

**GOVERNMENT OF KERALA**  
**Abstract**

Local Self Government Department- Judgment dated 19.07.2012 in WP(C) No.15947/12 filed by Sri. Francis Simon and another - implemented -Orders issued.

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**LOCAL SELF GOVERNMENT (DB) DEPARTMENT**

G.O(Rt)No. 504/2013/LSGD

Thiruvananthapuram,dtd. 27/02/2013

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Read:- 1) Judgment dated 19.07.2012 in WP(C) No.15947/12 filed by Sri. Francis Simon and another.  
2) Appeal petition dated 19.07.2012 filed by Sri. E.T. Joseph & Francis Simon.

**ORDER**

The President, SNDP Yogam Branch No.109, Kaipuzha in Kottayam Taluk has applied for a license to construct a concrete vault type cemetery in 43.00 sq. mtrs of land in 4.05 Ares of land comprised in Re.Survey No.263/9-1-1, 263/9-2 in Block No. 2 of the Kaipuzha Village.

2) On the basis of favourable enquiry reports of Tahsildar, Kottayam and District Police Chief, Kottayam, objections against the proposed construction were invited according to Rule 6(7) of Kerala Panchayath Raj (Burial & Burning Ground) Rules, 1998. Petitions were received against the proposed construction and a hearing was conducted by District Collector, Kottayam on 01.02.2011 and after observing all formalities, District Collector by proceedings No.H1/9851/07 dated 4/2012 issued the license with permission to use the vault only after getting fitness certificate by District Medical Officer (Health) and Environmental Engineer, Pollution Control Board.

3) Against this proceeding S/Shri. Francis Simon & E.T. Joseph filed WP(C) 15947 of 2012 before Hon'ble High Court and High Court in its judgment dated 19.07.2012 has issued the following directions.

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" It will be open to the petitioners to file appeals afresh before the Secretary to Government, Local Self Government Department, and if such appeals are filed within two weeks from today, ignoring the delay in the matter, appeals will be entertained and considered on merits.

It is also directed that along with the appeals, petitioners may also file stay petitions and if such stay petitions are filed, without any further delay in the matter, appellate authority will consider such stay petitions and appropriate orders on the stay petitions shall be passed as expeditiously as possible."

4) Government as per letter dated 15.10.2012 stayed the proceeding of District Collector dated 4/2012 until the final disposal of the appeal petitions filed by the petitioners.

5) In the appeal petition dated 19.07.2012 filed by the petitioners it was requested that a personal hearing be extended to them and they will produce detailed counter argument/statement during the hearing.

6) Accordingly after issuing notice to all concerned, hearing was conducted on 31.01.2013. Except the petitioners, Advocate for SNDP, President SNDP, Member Committee SNDP, Secretary, Kaipuzha Grama Panchayath, Representative of District Collector, Kottayam were attended the hearing. Representative of the District Collector revealed that the consent for the construction was given by the District Collector after getting enquiry reports/Non Objection Certificate of District Medical Officer (Health), Tahsildar, Kottayam, Pollution Control Board and also after hearing the petitioners, giving enough time for them to adduce further evidences. It is also said that the License shall be given only after getting consent to operate from District Medical Officer and Environmental Engineer, Pollution Control Board who shall ensure that the construction is completed strictly according

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to the conditions specified in the consent given for the construction. Panchayath Secretary was of the opinion that, as there is no common burial ground owned by Panchayath, this request for concrete vault is found to be a felt need of the community.

7) The appeal petition is seen filed on the ground that the District Collector has passed the order without application of mind. But in the proceeding of District Collector dated 4/2012, the objection raised by the petitioners are clearly narrated as

(a) the proposed site of construction is very close to their residential building. (b) the proximity of the cemetery to their houses will scare them. (c) the vault will pollute their drinking water sources. (e) the establishment of a new cemetery in future will adversely affect their interest attached to their own properties etc.

8) It may be noted that this site is at a low density residential area and the nearest building is 50.7 meters away, this proposed vault is near to an already existing graveyard and this proposal is for scientific method of leak proof concrete vault type for which pollution Control Board and District Medical Officer have accorded consent subject to conditions stipulated in NOC/consent letter issued by them.

9) As per the site plan and consent of Pollution Control Board, Grama Panchayat and of District Medical Officer it is evident that the applicant is eligible to get sanction to construct this concrete vault type in the proposed site rejecting the appeal petition containing the only argument that the District Collector has passed the order without application of mind which is found to be baseless.

10) The petitioners did not appear for the hearing in person with their detailed argument note as promised in their appeal petition. The latest representation of SNDP authority submitted during the hearing (with photographs of the almost completed vault) raised their apprehension of anti-social elements misusing the open vault causing further problem.

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Considering all the above mentioned facts the appeal petition filed by S/Sri Francis Simon and E.T. Joseph is disposed as rejected, vacating the stay order issued by Government in letter No. 44301/DB3/12/LSGD dated 15.10.2012. The direction of Hon'ble High Court of Kerala in the judgment in WP(C)15947 of 2012(P) dated 19.07.2012 are thus complied with.

By Order of the Governor

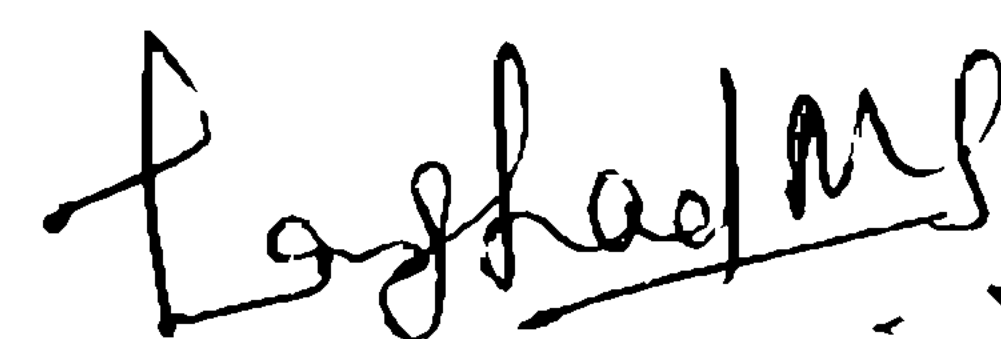
**REETHA S. PRABHA**

Under Secretary to Govt.

To

The Advocate General, Ernakulam (with C/L)  
Sri. Francis Simon, Arayan Kunnel, Kaipuzha. P.O, Kottayam.  
Sri. E.T. Joseph, Edamattom, Kaipuzha. P.O, Kottayam.  
The District Collector, Kottayam.  
✓ The Executive Director, Information Kerala Mission,  
Thiruvananthapuram (for publishing in the website of Local  
Self Government Department)  
The Secretary, Neendoor Grama Panchayat, Kottayam.  
President, SNDP Branch No.109, Kaipuzha, Neendoor, Kottayam.  
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Section Officer

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