

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9156 of 2026**

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MUBARAK KASAMBHAI PADARSHI

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MM KHARADI FOR MR UMARFARUK M KHARADI(8155) for the
Petitioner(s) No. 1MR ADITYA PATHAK ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 1,2,3,4

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 13/07/2026**ORAL ORDER**

1. Heard learned Advocate Mr. M.M. Kharadi for learned Advocate Mr. U.M.Kharadi on behalf of the petitioners and learned Assistant Government Pleader Mr. Aditya Pathak on behalf of respondent- State.

2. By way of present petition, the petitioners have sought for the following prayers:

“A. Admit this petition;

B. Allow this petition by quashing and setting aside impugned show cause notice dated 29.06.2026 (ANNEXURE-A) in the interest of justice;

C. Allow this petition by quashing and setting aside impugned order dated 16.06.2026 (Annexure-N);

D. Be pleased to stay operation and implementation of impugned notice and order dated 29.06.2026 (Annexure-A) & 16.06.2026 (Annexure-N) and further be pleased to permit the muslims of village Rupavati to continue 27 guntha of survey No. 45 at mouje Rupavati, Ta. Gariyadhar, Dist. Bhavnagar as burial ground;

E. Be pleased to restrain respondents authorities from taking any coercive action to exhume the dead bodies already buried in the Kabrastan;

F. Grant any other relief deemed fit in the interest of justice.”

3. It is the case of the petitioners that the petitioners have been issued a notice by the respondent no. 7 i.e Sarpanch of Rupavati Gram Panchayat District : Bhavnagar informing the petitioners that the petitioners had conducted a burial near a crematorium for Hindus situated in the village. It is informed that the petitioners was called upon to explain as to under what circumstances the petitioners had conducted the burial at the said site and whereas in absence thereof, the authorities, had informed the petitioners that the body which had been buried at the spot, would be exhumed after appropriate religious rituals and would be buried once again at graveyard which was designated for the said purpose. The Sarpanch had also informed the petitioner that the petitioners should not ensure any law and order

situation when the action as observed hereinabove, would be taken.

4. The petitioners have also challenged an order dated 16.06.2026, whereby the Deputy Collector, Palitana has rejected the representation preferred by the petitioners and others for considering the above referred 27 gunthas as being part of a Muslim graveyard.

5. It is submitted by learned Advocate Mr. Kharadi on behalf of the petitioners that the land in question, where the burial was carried out, admeasuring 2.28 hectares, was allotted by the erstwhile Baroda Government for the purpose of a crematorium (for Hindus) and for a graveyard (for persons of the Muslim community) and whereas, it was demarcated as 2 Acre 0.01 Guntha for the Hindus and for the crematorium 0.27 gunthas for Muslims as a graveyard. It is submitted by learned Advocate Mr. Kharadi that while originally, the revenue records inter alia mentioned both the part with regard to crematorium and graveyard yet, at some point of time, the reference to the graveyard had been removed from the revenue record and the whole land was being treated as assigned for the crematorium.

6. Learned Advocate would submit that the burial in question was of a family member was in the 27 gunthas which was reserved as a graveyard for

the persons of the Muslim community and whereas under such circumstances, the notice issued by the respondent Sarpanch, was absolutely illegal and whereas it was requested to be interfered with. Learned Advocate would further submit that as it is since the land as per the original revenue record, i.e the 0.27 gunthas was allotted for the purpose of graveyard for Muslims, the Deputy Collector had committed a gross error in rejecting the representation for considering the land as being reserved for Muslim Graveyard, since in the revenue records at an earlier point of time the land was shown as being allotted for Muslim Graveyard.

7. As against the same, learned AGP Mr. Pathak for the State, has vehemently objected to this petition inter alia pointing out that the petitioners could approach the appropriate authorities more particularly against the notice in question and whereas it is also pointed out that it is not for the first time, that the petitioner, is committing such an act. Learned AGP draws the attention of this Court to a notice issued to the petitioner somewhere on 08.06.2022, whereby the petitioners had buried another deceased person of their family in the very place i.e 27 gunthas in question and whereas, subsequent to orders passed by the Sub Divisional Magistrate, Palitana, the body was exhumed and had been buried once again in the place reserved for the same. Learned AGP would further submit as regards order dated 16.06.2026 that the Deputy Collector had not committed any

error since he had just asked to the petitioners to approach through the Gram Panchayat.

7.1 To a pointed query of this Court, under instructions, learned AGP had informed that there is a burial ground for persons of the Muslim community, in the same village and whereas except for the petitioners the members of the Muslim community are using the said place for burial of the deceased persons of their family.

8. As against the same, learned Advocate Mr. Kharadi would submit that the burial ground earmarked for burial of the persons of the Muslim community is now full and whereas it is under such circumstances, that the petitioners had decided to bury the deceased member at the place in question.

