

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.08.2025

Delivered on 03.11.2025

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

WP.No.35426/2024 & WMP.Nos.38305, 38871/2024 & 5029/2025

M/s.Stellar Developer
a Partnership Firm,
represented by its Partner- Sachin Manjunathan,
having its office at No.15, Pugalmuperumalpuram
4th Street, Kumaranthapuram,
Tirupur- 641 602.

...Petitioner

Versus

- 1.The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai 600 003.
- 2.Deputy Director [Public Health]
/Zonal Health Officer, Zone 12
Greater Chennai Corporation,
No.1, New Street [Near GST Road]
Alandur, Chennai 600 016.
- 3.The Member Secretary,
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.
- 4.The Inspector of Police,
T14 Police Station,
Sri Chakra Nagar,

Kamakshi Amman Nagar,
Mangadu, Chennai 600122.

5.S.Albert Kings Bell,
CSI, St.N.16/37,
Kaliyamman Koil, 2nd Street,
Porur, Chennai 600 116.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus, calling for the records pertaining to the impugned order being the license for Burial ground dated 27.02.2024 issued by the respondent No.1 and quash the same and direct the respondents to prevent any person from burying any dead bodies on the land situate at No.6, Othavadai Street, Madananthapuram, Chennai 600 125, Survey No.216/2C1C, Madananthapuram Village, Alandur Taluk, Chennai District and consequently direct the respondents 1 to 3 exhume the bodies which has been buried on the said land thus far.

For Petitioner : Mrs.G.Revathy
for M/s.Mothilal and Goda

For R1,R2 : Mr.Ramanlal, AAG
assisted by
Mrs.S.Vanitha Joice Rani
Standing counsel

For R3 : Mrs.K.Mageswari
Standing counsel

For R4 : Mr.J.Subbiah,
Government Advocate [Crl.Side]

For R5 :Mr.P.Wilson, Senior counsel
for
Mr.Dineshkumar

ORDER

“When the struggle for space over shadows even the breath of life, death too presses its silent claim upon the earth.”

- Khushwant Singh

The present litigation arises out of competing interests: The petitioner who is a Developer of residential apartments seeks to preserve the living environment of the apartment complex from the activities of the burial ground of the 5th respondent, who invoking Article 21, asserts the right to establish a space for the dignified burial of the dead. In a context where a land itself is scarce, this Court is called upon to reconcile these conflicting claims, mindful that the guarantee of dignity under Article 21 extends beyond life.

2.The petitioner is a promoter/developer of land measuring an extent of 48 cents approximately 21,023 sq.ft. comprised in S.No.216/2C (S.No.216/2C1 as per Patta No.2486), (presently bearing S.No.216/2C1B as per Patta No.3661), Muthu Nagar main Road, Madanandapuram Village, Alandur Taluk, Kanchipuram District. The petitioner developed a scheme for the aforesaid land known as 'BLUE TIDE' for constructing dwelling apartments. The petitioner applied and was granted planning permission by the CMDA on 09.06.2021, for construction of residential apartments comprised of stilt + 5 floors. Pursuant to

the approval, the construction was duly commenced in 2021. The petitioner states that in the course of construction of the Apartment-Complex, the 5th respondent, who is owner of the adjacent land conducted burials in his Patta lands without obtaining any permission from the authorities. The petitioner along with the residents/owners of the adjacent locality protested against such burials. The petitioner contends that the subject land was vacant and unused and that no burial activities were conducted either during negotiations for development in 2020, or at the time of approval and commencing construction. According to the petitioner, the said land was never designated as burial ground either by the 1st respondent or 2nd respondent. The petitioner further states that despite objections and complaints, the official respondents failed to prevent the illegal burials or to take timely action against the 5th respondent. The petitioner states that instead of taking action against the 5th respondent, the 1st respondent granted formal license to the 5th respondent on 27.02.2024. Aggrieved by the said license, the petitioner has filed the above writ petition.

