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24-PIL-119.2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

PUBLIC INTEREST LITIGATION NO. 119 OF 2021

Mr.Melwyn Isidore Fernandes and Others ... Petitioners
 V/s.
The State of Maharashtra and Others ... Respondents.

Ms. Sunita S. Banis for the Petitioners.
Ms. N.M.Mehra, AGP for Respondent Nos. 1, 4 and 5- State.
Mr. Ram S. Apte, Senior Advocate with Mr. Mandar V. Limaye and
Mr.Harshal P. Nahata for Respondent Nos. 2 and 3 -Thane
Municipal Corporation.
Mr. Kailas S. Dewal i/b. Mr. Yash Dewal and Mr. Sham Thakur for
Respondent No. 7.

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CORAM : **NITIN JAMDAR, ACJ. AND
ARIF S. DOCTOR, J.**

DATE : **19 July 2023.**

P.C. :

This Public Interest Litigation (PIL) filed for a direction to open all the reserved plots which are earmarked for the purpose of christian cemeteries in the development plan of Thane city. According to the Petitioner, the cemeteries which are available to the christian community are extremely inadequate. An affidavit in reply is filed on behalf of the Municipal Corporation wherein the Municipal Corporation has given list of plots which have been earmarked as cemetery grounds in the development plan of the city of Thane. The said list reads thus:

Sr. No.	Designation of Site/ Sector No. / Res. No.	Area of the site in Ha.	Description of the land Name of Village / S. No./ Gut No.	Acquired area in Ha.	Remarks
1	2	3	4		7
1	Cremation Ground / I/1	0.43	Kopari Gut No. 86 pt.	0.00	Land is under SEZ
2	Extn. to Cremation Ground / I/2	0.07	Naupada S. No. 144 pt. near Anand nagar Cremation Ground	0.00	Not in possession of TMC
3	Extn. to Cremation Ground/ V/1 Vide Plan	0.09	Chitalsar-Manpada Gut No. 3 pt.	0.00	Encumbered by Slum
4	Sayukta Smashanbhumi & Smruti Udyan/ VI/ 1A	3.70	Bhayendarpada S. No. 42pt., 45pt., 47pt., 109pt	2.60	Under Development. 3000 Sq. Mt. is proposed for Christen Cemetery as per General Body Resolution No. 03, Dt. 20.03.2017
5	Burial Ground / VIII/1	0.36	Kalwa S. No. 17 pt.	Existing Cremation Ground	Existing Cremation Ground
6	Cremation Ground/ VIII/1	3.06	Kharegaon Gut No. 184 pt.	0.00	Land is affected by CRZ-IA, CRZ-B & CRZ-II
7	Cremation Ground/ VIII/2	0.45	Kalwa S. No. 17 pt.	0.00	Land is in possession of Thane Gramin Police. Corporation demanded this land for Burial Ground, but yet land is not handover by them.
8	Cremation Ground/ VIII/ 3	1.92	Kalwa S. No. 234 & 236 pt.	0.00	Encumbered by Slum area
9	Cremation Ground / VIII/4	0.22	Kalwa S. No. 424 pt.	0.00	Encumbered by Structures

10	Cremation Ground / IX/ 1	0.45	Mumbra S. No. 107A Pt.	Existing Use.	Existing use.
11	Burial Ground/ IX/1	0.45	Mumbra S. No. 107A Pt.	Existing use	Existing use under muslim Burial ground.
12	Cremation Ground, Burial Ground for Muslims & Burial Ground for Christians / IX	2.00	Mumbra S. No. 55pt, 56pt, 57pt, 58pt	2.00	Developed 1000 Sq.mt.land is under Christen Cemetery
13	Cremation Ground/ IX	0.50	Kausa S. No. 123/1, 123/2 & 126/4	0.00	Application by land Owner trust for cremation ground maintenance.
14	Cremation Ground/X/1	1.88	Diva S. No. 192 pt.	0.00	Land is affected by CRZ-IA
15	Cremation Ground /X/2	0.50	Diva- Sabe S. No. 242A. pt., 269pt, 231 pt, 97pt & 74pt.	0.00	Land is affected by CRZ-IA
16	Cremation Ground /X/3	0.78	Agasan S. No. 153 pt.	0.00	CRZ
17	Extn. to Cremation Ground/X/4	0.62	Dativali S. No. 46pt., 59pt., 240Apt.	0.00	Partly CRZ-IA & CRZ-II
18	Cremation Ground/ XI/1	0.44	Dawale S. No. 127 pt.	0.00	Encumbered by structures
19	Cremation Ground /XI/2	0.79	Daighar S. No. 26 pt., 28pt & 55 pt.	0.3950	Existing Hindu Smashanbhumi

