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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

MONDAY, THE 18TH DAY OF MARCH 2024 / 28TH PHALGUNA, 1945

WP(C) NO. 33292 OF 2022

PETITIONER/S:

RAJESH
AGED 47 YEARS
S/O LATE SAROJANI & AYYAPPAN, POONTHALATH VEEDU,
THALAPPARA, KOTTAYAM DISTRICT, PIN-682315.

BY ADV T.A.KATHIRUKUNJU

RESPONDENT/S:

- 1 SUB DIVISIONAL MAGISTRATE, FORT KOCHI,
REVENUE DIVISIONAL OFFICE, FORT KOCHI, ERNAKULAM
DISTRICT-682001.
- 2 THE TAHSILDAR,
KANAYANNUR TALUK, THALUK OFFICE, PART AVENUE NEAR
SUBHASH PARK, KOCHI, ERNAKULAM DISTRICT-682011.
- 3 THE VILLAGE OFFICER,
KULAKYETTIKARA VILLAGE, KULAYETTIKARA VILLAGE OFFICE,
MULANTHURUTHY-KANJIRAMATTOM ROAD, AMBALLUR, ERNAKULAM
DISTRICT-682315.
- 4 THE SECRETARY,
AMBALLUR GRAMA PANCHAYAT, OFFICE OF THE AMBALLUR GRAMA
PANCHAYAT, KUNNUMPURAM, AMBALLUR, ERNAKULAM DISTRICT-
682315.
- 5 STATION HOUSE OFFICER,
MULANTHURUTHY POLICE STATION, MULANTHURUTHY.P.O,
KANJIRAMATTOM, ERNAKULAM DISTRICT-682314.
- 6 TREESA JOSEPH,
MOOTHEDATHVEEDU, EDAKKATTUVAYAL.P.O, EDAKKATTUVAYAL
VILLAGE, ERNAKULAM DISTRICT-682313.

- 7 GEORGE MANOJ,
MOOTHEDATH VEEDU, EDAKKATTUVAYAL.P.O, EDAKKATTUVAYAL
VILLAGE, ERNAKULAM DISTRICT-682313.
- 8 ADDL.R 8.P.M.AMEER
S/O. HAMSA, PUTHIRI HOUSE, VALLOM DESOM, PERUMBAVOOR,
ERNAKULAM-683543. (ADDL.R3 IMPLEADED AS PER ORDER
DATED 4-1-2023 IN IA1/2022 IN WP(C).

BY ADVS.

SHRI.T.K.AJITHKUMAR (VALATH), SC, AMBALLOOR GRAMA
PANCHAYAT
SANIL KUMAR

OTHER PRESENT:

GP IMAM GRIGORIOS KARAT; SR.GP.JUSTINE JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09.02.2024, ALONG WITH WP(C)No.37339/2022, THE COURT
ON 18.03.2023, DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 18TH DAY OF MARCH 2024 / 28TH PHALGUNA, 1945

WP(C) NO. 37339 OF 2022

PETITIONER/S:

TREESA JOSEPH
AGED 64 YEARS
W/O. JOSEPH, MOOTHEDATH HOUSE, KALYANIMUKKU,
EDAKKATTUVAYAL, ERNAKULAM,, PIN - 682316

BY ADVS.
SHERRY J. THOMAS
JOEMON ANTONY
ANTONY NILTON REMELO
RENISH RAVEENDRAN

RESPONDENT/S:

- 1 THE DISTRICT COLLECTOR
COLLECTORATE, 1ST FLOOR CIVIL STATION, ECHAMUKKU,
KUNNUMPURAM, KAKKANAD, ERNAKULAM, PIN - 682030
- 2 THE SUB DIVISIONAL MAGISTRATE
1ST FLOOR, KB JACOB ROAD, FORT KOCHI, KOCHI., PIN -
682001
- 3 THE TAHSILDAR
KANAYANNUR TALUK OFFICE, PARK AVENUE, NEAR SUBHASH
PARK, MARINE DRIVE, KOCHI, KERALA, PIN - 682011
- 4 THE STATION HOUSE OFFICER
MULANTHURUTHY POLICE STATION STEPHENSON COMPLEX,
KARVATTA KURIZ, MULANTHURUTHY - ARAKKUNNAM ROAD,
ERNAKULAM DISTRICT, KERALA, PIN - 682314