3.The 2nd respondent in its counter affidavit stated that pursuant to the Government orders dated 30.10.2011, the Greater Chennai Corporation, took over the administration of Mugalivakkam Panchayat and other municipalities, town panchayats, village panchayats, and merged them with the Corporation.

The 2nd respondent stated that one Dr.Samuvel Carolinius on behalf of the C.S.I. St.Mathew's Church, applied for No Objection Certificate for operation of Crematory in its privately owned patta land. The said order was communicated to the District Revenue Officer by the Collector for consideration. The 2nd respondent further stated that on inspection, the 2nd respondent found that the land in question was a private patta land adjacent to which existed 2 burial grounds, fertilizer godown and a Church. The 2nd respondent further stated that the Deputy Commissioner, in his proceedings dated 01.08.2023, based on the Tahsildar's no objection for conversion of the 5th respondent's private agricultural land to burial ground, directed that the 1st respondent could with the approval of the Council and as per the provisions of Section 319 of the Chennai City Municipal Corporation Act, 1919 and Section 388 of the the Tamil Nadu Urban Local Bodies Act, 1988, issue No Objection Certificate for burial ground. The 2nd respondent further stated that based on recommendation of the Deputy Commissioner, the 1st respondent appointed a five member Committee on 04.10.2023, which submitted its report dated 22.11.2023 to the Council.. Thereafter, the Council in its meeting conducted on 23.01.2024, passed Resolution No.10/2024 and a further, resolution in Resolution No.33 of 2024 on 31.01.2024, approving the proposal of the Public Health Department, Greater Chennai Corporation, in its proceedings dated 18.01.2024. The 2nd respondent

further stated that the 1st respondent exercising powers under Section 319 of the Chennai City Municipal Corporation Act, 1919 and Section 388 of the Tamil Nadu Local Bodies Act, 1998, granted license for cemetery, in the privately owned lands of the 5th respondent, with the approval of the Council on 27.02.2024. The 2nd respondent on the basis of the aforesaid contentions prayed for dismissal of the writ petition.

4. The 3rd respondent/ Chennai Metropolitan Development Authority, filed a detailed counter affidavit. The 3rd respondent stated that the petitioner was granted planning permission for construction of residential apartments in S.No.216, Madanandapuram Village, as per the Second Master Plan (2006 – 2026) for CMDA and Housing and Urban Development Department, since the said village was designated as primary residential zone. The 3rd respondent further stated that under the Tamil Nadu Combined Development and Building Rules, 2019, burning, burial grounds, crematoria and cemeteries were permissible in residential land use zone. The 3rd respondent further stated that residential development was permissible near existing burial grounds, without any distance restriction, in areas where piped water supply was available. The respondent stated that since 3 burial grounds were already existing in the locality, the writ petition lacked merits and deserved to be dismissed.

5.The 5th respondent filed counter stating that the Church of South India Trust Association, purchased the subject land on 28.06.2018, specifically for establishing a burial ground, since space was not available in any other burial ground of the Church. The 5th respondent stated that an application was made to the authorities seeking No Objection Certificate and further on due inspection, the Tahsildar issued NOC, pursuant to which the burial ground commenced its operations. The 5th respondent contended that though there are several burial grounds already existing adjacent to the petitioner's property, the petitioner for reasons best known to him, opposed the burial ground of the 5th respondent alone. The 5th respondent further stated that the petitioner had approached the Court by suppressing material facts and with unclean hands. The 5th respondent therefore prayed for dismissal of the writ petition.

6.Though some of the issues raised in the written arguments of both side counsels have not been directly raised in the grounds of the writ petition, or in the counter to the writ petition, since elaborate arguments were advanced by both side counsels on the said issues, the same are considered.