2. As regards Serial No.1, Gut No.86, the same is designated as cremation ground, however, according to the Municipal Corporation, it cannot be put to use because it is under SEZ. The same is the position as regards Survey No.144, Naupada that it is designated for cremation ground, however, it is stated that

it is not in possession of the Municipal Corporation. In whose possession it is, is not explained. As regards Serial No.3, it is stated that it is encumbered by slum. Serial No.6 at Kharegaon is affected by CRZ. Serial No.7 at Kalwa is in possession of Police. As regards Serial No.8 at Kalwa, it is stated that it is encumbered by slums. Serial No.9 at Kalwa is encumbered by structures. Serial Nos.14, 15, 16 and 16 are affected by CRZ. Serial No.18 is encumbered by structures. As regards Serial Nos.4, 5, 10, 11, 12 and 19 are concerned, we are informed that they are already put in use for burial grounds.

3. We find that these remarks are not satisfactory. The details as to why the lands are not in possession of the Municipal Corporation, the lands are encumbered by which structures is not specified. It is clear that once the plots are designated as burial ground, cremation ground or Smashan Bhumi in the development plan, then they cannot be put to any other use other than the one designated.

4. As regards adequacy of the cremation grounds, in paragraph-11 of the reply, the Municipal Corporation has stated as under:

“11. I say the Petitioner that with reference to Para 5 of the Petition, the total Population of Thane in the year 2011 was 18,41,488 out of which 2.5% i.e. there are approximately 46,000 people who belong to the Christian Community. I further say that as mentioned in the Petition about 250 to 300 people who belong to the Christian Community die per year

and that approximately 80 sq. ft. of area is required to bury one single person, similarly for burial of 300 persons an approximate area 2400 sq.mt. is required according to petitioner. 80 sq.ft. area per single burry is increased area more than required to bury. Thane Municipal Corporation has already provided two Cemeteries in the area of Mumbra at present which are being used by Christian community and the cemetery behind Mumbra Fire Brigade is admeasuring about 900 sq.mt. and there is also another cemetery admeasuring about 1000 sq. mt. situated at Mittal compound is within Thane City Limits. Hence, total area admeasuring about 1900 sq. mt. is already in use for the purpose of burial of dead bodies.....”

There is a reference to the population of Thane of the year 2011. The affidavit also refers to the number of deaths of the people belonging to the community. Thereafter certain area is calculated and it is stated that the area provided at present is adequate. We do not find any reference to the source for these calculations. This exercise cannot be on *ad hoc* basis. There has to be a scientific approach on the part of the Planning Authority. Ultimately the phrase planning means considering the position for future.

5. The Senior Advocate for the Municipal Corporation states that an additional affidavit with necessary data, its source and future projection in detail would be filed.

6. To enable the Corporation to file this affidavit, we defer the hearing to 23 August 2023.

7. In the meanwhile, we direct that the plots mentioned in paragraph-6 of the affidavit dated 14 September 2022, which have been designated as Cremation Ground/ Burial Ground/ Smasha Bhumi in the development plan will not be put to any other use other than the one designated in the development plan unless requisite procedure of law is followed for the change of user.

8. In light of this position, it is open to the Municipal Corporation to proceed to take requisite action in respect of the user of these plots contrary to the user designated in the Development Plan. The additional affidavit will also place on record the steps taken by the Municipal Corporation in this regard.

ARIF S. DOCTOR, J.

ACTING CHIEF JUSTICE