

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29-06-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

WP(MD) No. 27734 of 2022

and

W.M.P.(MD)No.21833 of 2022

1. Anbalagan .P
S/o. Pandi, Bharathiyar 2nd Street, South Street,
Sukkuvadanpatti, Oonchampatti Village, Theni
District.
2. Thavaraja. M
S/o. Mani, North Main Road,
Bommaiahgoundanpatti, Theni, Theni District.
3. Ragunathan. R
S/o. Ramuthevar, No.6B, Vellaichamy Street,
Bommaiahgoundanpatti, Theni, Theni District.

..Petitioner(s)

Vs

1. The District Collector
Collectorate Office, Theni District.
2. The Revenue Divisional Officer
Thamaraikulam, Periyakulam Taluk,
Theni District.
3. The Tahsildar
Theni Taluk, Theni District.
4. The Village Administrative Officer
Oonchampatti Village, Theni, Theni District.



5. The President
Oonchampatti Panchayat, Theni, Theni District.

6. Kubendran
S/o. Palraj, Sukkuvandanpatti, Theni, Theni District.

7. Sundar. P
S/o. Pitchaipandi, Sukkuvandanpatti, Theni, Theni District.

8. Sadayandi. V
S/o. Ponnaiahthevar, Sukkuvandanpatti, Theni, Theni District.

9. Balachandran. M
S/o. Mayathevar, Sukkuvandanpatti, Theni, Theni District.

10. Murugan. M
S/o. Mallaiah Ambalam, Sukkuvandanpatti, Theni, Theni District.

..Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 5 to take over the lock and key kept by the respondents 6 to 10 based on the representation dated 14.09.2022.

For Petitioner(s): Mr.M.A.M.Raja

For Respondent(s): Mr.M.Kannan,
Government Advocate for R-1 to R-5.

Mr.M.Saravanan for R-6 to R-10.



ORDER

(By G.R.Swaminathan J.)

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Whether one has the right to be cremated in a burning ground vested in a local body of which he is not the resident is a burning issue between the villagers of Bommaiahgoundanpatti and Sukkuvadanpatti.

2.The expression “burning ground” appears to be rather archaic. The word “cremation” is more dignified and appropriate. The word “burn” can apply to anything. Trash and effigy are burnt. But a more respectful expression is called for when one’s mortal remains are disposed of. While “burning” is a common term, when it is done ritually, it becomes cremation. It has a strong cultural connotation also.

3.In the Volume on Cremation and Burial in Halsbury’s Laws of England, it is remarked that although to speak of the deceased as having a right of burial involves some laxity of language, the expression is convenient and sanctioned by usage. Right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death (*Vide PT. Parmanand Katara Vs. Union of India 1995 (3) SCC 248*). Even a dead person has the right of treatment to his body with respect and dignity which he would have deserved had he been alive, subject to his tradition, culture and religion which he professed. These rights are not only



for the deceased but also his family members who have a right to perform the last rites in accordance with the religious traditions (vide *Mohammad Latief Magrey v. State (UT of J&K), 2022 SCC OnLine SC 1203*). The rites and ceremonies including the carrying or transporting the dead body to the cremation place or graveyard are an essential and integral part of the religion and hence cannot be prohibited in a secular State (*Mohamed Gani v. The Superintendent of Police, Dindigul District (2005) 3 L.W 289*).

4. Let us now come to the factual context that has given rise to the issue formulated in the opening paragraph. The writ petitioners are residents of Bommaiahgoundanpatti Village. It is now a part of Theni-Allinagaram Municipality. According to the petitioners, they have been cremating their dead in the cremation ground located in Sukkuvadanpatti, a hamlet of Oonchampatti Panchayat. The petitioners allege that the residents of Sukkuvadanpatti village are preventing them from exercising their right to cremate in the Shmashana that is vested in Oonchampatti Village Panchayat. The petitioners' counsel submits that considering the proximate location of Bommaiahgoundanpatti, it would be more convenient for its residents to use the Sukkuvadanpatti cremation ground.

5. In the wake of this controversy, a peace committee meeting was convened. Since the residents of Sukkuvadanpatti made it clear that they would not relax their stand, this writ petition has been filed.



6. Villagers of Sukkuvadanpatti had joined together and purchased a piece of land, built a crematorium and handed it over to their local body. As on date, the said crematorium vests only with Oonchampatti Village Panchayat. The moot question that calls for consideration is whether the residents of Bommaiahgoundanpatti Village can demand as a matter of right that they should be allowed to use the Sukkuvadanpatti crematorium.