- 5 **THE SECRETARY**
 AMBALLOOR PANCHAYAT, MULANTHURUTHY - KANJIRAMATTOM
 ROAD, AMBALLOOR, KERALA, PIN - 682315
- 6 **THE VILLAGE OFFICER**
 6. THE VILLAGE OFFICER, KULAYETTIKKARA VILLAGE,
 MULANTHURUTHY - ARAKKUNNAM ROAD, MULANTHURUTHY,
 ERNAKULAM DISTRICT, KERALA, PIN - 682314
- 7 **RAJESH K.A**
 (AGE AND FATHERS NAME NOT KNOWN TO THIS PETITIONER)
 POONTHALATH HOUSE, THALAPPARA, KOTTAYAM, PIN - 686605

BY ADVS.
GOVERNMENT PLEADER
SHRI.T.K.AJITHKUMAR (VALATH), SC, AMBALLOOR GRAMA
PANCHAYAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09.02.2024, ALONG WITH WP(C) No.33292/2022, THE COURT
ON 18.03.2023, DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of March, 2024

The not so pleasant facts emerging from these writ petitions are as under;

The dead body of an aged lady, who had been suffering from cancer for long, was quickly disposed of by her son, by burying the corpse in the ancestral property sold to a third person. According to the son, the burial was done with the consent of the present owner. In his hurry to dispose of the corpse, the son had accidentally buried the dead body of his mother in the land lying contiguous to his erstwhile ancestral property. On being informed about the burial, the owner of the adjacent land complained to the jurisdictional Sub Divisional Magistrate who, after hearing all concerned, issued

Order No.RDOCHN/5159/2022/C1 dated 07.10.2022, directing the son to disinter the body within one week, failing which the Secretary of Amballoor Panchayat was to get the body exhumed, and bury it in the Panchayat Burial Ground in accordance with the Kerala Panchayat Raj (Burial of Unclaimed Corpses and Carcasses) Rules, 1996 ('the Rules' for short). W.P.(C) No.37339 of 2022 is filed by the owner of the property where the body was buried by mistake, seeking enforcement of the direction issued by the Sub Divisional Magistrate. W.P(C) No.33292 of 2022 is filed by the son, challenging the very same order.

2. Heard Adv.Sherry J. Thomas, learned Counsel appearing for the petitioner in W.P.(C) No.37339 of 2022, Adv.Imam Grigorios Karat, learned Government Pleader and Adv.T.K.Ajithkumar (Valath), learned Standing Counsel for the Panchayat. The learned Counsel for the petitioner in W.P.(C) No. 33292 of 2022 was absent on the

last few posting dates.

3. Adv.Sherry J. Thomas contended that no person has the right to bury a dead body in another person's property without express consent. It is argued that the buried body is liable to be removed forthwith, since the faith and custom of his client does not permit such burial.

4. Adv.T.K.Ajithkumar contended that the Rules are applicable only in the case of unclaimed corpses, while in the instant case, the dead body was buried by the son himself. Therefore, the Sub Divisional Magistrate could not have directed the Panchayat to get the body exhumed and buried in accordance with the Rules.

5. Learned Government Pleader submitted that in the peculiar facts and circumstances involved, the Sub Divisional Magistrate was justified in passing the order.

6. The constitutional courts of this

country have declared the right to decent burial to be a facet of the right to life guaranteed under Article 21 of the Constitution of India. In **Parmanand Katara (Pt.) v Union of India [(1995) 3 SCC 248]**, while declaring paragraph 873 of the Punjab Jail Manual, which required the body of a condemned prisoner to remain suspended for half an hour, to be directory and not mandatory, the Supreme Court held that the right to dignity and fair treatment under Article 21 is not only available to a living man, but also to his body after death. This view was reiterated in **Mohammad Latief Magrey v State (UT of J&K) [2022 SCC OnLine SC 1203]** also. Therein, the prayer for exhumation made by the relatives of a foreign terrorist, who was shot dead and buried by the authorities, was declined by the Supreme Court, finding that the authorities had buried the body with dignity. For reaching such conclusion, the

court was also took guidance from the following words of *Justice Cordozo*;

"The dead are to rest where they have been lain unless reason of substance is brought forward for disturbing their repose."

Even though the prayer for exhumation was declined, the observation of the Apex Court that 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, assumes relevance.

7. On a philosophical note, death is that beautiful moment when you are finally at peace, relieved of the shadows of yesterday and the uncertainties of tomorrow. That beautiful moment also casts an obligation on the dear and near of the dead person, to bury the body with the respect and dignity it deserves.