7.The learned counsel for the petitioner relied on Annexure XVIII of the Tamil Nadu Combined Development Rules, 2019, in support of her contention

that as the land was classified as primary residential zone in the Master Plan, the permissible non-residential activities including burning, burial ground, cemetery were limited to one in a sub division. The learned counsel elaborated her argument by stating that as there already existed a burial ground in S.No.216/2C1C, the petitioner's application for license for burial ground in S.No.216/2C2 ought to have been rejected in terms of the aforesaid provisions of the Tamil Nadu Combined Development Building Rules. The learned counsel for the petitioner submitted that eventhough G.O.Ms.No. 79, was not applicable for reclassification of private patta land, only on a special sanction from the 3rd respondent, the 1st respondent could have issued the impugned license. The learned counsel submitted that provisions of Section 388 of the Urban Local Bodies Act, were grossly violated, in as much as no fee was determined or paid for grant of impugned license, and contrary to the aforesaid provisions, an unconditional license was issued. The learned counsel vehemently contended that since the licensing authority was part of the five member committee, he ought to have awaited the approval of the circular dated 06.11.2024 by the Government. The urgency with which the license was granted reflected total lack of bona-fides. The learned counsel further submitted that the undue haste with which the impugned license was issued indicates an intention to circumvent the circular that was awaiting Government approval. The learned counsel further

added that the impugned order reflected total non application of mind, in as much as the 1st respondent, blindly signed the impugned license by copying the license issued by the Zonal Health Officer, City Health Officer, Additional Health Officer and Additional Commissioner Health. The learned counsel therefore submitted that the impugned order deserved to be set aside, as it was arbitrary and an abuse of power. The learned counsel for the petitioner relied on few judgments in support of the plea for exhumation and relocation of the bodies.

8.The learned Senior counsel for the 5th respondent vehemently countered all the above submissions of the petitioner's counsel. The learned Senior counsel submitted that the petitioner had no locus standi to question the license of the 5th respondent. The learned Senior counsel further submitted that based on the 'No Objection Certificate' issued by the Tahsildar, for reclassification of land, the license was issued and therefore the contentions to the contrary were untenable. The learned Senior counsel contended that burial ground was functioning in S.No.216/2C2, which was a separate subdivision and therefore there was no necessity to obtain separate sanction as per Annexure XVIII of Tamil Nadu Combined Development and Building Rules, 2019. The learned Senior counsel further submitted that there was absolutely no violation of the provisions of the Urban Local Bodies Act, and that the respondents had exercised the powers

vested in them lawfully and hence the writ petition had no merits.

9.The learned Additional Advocate General, submitted that since the 5th respondent's application was pending from 2019, the Council decided to accord special sanction to the 5th respondent. The learned Additional Advocate General, submitted that 2 other burial grounds were already existing and hence, the petitioner's grievance against the establishment of burial ground by the 5th respondent alone was motivated. The learned Additional Advocate General submitted that the petitioner had no right to any hearing or a consideration of its objections, since the Act, did not provide for the same. The learned Additional Advocate General submitted that the writ petition deserved no merit.

10.Heard all learned counsels and perused the materials placed on record. The submissions of both side counsels can be summarised under the following heads:

1. Locus standi of the petitioner to file the writ petition.
2. Zoning Norm Violation
3. Violation of Statutory Provisions
4. Violation of Rule of law and Non-application of mind.

1. Locus standi of the petitioner to file the writ petition:

11. The issue of locus is not raised in the counters to the writ petition by any of the respondents. In any event, as already stated, since certain grounds not raised in the pleadings of both sides, were argued elaborately at the time of hearing and written submissions were also filed, this Court is inclined to consider the objection.