7. We answer in the negative by taking liberty with the Mimamsa principle of Atidesha and applying it to the present context. Atidesha means applying what is prescribed as a duty with regard to one object to another object. In *Hughes v. Lloyd (1888) 22 QBD 157*, question arose if the inhabitants of a parish which has been made a separate and distinct parish and has a burial ground of its own, have a right of burial in any other parish but that in which they resided. Lord Coleridge CJ held that he had come to a clear conclusion that they have no such right. They must buy such a privilege if they desire to have it. Applying the principle of analogy, what applies to the inhabitants of a parish can be applied to inhabitants of a local body also.

8. The above conclusion can be justified with reference to the statutory provisions also. Section 110(f) of the Tamil Nadu Panchayats Act, 1994 states that a village panchayat has the duty to make reasonable provision for carrying out the requirements of the panchayat village for the opening and maintenance



of burial and burning grounds. Thus, a local body has to cater to the needs of its local residents only. The local body makes provisions only to meet the requirements of its residents. The non-residents do not figure in the scheme of things in respect of the statutory functions envisaged under Section 110 of the Panchayats Act, 1994.

9.A duty to dispose of a dead body is incumbent on the immediate relatives or guardian of the deceased. If no suitable arrangement for the disposal of the body has been made, the local authority is obliged to step in. But this duty is confined only to unclaimed bodies or bodies in respect of which arrangement has not been made which are within its territorial limits. In Hohfeldian terms, this would mean that inhabitants residing within the territorial limits of the local body alone have a correlative right and this right cannot be claimed by non-residents.

10.Section 134 of the Panchayats Act, 1994 provides that porambokes such as burning and burial-grounds shall vest in the Village Panchayat and the Village Panchayat shall have power to regulate the use of the same. Of course, this power is subject to governmental control. The Government has also issued The Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999. These rules came to be considered by the Hon'ble Full Bench in ***Jegadeeswari v. B.Babu Naidu (2023) 3 L.W 697***. It was laid down therein



that burial and cremation can take place only in designated places. Once it is seen that the cremation ground is in the control of a local body, the sequitur is that use of the place has to be with the permission of the person-in-charge of the cremation ground. Of course, he cannot arbitrarily withhold permission. While the burial and cremation grounds belong to particular denominations are open to use only to their members, a cremation ground meant for Hindus will have to be open to members of all castes. Any discrimination on the ground of birth would be unconstitutional and violative of the equality principle enshrined in Article 15 of the Constitution of India. A learned Judge of this Court (V.L.N,J) in ***K.S.Balakrishnan v. The District Collector (WP Nos.36402 of 2025 etc., dated 11.02.2026)*** held that preventing a person from a marginalised community from accessing the public burial or cremation ground is a criminal offence and it is a form of practising untouchability which has been declared as unconstitutional under Article 17 of the Constitution of India.

11. But where the person in charge of the cremation ground denies the use of its facility for the reason that the person concerned is not a local inhabitant or did not die within the local limits, that would not fall foul of law. It is not the case of the writ petitioners that Theni-Allinagaram Municipality does not have a cremation ground on its own. In fact, it has a gasified crematorium. The residents of Bommaiahgoundanpatti have an enforceable right only against Theni-Allinagaram Municipality in this regard. They have no enforceable



right vis-a-vis Oonchampatti Village Panchayat. A right has to be derived either from the Constitution or from a statute or from custom or from contract or it should have been recognised by courts. Our attention has not been drawn to any statutory provision which enables a non-resident to claim the right of burial/cremation in a place that vests with another local body. The Hon'ble Calcutta High Court in *Mohur v. Sudhir Chandra Dey (1984 SCC OnLine Cal 344)* held that custom of a particular locality can confer a right to the inhabitants of the village to cremate or bury the dead in a particular land. But that custom has to be ancient, invariable, uniform, reasonable, certain, consistent and not immoral. The writ petitioners have not established any such customary right before us.

12. Article 243G of the Constitution of India sets out the powers, authority and responsibility of panchayats. It states that the legislature of a State may, by law, endow the panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those matters listed in the 11th Schedule. The 11th Schedule which pertains to panchayat lists "maintenance of community assets" as Item No.29. Burial/cremation grounds are obviously community assets. The 12th Schedule which pertains to Municipalities and Corporations lists "burials and burial



grounds ; cremations, cremation grounds ; and electric crematoriums” as Item No.14. Thus, in the constitutional scheme of things also, the local bodies have

control and power over the use and maintenance of burial/cremation grounds.

