

Break The Shackles Of Casteism, Equality Should Commence At Least For The Dead: Madras HC Calls For Common Burial Grounds

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

R. SUBRAMANIAN; J., K. KUMARESH BABU; J.

Writ Appeal Nos.909 & 910 of 2014 and MP Nos.1 & 1 of 2014 WA 909 of 2014; 21.11.2022

P. Muthusamy versus B. Vennila

For Appellants: Mr.N.G.R.Prasad for M/s. Row & Reddy

For Respondents: Mr. G.Poonkundran, for R1 Mr.Vadivelu Deenadayalan Additional Government Pleader for RR2 to 5 & 16 Mr.P.Anbarasan. For RR6 to 15

J U D G M E N T

R. SUBRAMANIAN, J.

Since both the Appeals arise out of the order of the Writ Court in WP 21871 of 2013, the Appeals are taken up for disposal together.

2. The Appellants who are the fifth and the seventh respondents in WP No.21871 of 2013 launched by the first respondent in both the Appeals, seeking a Writ of Mandamus directing the official respondents, viz. respondents 1 to 4 in the Writ Petition to remove the dead body buried in Survey No.237/1A which is located adjacent to the property of the first respondent herein, and classified as Vandipathai Poramboke are aggrieved by the judgment of the writ court allowing the said prayer. A prayer to remove the statue of Nandhi (Bull) installed at the grave was sought for and granted.

3. The claim of the petitioner was that there are separate burial grounds for Backward Class Community and Scheduled Caste Community in Navakurichi Village, Attur Taluk of Salem District. The burial ground for Backward Class Community measures about 94 cents and it situate in Survey No.238/4 and the burial ground for Scheduled Caste Community measures about 92 cents and it situate in Survey No.252/10. Claiming that the fifth respondent and others had buried the body of the mother of the fifth respondent in the land in Survey No.237/1A, classified as Cart Track (Vandhi Pathai), situate adjacent to the land belonging to the petitioner, the petitioner sought for the extraordinary relief of exhumation.

4. The petitioner would contend that burial of the dead in a place which is not designated as a burial ground is prohibited. It was also claimed that on a complaint made by the petitioner, the official respondents had erected warning boards cautioning public that burial should not happen in Survey No.237/1A as such burial is in breach of the rules. There were complaints and counter complaints by the parties before the Police Authorities and it led to breach of peace in the Village.

5. The private respondents/appellants herein, resisted the claim contending that though the entire Survey No.237/1A is classified as a Vandhi Pathai, the actual cart track runs across the said survey number and several dead bodies have been buried on the southern side of the said Vandhi Pathai, while there is a Odai on the northern side. While admitting the fact that caution Boards were erected by the official respondents, the appellants would contend that it has been a custom of the Villages to bury the dead in Survey No.237/1A. The caution boards were erected on the influence of the petitioner's husband, who happened to be the erstwhile President of the Village.

6. In the counter affidavit filed by the fifth respondent, he had also given names of persons belonging to various communities, who have been buried in Survey No.237/1A. The third respondent, the Tahsildar had submitted that since the Survey No.237/1A is not classified as a burial ground, a caution board was installed with the warning that no encroachment should be made and burials are banned. It was also submitted that the Police and Revenue Officials were closely watching the situation to avoid further burning or burying in the said land.

7. The Writ Court had appointed an Advocate Commissioner to inspect the property and file a Report. The Commissioner had filed a Report setting out the factual situation and pointing out that there are two burial grounds in the Village. The Writ Court concluded that burial of the dead in a property classified as a Vandhi Pathai is illegal and the Authorities ought not to have allowed such burial. On the said conclusion, the Writ Court directed the respondents 1 to 4/the official respondents to take steps to exhume the dead bodies and shift them to the designated burial grounds of the community of the fifth respondent, hence these Appeals.