12. The learned Senior counsel for the 5th respondent submitted that the petitioner lacked locus standi to maintain the present writ petition. The learned Senior counsel submitted that the petitioner was admittedly a promoter/developer and not the owner of the land in S.No.216/2C. The claim of the petitioner to the property was merely based on an unregistered agreement to sell dated 25.01.2021, which neither conveyed title nor created any enforceable proprietary/ interest in the land. The learned Senior counsel relied on Section 17 of the Registration Act, 1908 and the judgments of the Hon'ble Supreme Court in *R.Hemalatha versus Kashthuri*, reported in *2023 (10) SCC 725*, and *K.S.Vidyanadam versus Vairavan*, reported in *1997 (3) SCC 1*, in support of his submissions. The learned Senior counsel further submitted that the registered power of attorney dated 16.12.2021, placed on record by the petitioner, merely authorised the petitioner to represent the interest of the principal in certain

transactions and it in no way authorised the petitioner to initiate litigation in his own name. The learned counsel submitted that mere grant of planning permission or building permit did not entitle the petitioner to maintain the writ petition and writ petition filed by person lacking locus standi deserved to be dismissed.

13. The learned counsel for the petitioner relying on the averments made in the written arguments submitted that the petitioner possessed locus standi to file the writ petition.

14. The averments in the writ petition, reveal that the petitioner as a promoter/developer of lands in S.No.216/2C, formulated a scheme for construction of residential dwelling units comprising of a single block of stilt + 5 floors. The petitioner entered into registered power of attorney with the owners of the land for development by them and as per the terms of the power of attorney, the petitioner was authorised to perform several acts stated therein, including engaging advocates or pleaders, signing vakalats, verifying signing and instituting plaints, written statement, counter and any other documents for the purpose of dealing with the property. Dehors, the power, indisputably, during the course of development of the property, the issue arose and therefore the

petitioner filed the writ petition contending that the existence of the burial ground adjacent to his land/project had a detrimental impact on his business, as prospective buyers were unwilling to invest in the project. The fact that the trouble erupted during the development of the petitioner's property is not disputed by the respondent. The respondent has raised technical issue like the petitioner is only a promoter and not the owner and based on the power of attorney, he cannot file the writ petition. Undoubtedly, the existence of the burial ground adjacent to the petitioner's project will impact his business, in which he had invested huge money. Hence, it cannot be said that the petitioner is neither aggrieved nor has the locus standi to file the writ petition. Useful reference is made to the judgments of the Hon'ble Supreme Court on the issue.

15. The Hon'ble Supreme Court in the case of *Ayaaubkhan Noorkhan Pathan versus State of Maharashtra*, reported in **2013 (4) SCC 465**, at para 9 held that, *“A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities.”* So also, in the case of ***A.Subash Babu versus State of Andhra Pradesh and another***, reported in **2011 (7) SCC 616**, the Hon'ble Supreme Court held that, *“The expression “aggrieved person” denotes an elastic*

and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.”

16. From the aforesaid judgments, it is clear that the petitioner is not only an aggrieved person, but also that he has locus standi to challenge the license issued in violation of the provisions of Section 388 of the Tamil Nadu Local Bodies Act, 1998. The judgments relied on by the learned counsel for the 5th respondent, in my view are inapplicable to the facts of the present case. This Court is therefore of the view that the petitioner has locus standi to maintain the writ petition.

2.Zoning Norm Violation:

17. The learned counsel for the petitioner contended that as per Annexure XVIII of the TNCDBR, 2019, permissible non-residential activity in a residential zone was limited to one in a sub division. To understand and appreciate the submissions of both sides counsel's regarding this issue, it is necessary to refer to

Annexure XVIII of TNCDBR, 2019.

Zoning Regulations

Residential use zone

(1) In this zone buildings or premises shall be permitted only for the following purposes and accessory uses. Permissible non-residential activity shall be limited to one in a sub-division.

(xiv) Burning, Burial grounds, crematoria and cemeteries.