The local body, in fact, renders service. It can charge fees for providing the same. It can ordinarily limit the use of its cremation grounds to its residents alone. Any local body would provide for such facilities bearing in mind the requirements of its residents. Capacity building is conditioned by local factors. If a non-resident wants to assert a right against the local body, a case has to be made out. It cannot be recognised for the asking.

13.The Hon’ble Supreme Court in ***Ramesh Baghel v. State of Chhattisgarh, 2025 SCC OnLine SC 173*** was concerned with the issue of permitting burial of a Christian at a place used by those professing Hinduism. A split verdict was given. One of Their Lordships (Mr.Justice Satish Chandra Sharma) held that the right to bury in accordance with the custom of the individual would not encompass the unqualified right to choose the “place” of such ceremony including burial.

14.Rule 7(2) of The Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999 states that the person having control of a place for burying or burning the dead shall give information of every burial or burning of a corpse at such a place to any officer appointed by the Village



Panchayat for this purpose. As per the provisions of the Registration of Births and Deaths Act, 1969 any death will have to be notified and registered. The

burial and cremation grounds will have to maintain registers and entries will have to be duly made therein. Death certificates are issued on the basis of such entries. There has to be a regular coordination between the persons in charge of the burial and cremation grounds and the local authorities. This statutory functions can be properly discharged only if the right of burial or cremation in the designated place is confined to the inhabitants of the local body concerned. Vide order dated 10.04.2024 in **WP(MD)No.5558 of 2024 (M.Vallinayagam v. The RDO, Madurai)** after considering Section 10(1) of the Registration of Births and Deaths Act, 1969, one of us (GRSJ) observed that it is not as if the keeper of burial ground or cremation ground will bury or cremate any dead body brought there. It has to be brought in by a person who can be described as an informant. This informant has to fill in certain particulars and also furnish certain documents. From this, the place of death can be very easily ascertained.

15. Though we hold that one cannot demand as a matter of right that he or she shall be cremated or buried in a cremation or burial ground that is vested in a panchayat of which he or she is not resident, we have to add an important caveat. If custom recognises that a particular place is a consecrated ground open to Hindus irrespective of their residential status, that would take the issue to the realm of fundamental rights. The decision of the Hon'ble Division Bench of the



Kerala High Court in *Krishna Das C. Vs State of Kerala* is a case in point.

Petitioners therein pleaded that Ivor Madom situated on the banks of river Bharathapuzha, recogniseed as Dakshina Kasi”, is one of the most sacred burning ghats in the country. The jurisdictional Panchayat passed a resolution barring bringing in dead bodies from outside the Panchayat for cremation at the burning ghat at Ivor Madom. The Panchayat resolution cited public health considerations for taking such an action. The Hon’ble Division Bench held that the belief entertained by the Hindus that performance of the last rites of their dead kinsfolk at the banks of river Bharathapuzha would yield salvation is protected under Article 25 of the Constitution of India. It was further held that the Hindus who are situate outside the Panchayat area also have the right to use the burning ghat for performance of the last rites of the dead.

16.The writ petitioners herein have not anchored their case on Article 25 of the Constitution of India. Convenience is the reason canvassed by them. Balance of convenience is one of the considerations for granting the relief of interim injunction. An enforceable right cannot be built on this foundation.

17.For the foregoing reasons, we hold that those residing within the territorial limits of a local body cannot claim right of burial / cremation in the burial / cremation ground vested with another local body. However, such a right



is enforceable if it partakes the character of a fundamental right under Article 25 of the Constitution or a customary right. The residents of Bommaiahgoundanpatti have not made a claim under Article 25 of the Constitution nor have they proved the existence of any customary right. Hence, we hold that they are not entitled to claim the right of cremation in the crematorium / cremation ground of Sukkuvadanpatti Village. We earnestly hope that the order made in this writ petition finally buries the festering issue between the two hamlets.

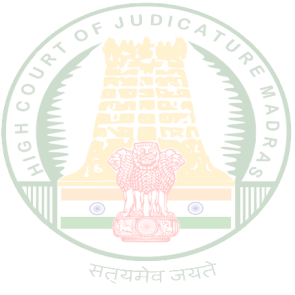
18. With the aforesaid observations, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S.,J.) & (K.K.R.K.,J.)
29-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
PMU/SKM

To:

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2. The Revenue Divisional Officer, Thamaraikulam, Periyakulam Taluk, Theni District.
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**G.R.SWAMINATHAN, J.
AND
K.K.RAMAKRISHNAN, J.**

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