8. We have heard Mr.N.G.R.Prasad, learned counsel appearing for M/s.Row & Reddy, for the appellants in WA No.909 of 2014 and the respondents 6 and 7 in WA 910 of 2014, Mr.G.Poonkundran, learned counsel appearing for the first respondent in WA Nos.909 & 910 of 2014, viz. the petitioner in the Writ Petition, Mr.Vadivelu Deenadayalan, learned Additional Government Pleader appearing for the respondents 2 to 5 & 16 in WA No.909 of 2014 and 2 to 5 & 8 in WA No.910 of 2014. Mr.P.Anbarasan, learned counsel appearing for the respondents 6 to 15 in WA 909/2014 and the appellants in WA No.910 of 2014.

9. Mr.N.G.R.Prasad, learned counsel appearing for the appellant would submit that there is no statutory prohibition for burying the dead in a place which is not designated as a burial ground. Relying upon the Rules, viz. the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules, 1999, framed under the power conferred by Sections 116 and 242 of the Tamil Nadu Panchayats Act, The learned counsel would submit that in the absence of there being a prohibition, the burial of the dead in a particular place cannot be held to be illegal. Referring to Rule 7 of the said Rules which reads as follows:

7. Place for burial and burning grounds. -

(1) *No person shall bury or burn or cause to be buried or burnt any corpse in any place within ninety metres of a dwelling place or source of drinking water-supply other than a place licensed as a burial and burning ground.*

(2) *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.*

(3) *If a village panchayat is satisfied -*

(a) *that any registered or licenced place burying or burning of the dead is in such a state or situation as to be or likely to become dangerous to the health of persons living in the neighbourhood thereof; or*

(b) *that any burial ground is overcrowded with graves, and if in the case of a public burial or burning ground, another convenient place duly authorised for burying or burning of the dead exists or has been provided for the persons who would ordinarily make use of such place, it may with the previous sanction of the Assistant Director (Panchayats), give notice that it shall be not lawful*

after the expiry of a period of not less than two months to be specified in such notice to bury or burn any corpse at such place.

(4) Every notice given under sub-rule (3) shall be published by affixture to the notice board of the village panchayat and by beat of drum in the village.

(5) No person shall, in contravention of any notice under sub-rule (3) and after expiration of the period specified in such notice, bury or burn or cause or permit to be buried or burnt any corpse at such place.

(6) The Inspector may cancel or modify any notice issued by a village panchayat under sub-rule (3).

(7) Whoever contravenes any of the provisions of these rules shall be punishable with fine which may extend to one hundred rupees or in case of a continuing breach, with fine not exceeding fifteen rupees for every day during which the breach, continues after conviction of the first breach:

Provided that no prosecution shall be instituted for contravening the provisions of sub-rule (1) of Rule 7 without the written sanction of the Executive Authority of the village panchayat, concerned.

10. The learned counsel would contend that while it is open to the Panchayat to designate a place of burial ground or burning ghat, such designation of a certain place by itself would not result in a prohibition from burying or burning in other places. The learned counsel would contend that what is prohibited under Rule 7 is a burial within 90 meters of a dwelling place or source of drinking water supply unless it is designated as a burial ground. The learned counsel would invite us to the language of the Rule to contend that burial of the dead in other places than the places designated as a burial ground in Panchayat areas is not absolutely prohibited.

11. Contending contra, Mr.G.Poonkundran, learned counsel appearing for the petitioner in the Writ Petition and the first respondent in these Appeals, would submit that a burial cannot happen in the place designated as a Vandi Pathai or Cart Track. Claiming that the Vandhi Pathai Poramboke is a communal land and burial of the dead in communal land is impermissible. The learned counsel would attempt to justify the action of the Writ Court in directing exhumation of the bodies.

12. Mr.Vadivelu Deenadayalan, learned Additional Government Pleader appearing for the State would submit that though there is no restriction on burials, it will be open to the State to prevent burial in a particular place when other convenient places duly authorised or available, the learned Government Pleader would rely upon Sub Rule 3 (b) of Rule 7 in support of his contention.

