I carefully considered the petitioner's counsel's emotional plea for exhumation as well as the rival contention that there is no right as such.

4. This writ petition has been filed in the nature of a Writ of Mandamus. Only if the writ petitioner is able to show the existence of any legal right in her or a corresponding legal duty on the part of the respondents, relief sought for can be granted. The learned counsel appearing for the petitioner is unable to draw my attention to any statutory provision. However, reliance was placed on *Anandhi Simon Vs. The State of Tamil Nadu (2021 (3) MLJ 479)*.

5. The dead have to be treated with dignity. The body will have to be buried or cremated in terms of the wishes of the deceased, if it can be ascertained. The immediate kin are entitled to dispose of the body in accordance with the tradition, culture and the religion which the deceased professed (*vide Pt.Parmanand Katara Vs. Union of India*



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(1995) 3 SCC 248, Ramji Singh Vs. State of U.P. (2009) 5 ALL LJ 376).

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6. While right to decent burial or cremation can be brought within the sweep of Article 21 of the Constitution of India, disinterment or exhumation of the bodily remains stands on a different footing altogether. The Hon'ble Supreme Court in the decision reported in **2022 SCC OnLine SC 1203 (Mohammad Latief Magrey Vs. State)** dealt with the issue of exhumation. In the said case, a Kashmiri had been killed in a police encounter. He was buried in accordance with the Islamic rites and customs by the security forces. However, the father of the deceased sought exhumation of the body so that he can perform the final rites. A learned single Judge of the Jammu & Kashmir High Court had upheld the claim. The decisions of the Madras High Court made in **W.P.(MD)No. 3888 of 2007 dated 28.08.2007 (S.Sethu Raja Vs. The Chief Secretary, Government of Tamil Nadu)** and reported in **2021 (3) MLJ 479 (Anandhi Simon Vs. State of Tamil Nadu)** were relied upon. But on appeal by the State, the Division Bench had reversed the decision of the single Judge. The father of the deceased had approached the Hon'ble Supreme Court. But the Apex Court declined to interfere. It was noted



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that the issue cannot be decided based on sentiments of the parties. The

Hon'ble Supreme Court noted that there is a legislative vacuum. The law

on the subject was enunciated in the following terms:-

“ 56. After a body has been buried, it is considered to be in the custody of the law; therefore, disinterment is not a matter of right. The disturbance or removal of an interred body is subject to the control and direction of the court. The law does not favour disinterment, based on the public policy that the sanctity of the grave should be maintained. Once buried, a body should not be disturbed. A court will not ordinarily order or permit a body to be disinterred unless there is a strong showing of necessity that disinterment is within the interests of justice. Each case is individually decided, based on its own particular facts and circumstances.”

7. Section 196(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 states that whenever the jurisdictional Magistrate considers it expedient, he may cause disinterment and examination of the dead body of any person who has already been interred in order to discover the cause of his death. In other words, for forensic purposes, a body can be exhumed but



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this lies within the power of the Magistrate. Of course, constitutional Courts in exercise of writ jurisdiction can also direct such exhumation.

Section 173 (2) of the Tamil Nadu Urban Local Bodies Act, 1998 states that no person shall, without the sanction in writing of the Judicial Magistrate, reopen a grave already occupied. Thus, it appears that the matter is left to the discretion of the jurisdictional Courts. In ***Re Blagdon Cemetary (2002) 3 WLR 603***, the standard was formulated in the following terms:- “*Has the petitioner shown that there are sufficient and exceptional grounds for disturbance of the churchyard.*” The expression “disturbance” is significant. When a person dies, the normal response is “RIP”(rest in peace). Any exhumation of the bodily remains is obviously an act of disturbance. That is why, law heavily weighs against the same. Courts will not permit exhumation unless a strong case is made out. As on date, exhumation is allowed only under two circumstances. a) to ascertain the cause of death and b) where burial did not take place in a proper manner. Even in such cases, courts will also take into account various relevant factors. One such factor can be the length of time after which the request for exhumation is made. This is so because body will start decomposing after a given period and no purpose will be served by



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directing disinterment of a decomposed body. As per Christian theology, permanency attaches to burial. A cemetery is a consecrated place. It is interesting to note that while the members of the parish have the right to be buried in the cemetery maintained by the parish, it does not include a right to erect a memorial to the deceased. A grave stone placed in a churchyard without permission constitutes a trespass. Equally, a grave stone not complying with the terms of the permission granted is also a trespass. The legal authority in relation to the cemetery can decide issue concerning memorials ***(1994 1WLR 1588 In Re Holy Trinity Churchyard, Freckleton)***.

8. The practice adopted by the subject church, as set out in the counter affidavit of not permitting permanent memorials to be erected, is in accord with the law indicated above.

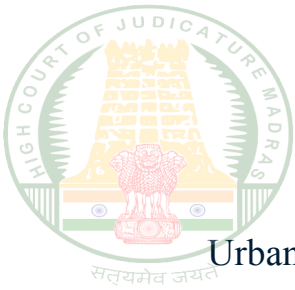
9. The petitioner's husband was a practicing Christian owing allegiance to Latin Catholic Church. He was buried as per Christian rites and customs. Once a body has been buried, it may not be appropriate to direct its exhumation for reburial without any sufficient cause. In



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Anandhi Simon's case, the body was buried in a place where people belonging to a different faith had been buried. The customary ceremonies were also not observed. That is why, relief was granted to the writ petitioner therein. Such is not the case here. Hence, reliance on **Anandhi Simon** is misplaced. The petitioner has not shown the existence of any legal right. What is projected is a mere sentiment. Unless a convincing reason is made out, exhumation cannot be permitted. The petitioner has failed to meet the said requirement. I, therefore, decline to grant relief.

10. There is yet another reason for negating the petitioner's request. I wanted to know as to what the petitioner would do after exhumation. It was claimed that the body would be buried in the petitioner's patta land. This is impermissible. The Hon'ble Full Bench of the Madras High Court in the decision reported in **2023 SCC OnLine Mad 4773 (Jagadheeswari Vs. B.Babu Naidu)** has held that bodies can be buried or cremated only in designated places. The learned counsel for the petitioner would argue that the decision of the Hon'ble Full Bench will apply only to panchayats and not to municipalities. I decline to take cognizance of such a distinction. Section 172(3) of the Tamil Nadu



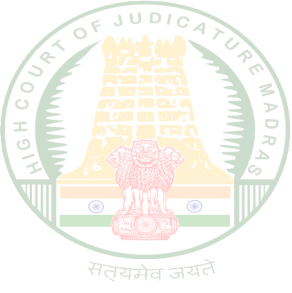
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Urban Local Bodies Act, 1998 states that no person shall bury or burn any corpse except in a place which has been registered, licensed or provided. Admittedly, the petitioner's patta land is not a registered or licensed place for burial. If the petitioner's request is conceded, it would be contrary to law. Looked at from any angle, the petitioner's prayer has no merit.

11.The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.11.2025

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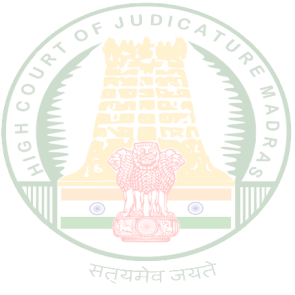


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- 5.The Commissioner,
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G.R.SWAMINATHAN, J.

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