

W.A.No.3243 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.06.2025

PRONOUNCED ON : 24.07.2025

CORAM:

THE HONOURABLE MRS.**JUSTICE J. NISHA BANU**
and
THE HONOURABLE MR.**JUSTICE M.JOTHIRAMAN**

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1.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai-600 003.

2.The Additional Health Officer,
Greater Chennai Corporation,
General Health Department,
Ripon Buildings,
Chennai-600 003.

3.The Zonal Officer,
Zone-7, Chennai Corporation,
Ambattur,
Chennai-600 053.

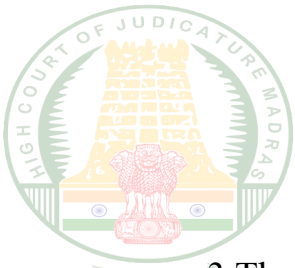
...Appellants/Respondents 2 to 4

Vs.

1.S.Jaya

....1st respondent/writ petitioner

2.The State of Tamil Nadu,
Rep.by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.



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3. The Deputy Director of Health Service,
(Public Health),
Krishnankoil @ Nagercoil,
Kanyakumari District.

...Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the judgment dated 25.09.2024 passed in W.P.No.10337 of 2024.

For Appellant : Mr.P.S.Raman
Advocate General
for Mrs.P.T.Ramadevi

For Respondents : Mr.Ravikumar Paul
Senior Counsel
for Mr.P.Ebenezer Paul for R1
Mr.K.Tippusultan
Special Government Pleader
for R2 and R3

J U D G M E N T

(The Judgment of the Court delivered by Justice M. JOTHIRAMAN)

This Intra-Court Appeal is filed against the order dated 25.09.2024 passed in W.P.No.10337 of 2024 by this Court.

2. Before the writ Court, the first respondent/writ petitioner has challenged the order impugned passed by the Additional Health Officer, Greater Chennai Corporation, Chennai, dated 23.01.2024, thereby



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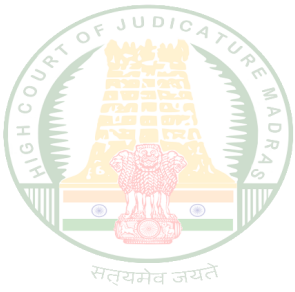
rejecting the request made by the writ petitioner seeking permission to exhume the body of her husband buried at Ambattur Corporation graveyard to rebury the body at his native place as per the protestant Christian rites.

3. The writ Court has quashed the order impugned in its order dated 25.09.2024 in W.P.No.10337 of 2024 and the relevant portion of the order is extracted hereunder:

“9. Accordingly, the impugned order passed by the third respondent dated 23.01.2024 is hereby quashed. The second respondent is directed to permit the petitioner to exhume the body of the petitioner's husband, viz., I.Austin, buried at Ambattur Graveyard within the jurisdiction of the fourth respondent zone and to rebury the remains of her husband at their native place as per their rites in the family graveyard located at New S.Nos.599/24, 25 & 26, Vembadivillai, Kallukoottam Village, Kalkulam Taluk, Kanniyakumari District, within a period of two weeks from the date of receipt of a copy of this order on condition that

(i) the exhumation will be done in the presence of the third and fourth respondents at the cost of the petitioner;

(ii) the remains of the body of the petitioner's husband shall be taken to their native place in a sealed cover without causing any health hazard to anybody



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immediately after exhumation;

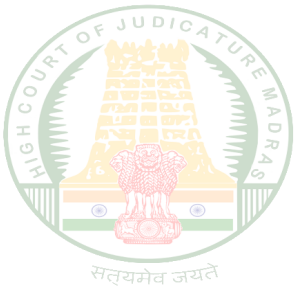
(iii) the exhumation of the petitioner's husband body shall be done without causing any damage to the adjacent corpses;

(iv) the exhumation shall be done with the aid of police protection to avoid law and order issue if any;

(v) the fourth respondent shall ensure the correct graveyard of the petitioner's husband to be opened with the assistance of the petitioner.”

4. Feeling aggrieved by the said order, the Commissioner, Greater Chennai Corporation, the Additional Health Officer, Greater Chennai Corporation and the Zonal Officer, Chennai Corporation, Chennai, have preferred this Intra-Court Appeal.