13. The counsel for the other private respondents would adopt the arguments of the learned counsel Mr.G.Poonkundran, in support of their submissions.

14. We have considered the rival submissions as well as the reasoning of the Writ Court.

15. Section 242 of the Tamil Nadu Panchayats Act 1994, confers the power on the Government to make Rules and Clause 31 of Sub Section 2 of Section 242 specifically deals with provision for burial and burning grounds and also for prohibition of the disposal of corpses except in such grounds or other permitted places. Section 116 of the Act provides for construction and maintenance of common burial and burning grounds. Clause 31 of Sub Section 2 of Section 242 reads as follows:

xxxi) as to the provision of burial and burning grounds, the licensing of private burial and burning grounds, the regulation of the use of all grounds so provided or licensed, the closing of any such grounds, and the prohibition of the disposal of corpses except in such grounds or other permitted places;

16. In exercise of the power vested under Section 242, the Government has framed Rules titled the Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules, 1999. The Rules provide for registration of burial and burning grounds, conditions for opening of burial and burning grounds, the registers to be maintained at such burial and burning grounds and for designation of places as burial and burning grounds. Rule 7 of the Rules will be germane in the given situation. The said Rule has been extracted supra. Mr.N.G.R.Prasad, learned counsel appearing for the appellant would lay particular emphasis on the language of Sub Rule (1) of Rule 7 which, for convenience is extracted again:

7. Place for burial and burning grounds. - (1) *No person shall bury or burn or cause to be buried or burnt any corpse in any place within ninety metres of a dwelling place or source of drinking water-supply other than a place licensed as a burial and burning ground.*

(emphasis supplied)

17. A reading of the above provision shows that no burial or burning of a corpse could happen in any place within 90 meters of a dwelling place or source of drinking water supply. Places which are designated or licensed as a burial or burning ground are exempt from the prohibition regarding the Distance. Therefore, it is clear that the intention of a legislature was not to ban burial or burning in a place which is not designated or licensed. While under Section 116 of the Tamil Nadu Panchayats Act provides for provision of common burial and burning grounds, it does not enact any prohibition in respect of burials outside licensed/designated areas. The Rule 7 of the Rules framed under Section 242 of the Tamil Nadu Panchayats Act 1994, which has been extracted above does not also prohibit such burial.

18. If we examine the provisions of the Tamil Nadu District Municipalities Act, 1920, there is a specific prohibition contained in Section 281 (3) which prevents any burial or burning in a non-designated or unlicensed area. The said provision reads as follows:

281. Register of registered, licensed and provided places and prohibition of use of other places .—

(1) *A book shall be kept at the municipal office in which the places registered, licensed or provided under sections 278, 279 or 280 and all such places registered, licensed or provided before the commencement of this Act, shall be recorded, and the plans of such places shall be filed in such office.*

(2) *Notice that such place has been registered, licensed or provided as aforesaid shall be affixed in English and in at least one vernacular language to some conspicuous place at or near the entrance to the burial or burning ground or other place as aforesaid.*

(3) ***No person shall bury, burn or otherwise dispose of any corpse except in a place which has been registered, licensed or provided, as aforesaid.***

19. Another comparable enactment is the Chennai City Municipal Corporation Act. Sections 318 to 326 of the said Act, deal with disposal of the dead. Subsection 4 of Section 321 prohibits any burial or burning in a place other than a place registered licensed or provided as a burning or a burial ground. The said provision reads as follows:

321. Register of registered, licensed and provided places and prohibition of use of other places.—

(1) *A book shall be kept at the municipal office in which the places registered, licensed or provided under section 318, section 319 or section 320, and all such places registered, licensed or provided before the commencement of this Act, shall be recorded, and the plans of such places shall be filed in such office.*

(2) *Notice that such place has been registered, licensed or provided as aforesaid, shall be affixed in English and in Tamil to some conspicuous place at or near the entrance to the burial or burning ground or other place as aforesaid.*