18. Admittedly, burial ground, burning, crematories etc. are permissible non-residential activity, however, the same is limited to one in a sub division. The contention of the learned counsel for the petitioner is that there exists a burial ground in S.No.216/2C1C and S.No.216/3 and therefore as per the above Annexure, license ought to have been refused. The learned Senior Counsel for the 5th respondent, contends that S.No.216/2C2 is a separate sub division and hence, the license was validity granted. The method of notation of New-subdivisions is given in BSO 34(A) relating to maintenance of Revenue Records and Regulation, in normal course of Revenue Regulation. Para 12 of the aforesaid Standing Order, reads as follows:

“12. Method of notation of new sub-divisions. - (a) The notation of new sub-divisions will depend on the notation of the survey fields and sub-divisions in the printed diglott register and should be such as to indicate the plot from which the new sub-division is made. If, in the diglott register, sub-divisions are

denoted by numbers, new sub-divisions should be denoted by letters and vice versa, e.g., (1) new sub-division of settlement sub-division No.14-1 should be denoted as 14-1-A, 14-1-B, etc.: (2) new sub-divisions of settlement sub-division No.14-1-A should be denoted as 14-1-A-1, 14-1-A-2, etc. New sub-divisions of settlement S.No. 14 should generally be denoted 14-1, 14-2, etc., unless the district practice has hitherto been to use letters, eg., 14-A, 14-B, in which case this practice may continue, the main objects being to indicate clearly the origin of each sub-division, to preserve continuity of revenue records, and to facilitate search for and identification of registered assurances.”

Following the said notation, it can be said that the main S.No.216 is divided as S.No.216/2, the said Survey Number has been further sub divided as S.No.216/2C and S.No.216/2C is further sub-divided into S.No.216/2C1C and 216/2C2. The issue that arises for consideration is whether in each of the subdivisions, license could be granted. The expression used in Annexure XVIII, namely, “one in a sub-division” has to be interpreted to mean “any one and not each”. If the interpretation suggested by the respondents', that “a sub- division” would mean each of the sub-divisions - is accepted, it would amount to rewriting the provision and would run counter to the express language of the statute. Therefore, when there already exists a burial ground in S.No.216/2C1C, a further burial ground cannot be permitted within the same subdivision (i.e) 216/2C.

Even otherwise the subdivision numbers assigned for the purpose of revenue cannot serve as determining factors for land-use classification under the planning laws. Sub-divisions are created only for administrative convenience and for generating land revenue, they do not alter the physical extent of the land or its character. Accordingly, the pattern of land use cannot be determined merely with reference to sub-division numbers. The guiding factor must be the legislative intent embodied in Tamil Nadu Combined Development Building Rules, 2019 (TNCDBR), which having regard to the land-use pattern, imposes restrictions on the permissible non-residential use of land. Therefore, the restriction prescribed by TNCDBR, 2019, must be applied keeping in view the land-use pattern and not the revenue sub-division alone. The statutory provisions governing land use and development, must be construed in a manner that advances the object of the legislation rather than defeating it. The object of TNCDBR, 2019, is to ensure regulated and planned development consistent with the designated land use pattern. Any interpretation that allows multiple permission in the same sub-division, merely on revenue fragmentation, would defeat the very purpose of such regulation and lead to arbitrary and unplanned utilisation of the land. Therefore, the submission of the learned Senior counsel, premised solely on revenue sub-division numbers, for grant of license, in the view of this Court, is legally untenable and contrary to the scheme of TNCDBR, 2019.

3. Violation of Statutory Provisions:

19. Section 388 of the Tamil Nadu Urban Local Bodies Act, 1998 provides for registration of existing burial ground, burning ground and crematory and applications for new license. The relevant provisions of the Section are extracted here under:

“4) Every application under sub-rule (2) or sub-rule (3) shall be accompanied with a fee as may be fixed by the council from time to time and such fee may be paid in the form of a demand draft drawn in favour of the commissioner of the respective Municipality or paid in the office of the Municipality and the challan for proof of payment or online payment and the same shall be presented to the Commissioner. On receipt of such application, the Commissioner after making inspection of the area and satisfying himself that the particulars furnished in the license in Form 2, subject to such conditions as may be specified in the license:

Provided that no application shall be rejected without giving the person concerned an opportunity of being heard.”