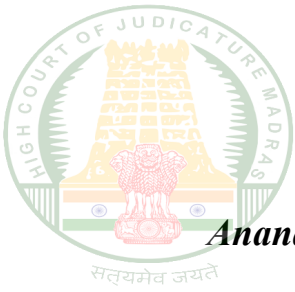
5. The learned Advocate General appearing for the appellants would submit that there is no specific provision of law in India relating to the exhumation of the body except Section 176(3) of Code of Criminal Procedure. The Hon'ble Supreme Court of India in the case of ***Mohammed Latief Magrey vs. The Union of J & K*** in ***C.A.No.6544 of 2022***, held that once the body is buried after performing all the rituals and prayers as per the religious rites and customs, the body should not be disturbed, unless there is a strong showing of necessity that disinterment is within the interests of justice.



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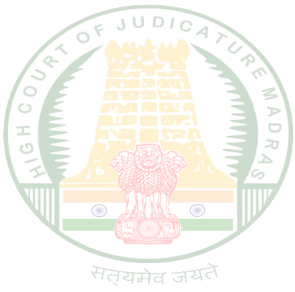
6. The learned Additional Advocate General would further submit that the deceased, namely, I.Austin was buried in Ambattur Corporation Graveyard on 15.08.2020, and more than 5 years have passed post burial and it is suggested that if the exhumation process takes place, the body may not be in a deliverable state. He would submit that the first respondent/writ petitioner has approached the Appellants Corporation vide representation only on 12.01.2024 which is almost four years post burial of the deceased. The writ petitioner has never approached the appellants Corporation earlier with such contentions. The first respondent/writ petitioner has relied on the judgment of this Court in the case of *Anandhi Simon vs. State of Tamil Nadu* reported in **2021 3 Mad LJ 479**, for exhumation of the body, but wherein, a request was made to exhume the body within four months of burial. The exhumation of the deceased may also create a situation against the maintenance of law and order and there is nothing to indicate or prove that the deceased was not given a decent burial as enshrined under Article 21 of the Constitution of India. Since no right is absolute in its nature and is accompanied by reasonable restrictions, one such restriction that arises while dealing with the case of exhumation is that of public health and morality.



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Anandhi Simon's case as cited supra relied upon by the first respondent/writ petitioner has also been considered by the Hon'ble Supreme Court of India in **Mohammed Latief Magrey's** case (cited supra), wherein, it has been held that the Court of law should not decide the rights of the parties considering their sentiments and should decide the matter in accordance with law, more particularly, keeping in mind the doctrine of rule of law. The learned Additional Advocate General would further submit that in the case of **Common Cause vs. Union of India**, the Hon'ble Supreme Court of India held that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public health, the judiciary must occupy the field to sub-serve the public interest. The exhumation can be ordered only when there is a suspicion that the death was caused by poisoning, homicide, suspected homicide, disguised suicide or criminal abortions. But in cases where the State had performed the last rites of the deceased following the religious beliefs, re-performing such rituals and shifting the grave is not warranted one. The process of exhumation shall be time bound as once the body is buried, its start to putrefy after attaining a particular stage and removing it from the grave might cause the spread of some harmful disease.



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7. Per contra, the learned Senior Counsel appearing for the first respondent/writ petitioner submits that the first respondent has sent a representation to the first appellant seeking permission at her cost to exhume the body of her husband and bury the same at the family cemetery in his native place, after taking all precautionary measures for shifting the body in a safe manner. Without conducting any enquiry or looking into feasibilities or giving any opportunity, the third appellant rejected the request vide order dated 23.01.2024, merely stating that there is no provision of law for the same. The writ Court quashed the impugned order on the basis that the first respondent and the family members were not allowed to perform rituals/prayers while burying the body of her husband as per Christian Rites. Article 21 of the Constitution of India includes the right to have a decent burial which was not done in this case as religious prayers and rites were not performed as per the practice for Christians. Even as per the guidelines issued by the WHO and the Scientific reports, there is no evidence of persons having become infected from exposure to the people, who had died due to COVID-19.