(3) *The commissioner shall annually publish a list of all places registered, licensed, or provided as aforesaid or provided by the Government.*

(4) **No person shall bury, burn or otherwise dispose of any corpse except in a place which has been registered, licensed or provided as aforesaid.**

20. These three different enactments which provide for burial or burning of the dead have different provisions, while burying or burning of the dead in Municipal and City Municipal Corporation areas outside the areas licensed or designated as burial or burning grounds is completely prohibited, the same is not the case in a Panchayat area. The prohibition in a Panchayat area is only in places which are located within a distance of 90 meters from the dwelling unit or a source of drinking water supply. There are various customs in various parts of the State in respect of burning and burial of the dead, there are Villages where there is no specific place earmarked for burial or burning. In such places it is the custom of the Villages that prevails. Therefore, the legislature thought it fit to refrain from interfering with such custom in respect of Village Panchayat areas alone. We find that such restraint is based on sound reasoning taking into account the density of population and urbanisation. Care has been taken to empower the Panchayat to ban burials in a particular area depending upon the need.

21. We are therefore unable to concur with the conclusions of the Writ Court directing exhumation of the bodies from the present location on the ground that it is classified as a Vandi Pathai. The Commissioner's Report that has been filed before the Writ Court would show that there are several dead bodies and very old graves situated in the land in question. In fact the Advocate Commissioner has found that though the entire Survey Number is mentioned as Vandi Pathai, there is a Canal on one side and vacant land on the other side of the Vandi Pathai which also bears the same Survey Number. The width of the road measures about 22 yards and the bodies are buried in the portion on the left side of the road.

22. There is also a Final Report of the Inspector of Police, Thalaivasal Police Station which has been filed before the Judicial Magistrate, Attur, in Crime No.343 of 2013, wherein it has been observed that the land in question has been used as a burial ground for several years and he has in fact recommended dropping further action in the said Crime number.

23. In the light of the above factual matrix, we find that there is a practice in the Village to use this land in Survey No. 237/1A as a burial ground. Neither the Rules nor the enactment which governs the field prohibit burial in a non-designated place. Material is also available to show that there are designated burial grounds on community basis in the Village. In the absence of any prohibition in the enactment as is the case in the Tamil

Nadu District Municipality Act and Chennai City Municipal Corporation Act, we are unable to persuade ourselves to agree with the conclusions of the Writ Court.

24. We find that the attention of the Writ Court has not been drawn to the specific Rules that have been framed by the Government in this regard. We are therefore unable to confirm the conclusions of the Writ Court. ***We hasten to add that the fact that there is no prohibition cannot be used as a license to bury or dispose of the dead anywhere and everywhere. Wherever there are designated places for burial and burning of the corpse, burial and burning must be restricted to those designated places unless there is a custom in the Village or area concerned to use any other place for burial or a burning of corpses.*** It will be open to the Panchayat, under Sub Rule 3 of Rule 7 to ban burial or burning in a particular place even though it is designated. We therefore **allow** the Appeals and set aside the order of the Writ Court. In the circumstances there will be no order as to costs. Consequently the connected miscellaneous petitions are closed.

25. Before parting with this case, we are constrained to observe that the direction of the Writ Court to exhume and bury the dead in the area designated for the community has stemmed out of the fact that provision of separate burning and burial grounds based on the community is made by the Panchayat. Though 75 years have passed since independence, we are unable to break the shackles of casteism and even the secular Government is forced to provide for separate burning and burial grounds on communal lines. Equality has to commence at least when the person travels to his/her maker. Mahakavi Bharathiar observed that there are no caste when he said:

“சாதிகள் இல்லையடி பாப்பா”

But even in the Twenty First Century, we are left grappling with casteism and classification based on caste is made even in matters of burial of the dead. This situation has to change and the change should be for the better. We sincerely hope that the Government of the day would come forward to make a beginning by making at least burial grounds and burning grounds common to all communities.

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