8. In the case under consideration, the fact that the dead body of the old lady was

buried in a stranger's property, whose religion, faith and custom does not permit such burial, is good enough reason for ordering disinterment. No doubt, the procedure under the Kerala Panchayat Raj (Burial of Unclaimed Corpses and Carcasses) Rules, 1996 is attracted only when an unclaimed corpse is to be buried. In this context, the assurance given by the son to the Sub Divisional Magistrate that he would either remove the body of his mother and bury it properly or come to some sort of settlement with the owner of the property, once it is established that the body was buried in the adjacent property, assumes importance. Here, it is to be noted that, on demarcation of the properties, it became evident that the body was buried in the adjacent property. Unfortunately, the son retracted from his earlier assurance thereafter. In my opinion, by his refusal to remove the corpse even after it becoming evident that the body was buried in a

stranger's property, the son had virtually abandoned the body of his mother, making it akin to an unclaimed corpse. In that view of the matter, the direction to act in accordance with the Rules is justified.

9. As regards the power of the Sub Divisional Magistrate to order exhumation of the body, one can refer to Section 176(3) of the Code of Criminal Procedure, though the exhumation under that provision is for the purpose of discovering the cause of death. The view expressed by the Apex Court in paragraphs 58 and 59 of **Mohammad Latief Magrey** (*supra*), extracted herein below for convenience, is also to the same effect;

*"58. We take notice of the fact that India has no legislation relating to exhumation except Section 176(3) of the CrPC. As noticed by the Madras High Court in the case of Anandhi Simon (*supra*), very few countries are having a legislation in regard to exhumation.*

One such legislation available is in Ireland under Section 46 of the Local Government (Sanitary Services) Act, 1948 as amended by Section 4(2) and the Second Schedule of the Local Government Act, 1994.

59. The Union of India may consider enacting an appropriate legislation on exhumation so as to tackle the situations like the one on hand."

Being so, the order of the Sub Divisional Magistrate, requiring the Secretary of the Panchayat to get the body exhumed and buried in accordance with the Rules, warrants no interference.

The following quote by *Mokokoma Mokhonoana*, extracted in the book, '*Riding the pale horse*', by *George Paul*, appear to be felicitous;

'Amongst other things, culture is the decision as to how a corpse is to be returned to the soil '.

One can only hope that such *faux pas* is not committed by any son or daughter in the haste to

be done with the body of their deceased parent.

For the reasons aforementioned, W.P.(C) No.37339 of 2022 is allowed. The official respondents are directed to strictly comply with the directions in Order No.RDOCHN/5159/2022/C1 dated 07.10.2022.

W.P.(C) No.33292 of 2022 is dismissed.

Sd/-

V.G.ARUN
JUDGE

Scl/

APPENDIX OF WP(C) 37339/2022

PETITIONER EXHIBITS

Exhibit P1 THE TRUE COPY OF THE TITLE DEED OF THE
PETITIONER DATED 25-6-2011

Exhibit P2 THE TRUE COPY OF THE PETITION FILED
BEFORE THE 1ST RESPONDENT DATED 8-6-
2022

Exhibit P3 THE TRUE COPY OF THE ORDER OF 2ND
RESPONDENT SUB DIVISIONAL MAGISTRATE,
DATED 7-10-2022

RESPONDENT EXHIBITS

Exhibit R5(a) The true copy of the above reply dated
29-8-2022 issued to the 2nd respondent

APPENDIX OF WP(C) 33292/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE SALE DEED NO.947/1/15
OF THE MULANTHURUTHY S.R.O.
- Exhibit P2 TRUE COPY OF THE DEATH CERTIFICATE
DATED 6.6.2022 ISSUED BY REGISTRAR OF
BIRTHS AND DEATHS, NELLIKUZHI GRAMA
PANCHAYAT.
- Exhibit P3 TRUE COPY OF THE NOTICE BEARING
NO.RDOCHN/5159/2022-C1, DATED
17.09.2022 ISSUED BY THE SUB
COLLECTOR, FORT KOCHI.
- Exhibit P4 TRUE COPY OF THE OBJECTION DATED
23.09.2022 SUBMITTED BEFORE THE 1ST
RESPONDENT.
- Exhibit P5 TRUE COPY OF THE ORDER
NO.RDOCHN/5159/2022/C1 DATED 7.10.2022
ISSUED BY THE 1ST RESPONDENT.