8. The learned Senior Counsel would further submit that this Court in identical circumstances in W.P.No.7620 of 2020 directed to grant



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permission to exhume the body of Dr.Simon, who died due to COVID-19

and buried under similar circumstances in Ambattur Corporation

Graveyard and rebury the same in Christian Cemetery at Kilpauk, after

performing the religious rituals. The statement made by the learned

Advocate General that there is no specific provision of law relating to

exhumation of the body except Section 176(3) Cr.P.C., is not applicable

to this case. *Mohammad Latief Magrey's* case relied on by the

appellants Corporation, wherein the request for exhumation of the body

and reburial was rejected as the body was not in a deliverable state after

9 months, is not applicable to this case, since the facts of this case are not

similar but completely different. The learned Senior Counsel would

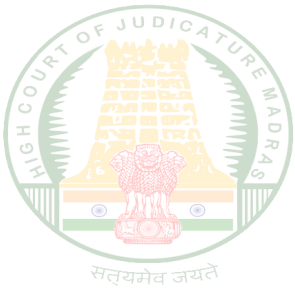
further submit that the permission for exhumation and reburial granted in

Anandhi Simon's case is in identical circumstances and the denial of the

same in this case is in violation of Article 14 of the Constitution of India.

Hence, he prays for dismissal of this appeal.

9. We have considered the submissions made on either side and perused the records.



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10. It is the case of the first respondent/writ petitioner that the first respondent's husband, while was working as Assistant in this Court, was affected with COVID-19. Immediately, he was admitted in the Government Rajiv Gandhi Hospital, Chennai. Unfortunately, due to heart attack, he died on 15.08.2020. His native place is Vembadivillai, Kallukootam Village, Kalkulam Taluk, Kanyakumari District and his entire family members are residing there. They have a common graveyard in their own land and the bodies of their family members were buried in that land. After the demise of her husband, the first respondent sought for permission from the appellants to take his corpse to their native place. However, the first respondent was denied permission. Without the consent of the first respondent and her family members, her husband body was buried at Ambattur Corporation graveyard. During burial, the first respondent and her family members were not allowed to perform the rituals/prayers in accordance with Christian rites and customs. Therefore, it caused great hardship and irreparable pain to the first respondent and her family members. After the demise of her husband, her mother-in-law died on 28.05.2021 and her body was taken to their native place and buried there. Thereafter, the second and third waves of COVID-19 came and therefore, the first respondent did not



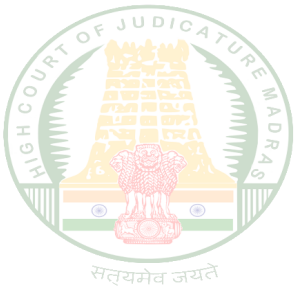
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seek any request to exhume and rebury her husband's corpse in their native place. Therefore, she waited till recuperation of COVID-19 and made a representation on 12.01.2024 seeking permission to exhume her husband body and to rebury the same at their native place. It was rejected on the ground that there is no provision to exhume the buried body under law.

11. It is pertinent to mention that exhumation of a buried body raises complex issues relating to dignity and the rights of the deceased as well as the right of their families. Article 21 of the Indian Constitution guarantees the protection of life and personal liberty. The Hon'ble Supreme Court of India and the various High Courts have interpreted this Article to include the right of dignity not only for the living but also for the deceased.

12. It is to be noted that the deceased have a fundamental right of dignity, which includes a decent burial or cremation according to their religious rites and burial/cremation should be performed according to the deceased's religious tradition and the family members have the right to perform the lost rites and ensure a dignified burial/cremation.



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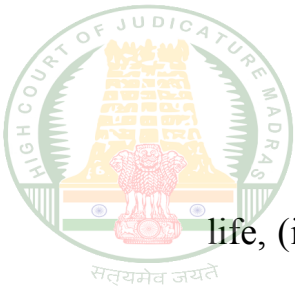
13. It is also to be noted that Section 11 of Indian Penal Code describes that the word “person” includes any Company or Association or body of persons, whether incorporated or not. Chapter XV of Indian Penal Code deals with offences relating to religion. Section 297 deals with trespassing on burial, places etc., which reads as follows:-

“ whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

14. It is pertinent to mention that the important components of Article 21 of the Constitution of India are (i) person, (ii) deprivation of



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life, (iii) deprivation of personal liberty and (iv) procedure established by law. All these components are increasingly receiving expanded interpretation. Relevant to the fourth component is the decision of the Hon'ble Supreme Court of India in the case of ***Maneka Gandhi vs. Union of India*** reported in ***AIR 1978 SC 597*** which has totally changed the scope of Article 21 of the Constitution of India by demanding that the procedure must not only be established by law but that it must be just, fair and reasonable.