Upon reading of Clause 4 of the aforesaid Section, it is evident that every application for the grant of license for operating a crematorium must necessarily be accompanied by payment of the prescribed fee and proof thereof in the form of a challan. The statute also mandates that before rejecting any such application, an opportunity of hearing must be accorded while rejecting the same, to the applicant. The vital aspect to be noted here is that every application must

mandatorily be accompanied by the challan evidencing payment of prescribed fees, as fixed by the council. Absence of such proof of payment would render the application incomplete and incapable of being considered on merits and any condition to pay the fee post grant of license cannot cure the defect in presentation of the application.

20. At this stage, it is pertinent to note here that a five member committee was constituted for the purpose of framing the rules and for fixing the license fee. The Committee submitted its recommendations on 22.11.2023, which was approved by the Council, vide the resolution No.337 of 2024, dated 21.08.2024. Thereafter, even before obtaining the approval of the Government, for the said rules, the Council by its resolution No.33 of 2024, dated 31.01.2024, granted approval to the 5th respondent, treating it as a special case. The only reason cited by the Council for treating the 5th respondent's case as a special case was that its application was pending from 2019, (i.e) prior to commencement of the 1998 Act on 13.04.2023. The reason cited by the Council for granting permission as a special case is erroneous, and contrary to the factual matrix, since even according to the respondents 1 and 2, the 5th respondent submitted his application only on 02.01.2024, and what was pending from 2019 was only a representation and not application.

21. Assuming for arguments sake, that the Council was not required to await Government approval for the rules framed. Under Section 388(4), the Council could entertain the application only if, it was accompanied by the requisite challan, in proof of payment of the prescribed fee. Admittedly, the prescribed fees were not finalised since they were pending with the Government for its approval and therefore, the 1st respondent could not have entertained the application. It is further significant to note that the 1st respondent, who granted the impugned license was a member of the five member Committee, which recommended the Rules and the fee structure and as such he was fully aware that the same was pending approval by the Government. Under the circumstances, in all fairness, the 1st respondent ought to have awaited the approval of the Government before granting license. The haste and the urgency with which the license was issued casts serious doubt on the bonafides of the respondent in issuing the same.

22. It is also significant to note here that, in the Rules framed by the five member Committee, some of the proposed conditions, if implemented, would have disqualified the 5th respondent from obtaining the license. For instance one of the rules relating to the minimum extent of land required a minimum of 0.5 acres i.e. 50 cents for establishing a burial or burning ground. In the present case

admittedly, the 5th respondent's land measures only 41 cents, which falls short of the prescribed minimum extent of 50 cents. Further, the rules also stipulate that there can be no burial ground, crematoria in residential zone, which means that the 5th respondent is ineligible under this rule also, since its lands are situated in Residential Zone. Hence, this Court finds that the impugned order is unsustainable for violation of statutory procedure. Further, this Court is constrained to infer that the license was issued in undue haste, evidently to circumvent the rigours of the proposed rules.

4. Violation of Rule of law and Non-application of mind:

23. As already noted, the Council granted approval for the license treating the application of the 5th respondent, as a special case on the ground that the application was pending since 2019. This finding suffers from a serious factual error. The records reveal that it was not the application that was pending since 2019, but merely a representation. The application forming the basis of the license was only submitted on 02.01.2024, as is evident from the typed set of papers filed by the respondents 1 and 2. Therefore, the Council erred in assuming that the application was pending from 2019 and such assumption reflects total non-application of mind to basic facts.

24. It is seen that in the impugned license, the remittance of fee was shown as one of the conditions to be complied with. The first respondent, being a member of the very Committee that recommended the fee structure and the rules, was fully aware that Section 388 of the Act, mandates the submission of the challan in proof of payment of fee along with the application. Hence, the inclusion of the said condition in the license directing the fifth respondent to pay the fees post grant of license is in violation of Section 388(4) of the Act and demonstrates non application of mind. In my view, the decision to grant the license in such circumstances is arbitrary, since the authority failed to adhere to the statutory provisions governing the grant of licenses under the Tamil Nadu Urban Local Bodies Act, 1998. Furthermore, when the license was issued subject to compliance with the Rules and Regulations framed by the Greater Chennai Corporation from time to time, it is unclear, why the first respondent did not await the Government's approval of those rules and regulations. These factors collectively indicate that the first respondent acted in undue haste and without proper application of mind, resulting in an arbitrary exercise of power.