9. Considering the rival submissions, and also having considering the sensitivity of the issue, this Court had directed learned AGP to ensure a site visit being carried out by appropriate officers of the Revenue Department and the Panchayat Department and submit a report and whereas pursuant to the directions of this Court, s report dated 07.07.2026 by Circle Officer (Rural), Gariyadhar and Extension Officer, Panchayat, Taluka Panchayat, Gariyadhar, had conducted a site visit of the graveyard, earmarked for the

persons of the Muslim community and whereas, as per the report it appears that the said burial ground is approximately 700 square meters in size and whereas it is fenced on all sides and there is also a gate on the burial ground and it is also pointed out that around half of the land has been used for burial purposes and the other half is completely empty.

10. Considering such a position, to this Court it would appear that when there is a burial ground, earmarked for the persons of the Muslim community for burying the deceased of the said community, it was not open for the petitioners to have decided to have the deceased person of their family buried in the disputed 27 gunthas. To this Court it would appear that it may have been a different matter that the burial ground, for persons of the Muslim community may have been at a far distance, which may have caused hardships to the family members of the deceased and whereas in view of such an exigency, the disputed place, may have been used as a burial ground yet, to this Court it would appear that the same is not the case. As a matter of fact it also appears that in the year 2021-2022, things had reached a pass and where a body, which had been buried by the petitioners, of a deceased family member was required to be exhumed from the place in question and whereas it was buried at the community graveyard and whereas under such circumstances, after four years, without having questioned the

decision or without having any clarity upon the same, it was not open for the petitioners to have used the same land in question for the purpose of burial. To this Court it would appear that when the appropriate authorities had taken a stand that the land in question could not have been used for burial purpose then it was open for the petitioners at the relevant point of time to have questioned the said decision or to have questioned the decision of not being permitted to use the above referred 27 gunthas as earmarked for the Muslim community as a graveyard, yet having not done so, after a period of four years, the petitioners are not entitled to unilaterally decide that the said land could be used for the purpose of burial of deceased persons from the Muslim community .

11. Even otherwise, as noticed hereinabove, there being a graveyard earmarked for persons of the very community in the village itself, the petitioners were not required to have created this issue, for no reason whatsoever. This Court notices that the land, which is used by the persons of the community as a graveyard is sufficient i.e. approximately 700 square meter in area and whereas the competent officers have certified that almost half of the land is open, which could be used for burial purposes. Thus there being an appropriate burial ground for the persons of the community in question where the petitioners also could have buried the deceased in question, the stand taken by the petitioners as regards the 27 guntha,

appears to be completely unjustified. Under such circumstances, this Court does not find any error committed by the respondent no. 7 in issuing the notice calling upon the petitioners to show appropriate documents showing that the land was used as a burial ground and/or of exhuming the body in question.

12. At this stage learned Advocate Mr. Kharadi would submit that instead of authorities exhuming the body since this Court is not interfering in the notice, the petitioners would himself have the body of the deceased exhumed and would bury the body in the community burial site.

13. Learned Advocate Mr. Kharadi would submit that the order dated 16.06.2026, is against a representation in question and whereas the petitioners may have an independent right to challenge the revenue entries whereby the details with regard to the kabrastan had been removed.

14. Learned Advocate in this regard would submit that liberty may be reserved in favour the petitioners to question the deletion of 27 gunthas, which was earmarked for burial ground in the revenue record. The same is being vehemently opposed by learned AGP Mr. Pathak.

15. Considering the rival submissions and observations and discussion hereinabove, to this Court the following directions would meet with the

ends of justice:

[1] The present petition is disposed of as rejected.

[2] Statement of learned Advocate Mr. Kharadi is recorded that the petitioners will have exhumation of the body which has been buried at the dispute site i.e land situated at survey no. 45, village Rupavati, Gariyadhar Taluka, District Bhavnagar and bury the body in the graveyard earmarked for the said purpose within a period of 10 days from today.

[3] In case the petitioners do not carry out the said process within the time period stipulated by him then it would be open for the State/Panchayat Authorities to take appropriate steps after intimating the same to the petitioners herein.

[4] It is clarified that as observed by the respondent no. 7 in case of any exhumation required to be done by the State/Panchayat authorities, the same shall be done after appropriate religious rituals and respondents shall also ensure that the dignity of the deceased shall be maintained at all costs.

[5] Insofar as the liberty sought for, just to allay any confusion or

apprehension, since the question of challenging the revenue entry is not subject matter of the present petition, the petitioners may exercise the rights available to him and whereas this Court deems it appropriate neither to grant any liberty nor to reject any liberty.

[6] The appropriate authority to take appropriate stand at the relevant point of time, if and when the entries are questioned.

16. With the above directions, the petition stands disposed of as rejected.

(NIKHIL S. KARIEL,J)

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