15. It is pertinent to mention that environmental, ecological air and water pollution would amount to violation of the right to life assured by Article 21 of the Constitution of India. The Hon'ble Supreme Court of India in the case of ***State of M.P. vs. Kedia Leather and Liquor Limited and others*** reported in ***(2003) 7 SCC 389***, wherein it has been held that hygienic environment is an integral facet of healthy life and right to live with human dignity becomes illusory in the absence of humane and healthy environment.

16. Section 297 of Indian Penal Code deals with trespassing of places of sepulture and places set apart for the performance of funeral



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rites or as a depository for the remains of the dead. A person who has the duty of properly burying a dead body, also has right to possession of the body for burial, to maintain the burial place and to protect the body therein and to initial legal proceedings for any disturbance to such burial place. It is also universally accepted that a duty is owed to the Society that the body be buried without any unnecessary delay. This duty casts upon whoever has the right to bury the deceased and who is under the roof of the deceased. The right to decent burial is upheld in the Indian Context but who is authorized for the burial is not explained.

17. It is to be noted that the State is obliged to sanction removal the body in a safety manner for its adequate disposal. The State is also obliged to the welfare of the people and non-prevention of dangerous consequences of the body and protect the rights of such person provided under Article 21 of the Constitution of India for dignity and decent burial in accordance with the religious manner.

18. As rightly pointed out by the learned Advocate General, the Hon'ble Supreme Court of India has held that once the body is buried after performing all the rituals and prayers, the body should not be



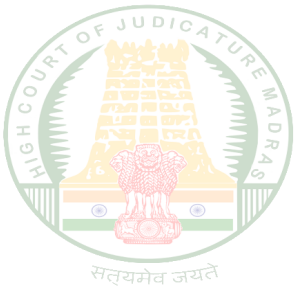
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disturbed, unless there is a strong showing of necessity that disinterment is within the interests of justice. The relevant portion of the judgment relating to the process of decomposition of the human body post burial in

Mohammed Latief Magrey's case is extracted as follows:-

“53. The appellant himself has relied on an expert, namely, Dr.Arpad A.Vass, a Senior Staff Scientist at the Oak Ridge National Laboratory and Adjunct Associate Professor at the University of Tennessee in Forensic Anthropology who has stated that decomposition of the human body begins around 4 minutes after a person dies. The Expert has said that the body starts to liquify after one 1 month of decomposition. As each day passes by, more putrefaction is undergone by the body. Even the learned Single Judge by order dated 27.05.2022, had mentioned that the dead body of the deceased must be in advanced stage of putrefaction. Almost 9 months have passed post burial which is suggestive that the body may not be in a deliverable state. It will be too much at this stage to disinter the body. The dead should not be disturbed and some sanctity should be attached to the grave.

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



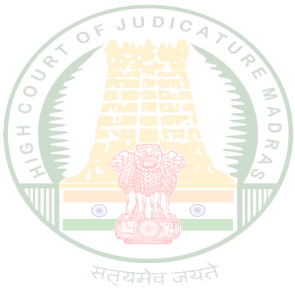
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that the sanctity of the grave should be maintained. Once buried, a body should not be disturbed. A Court will not ordinarily order or permit a body to be disinterred unless there is a strong showing of necessity that disinterment is within the interests of justice. Each case is individually decided, based on its own particular facts and circumstances.”

