



GOVERNMENT OF KERALA

Abstract

Local Self Government Department- Appeal Petition filed by Smt. Elizabeth Mathai - Judgment in WP(C) No.6530/13 - implemented -Orders issued.

LOCAL SELF GOVERNMENT (DB) DEPARTMENT

G.O(Rt)No.1733/2013/LSGD

Thiruvananthapuram, dtd. 29/06/2013

Read:- 1) Proceedings No. D.Dis15/40627/11/M5 dated 14.05.2012 of District Collector, Ernakulam.

2) Appeal petition dated 07.06.2012 filed by Smt. Elizabeth Mathai.

3) Judgment dated 04.04.2013 in WP(C)No.6530/13 before the Hon'ble High Court of Kerala.

ORDER

The District Collector, Ernakulam rejected the application for license to establish a burial ground for Indian Pentecostal Sabha, Kunnathunadu Taluk vide proceedings read as 1st paper above. Smt. Elizabeth Mathai filed an Appeal Petition before Government against the proceedings of District Collector, Ernakulam. The Honourable High Court in its judgment dated 04.04.2013 in WP(C)6530/13, directed the 1st Respondent (Secretary, LSGD) to consider Exhibit P11 appeal (Appeal filed before Secretary, LSGD by Smt. Elizabeth Mathai through her husband K.O. Mathai) in accordance with law and to finally dispose of the same after hearing the petitioner as well as the second respondent (Mazhuvannoor Grama Panchayath Secretary) and any other interested persons as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of the judgment.

2) Accordingly, a hearing was conducted on 05.06.2013. Sri. K.O. Mathai, representative of petitioner accompanied by one Daniel K. Jacob and Junior Superintendent from Office of District Collector, Ernakulam and Secretary, Mazhuvannoor Grama Panchayath attended the hearing.

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3) As per the appeal petitioner, Mannoor Pentecostal church is having properties in Sy. No.252/20 of Irapuram Village, Kunnathunadu Taluk. While they were using the place as burial ground, some local people tried to demolish the compound wall of the cemetery in 2000, the Sabha approached Perumbavoor Munciff Court for an injunction by filing OS 358/2000. In that case some local people filed a Counter Claim to restrain the Sabha from using the place as burial ground. In the suit an Advocate Commissioner was appointed. Commissioner in his report in point No.3 made it clear that, dead bodies were buried in that place for the last so many years and there is evidence in the ground to substantiate it.

4) The appeal petitioner has pointed out that the ground in question is used as burial ground for last 60 years. It is submitted that the petitioner filed an application to the Panchayath for a license to make a concrete cell cemetery in a portion of land purchased from the larger extend of said burial ground. As their Sabha received a mass petition stating that since the land level is higher, sand has to be removed to make it road level and thereafter dead bodies can be buried only by taking pit to a depth of 6 feet.

5) On 05.07.2011 District Medical Officer gave No Objection Certificate to issue license for the Vault type Cemetery with certain conditions on the application dated 20.09.2010. It is stated that after this, petitioner has received a proceeding dated 14.05.2012 from Districting Collector, Ernakulam rejecting the application for constructing concrete cell, citing reason of law and order issue with communal problems, possibilities of contamination of drinking water source of nearby residents and it is a thickly populated area etc. Against this order of District Collector that the petitioner Smt. Elizabeth Mathai filed an appeal petition before Government and the Petitioner's husband Sri. K.O. Mathai filed WP(C)No.6530 before High Court and the Court pronounced the Judgment on 04.04.2013.

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6) During the hearing representative of District Collector, Ernakulam and Mazhuvannoor Grama Panchayath Secretary produced a letter dated 30.01.2012 of Pollution Control Board citing it as residential area and not suitable for cemetery without mentioning about vault type cemetery and report of Superintendent of Police (Rural) Aluva dated 07.03.2012 citing law and order issue based on an issue occurred 4 years back that the local people objected cremation in this area without specifically mentioning the date and a report of Tahsildar Kunnathunadu dated 09.04.2012 objecting citing the reason that there is chances of contamination of drinking water whereas as per District Medical Officer's report there is a drinking water well 30 meters away from the compound wall of proposed vault type cemetery.

7) Petitioner's representative produced a copy of Revenue Record i.e. (sketch of land) in which one side of the area in question is marked as 'ശവക്കോട്ട പാറമ്പ്' to substantiate that the ground in question is used as burial ground for last 60 years. In the mass petition dated 24.05.1999 received by Sabha also, it is requested that the hereafter burial can be done only after making the alteration to the ground suggested by them. This means local people knew that this land is used for burial purpose. Similarly Advocate Commissioner of OS 358/2000 of Perumbavoor Munciff Court in his report in point No. 3 made it clear that, in that place dead bodies are buried from last so many years and there is evidence in the ground to substantiate it.

8) On perusal of records available and examination of the case in detail, it is evident that if original revenue records of the extended land stands registered as 'burial ground' (which has to be get clarified by the Panchayath authorities from Revenue authorities) and has been functioning in the locality even before the notification of Kerala Panchayath Raj (Burning & Burial Ground) Rules, 1998, Panchayath can issue a Registration Certificate to the petitioner as per Rule 4 of Kerala Panchayath Raj (Burning & Burial Ground) Rules. 1998, after obtaining an application to this effect from the petitioner.

9) The argument of Panchayath Secretary and representative of District Collector were not seen substantiating enough in evidence to deny a sanction order to build a vault type crematorium as requested by the petitioner.

10) Government have examined the matter in detail and are pleased to direct the Secretary, Mazhuvannoor Grama Panchayath to issue a Registration Certificate as per Rule 4 of Kerala Panchayath Raj (Burning & Burial Ground) Rules 1998 after obtaining an application from the petitioner for a Registration Certificate rather than a license.

11) The Judgment of the Hon'ble High Court of Kerala read as 3rd paper above is thus complied with.

By Order of the Governor

REETHA S. PRABHA
Under Secretary to Govt.

To

The Advocate General, Ernakulam (with C/L)
Sri. K.O. Mathai, Kadambelil House, Keezhillam, Mazhuvannoor Grama
Panchayat, Kunnathunad Taluk.
Smt. Elizabeth Mathai, Kadambelil House, Keezhillam, Mazhuvannoor
Grama Panchayat, Kunnathunad Taluk.
The District Collector, Ernakulam.
The Secretary, Mazhuvannoor Grama panchayath, Ernakulam,
The Executive Director, Information Kerala Mission,
Thiruvananthapuram (for publishing in the website of Local
Self Government Department)
Stock file/Office copy

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Section Officer