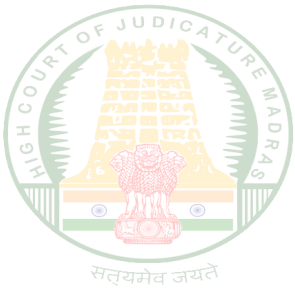
19. The Hon'ble Supreme Court has also discussed about the state of decomposition of human body relying upon the report of the Expert in Forensic Anthropology. It has been stated that the decomposition of the human body begins four minutes after a person dies. By applying the above ratio, in the case on hand, the deceased, namely, Thiru.I.Austin, was buried in Ambattur Corporation Graveyard on 15.08.2020 and more than 5 years have passed post burial. If the exhumation process takes places, the body may not be in a deliverable state. It is pertinent to mention here that the first respondent has approached the appellant Corporation vide representation only on 12.01.2024 which is almost four years post burial of the deceased.



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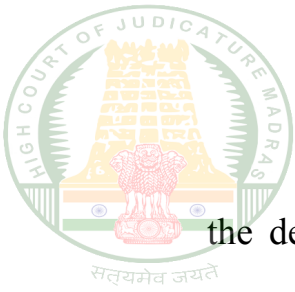
20. The learned Senior Counsel appearing for the first respondent/writ petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of *Anandhi Simon vs. State of Tamil Nadu* reported in **2021 3 MAD LJ 479** in support of his case, however, in that case, the request for exhumation of the body was made within four months of the burial of the deceased, who died due to COVID-19. There is nothing on record to indicate that the deceased was not given a decent burial. Only after performing all the rituals and prayers as per their religious rites, the first respondent constructed a tomb for the deceased, namely, Thiru.Austin in Ambattur Corporation Graveyard.

21. It is pertinent to mention that the judgment of *Anandhi Simon*'s case as relied on by the learned Senior Counsel appearing for the first respondent has also been considered by the Hon'ble Supreme Court of India in the case of *Mohammed Latief Magrey*'s case cited supra, wherein, it has been held that the Court of law should not decide the rights of the parties, considering the sentiments and should decide the matter in accordance with law, more particularly, keeping in mind the doctrine of rule of law.



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22. This Court is of the opinion that the process of exhumation shall be time bound as once the body is buried, it should not be disturbed and it starts to putrefy after attaining a particular stage, removing it from the grave might cause the spread of some harmful diseases. It is relevant to mention here that “Salus Populi Suprema Lex” means the welfare of the people is the supreme law. If this Court allows exhumation of the body, it will create a precedent for all those families, who lost their closed ones seeking for exhumation of the body irrespective of the fact that their faiths were buried/cremated at different places on account of their death due to COVID-19 infection which will result in public turmoil endangering the larger public, wherein, the whole world had already suffered the fatal waves of a global pandemic. That apart, “the departed soul requiescat in pace”. It is to be noted that there is no specific provision of law in India relating to the exhumation of the body except Section 176(3) of Code of Criminal Procedure (196(4) of Bharatiya Nagarik Suraksha Sanhita, 2023). Therefore, the reasons assigned by the writ Court are not justifiable under law, since there is nothing to indicate that the deceased was not given a decent burial as enshrined under Article 21 of the Constitution of India. Further, after performing all the rituals and prayers, a grave/tomb was constructed for



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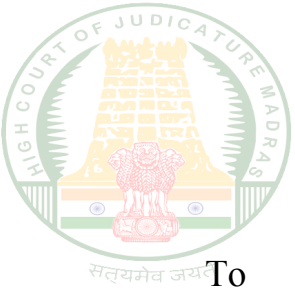
the deceased, namely, Thiru.Austin. In view of the above discussions, there are merits in this appeal and the order of the writ Court is liable to be set aside.

23. In the result, this Writ Appeal is allowed and the order of the Writ Court dated 25.09.2024 passed in W.P.No.10337 of 2024 is set aside. There shall be no order as to costs. Connected miscellaneous petition is closed.

(J.N.B., J.) (M.J.R., J.)
24.07.2025

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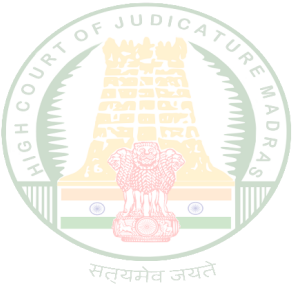
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Internet : Yes
Neutral Citation: Yes



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- To
- 1.The State of Tamil Nadu,
Rep.by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
 - 2.The Deputy Director of Health Service,
(Public Health),
Krishnankoil @ Nagercoil,
Kanyakumari District.



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