25. It also deserves mention that the authority concerned has failed to record any independent satisfaction regarding compliance of the statutory requirement before issuing the license. The impugned order, thus reflects

mechanical exercise of power and lack of application of mind. The principles of *Audi alteram partem* embodied in the proviso to Section 388(4), which mandates affording an opportunity of hearing before rejection, equally implies that satisfaction before grant must be real and based on material evidence. In my view, absence of such satisfaction vitiates the impugned order.

26. Having regard to the above circumstances, this Court is constrained to hold that the procedure prescribed under Section 388(4) has not be followed in letter and spirit. The approval accorded by the Council in favour of the fifth respondent, treating it as a “special case” was not supported by any justifiable reason or material record. The subsequent issuance of the license by the first respondent, notwithstanding the absence of Government approval and without proof of payment of the prescribed fee, is thus contrary to Statutory Mandate. The entire process viewed cumulatively, discloses undue haste and an arbitrary exercise of power.

27. The settled position in law is that when a statute prescribes a particular mode for doing an act, it must be done in that manner or not at all. Any deviation from the prescribed procedure vitiates the resulting action. The conduct of the first respondent also betrays a clear lack of due diligence and procedural

proprietary. When the committee constituted by the Council already framed the necessary rules and submitted them for approval of the Government, prudence required the first respondent to await the Government's approval before taking further step. Instead, the license was issued precipitously, without ensuring the procedural compliance by the applicant. Such conduct not only contravenes the express language of Section 388(4) but also undermines the rule of law, which demands that statutory authorities act within the four corners of law and in a manner that is transparent, fair and consistent. The Hon'ble Supreme Court in the case of *E.P.Royappa v. State of Tamil Nadu* and *Maneka Gandhi v. Union of India*, held that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The Court held that the State action was not to be arbitrary but be based on rational and relevant principle which is non-discriminatory and not for extraneous or irrelevant considerations, because that would be denial of equality. This Court finds that the undue haste with which the 1st respondent granted the license to the 5th respondent reflects a malafide and arbitrary exercise of power undermining Rule of law and therefore, the impugned order dated 27.02.2024, is set aside.

Prayer for Exhumation

28. The learned counsel for the petitioner prayed for exhumation of the

bodies buried in the burial ground. It is submitted by the learned counsel that several burials took place even before the impugned license was issued and even posts the invalid license. The learned counsel relying on the judgments in the case of ***Jagadheeshwari & Ors v B. Babu Naidu & ors*** reported in ***(2023) SCC Online Mad 4773***, ***Palani vs District Collector Mettur***, reported in ***(2014) SCC Online Mad 10969*** and ***Mathew vs State of Kerala***, reported in ***(2022) SCC Online Ker 1142:(2022) 2 KLT 225***, prayed that a direction to exhume the bodies and bury them in designated place be issued.

29. It is admitted by the 5th respondent in the counter to the writ petition as also in the vacate stay affidavit that burials started soon after the “No Objection Certificate” issued by the Tahsildar on 04.02.2021. Hence, it is clear that the burials were conducted even prior to the impugned license dated 27.02.2024, and continued till the Interim stay was granted by this Court in WMP No.38305 of 2024, on 09.12.2024. The full Bench of this Court in the case of ***Jagadheeshwari & Ors v B. Babu Naidu & ors***, reported in ***2023 SCC Online Mad 4773***, while answering the following reference:

“Whether, under the Rules of 1999, the burial can take place at a place other than the designated land, more particularly when the designated land exists in the village?”, held in para 36 as follows:

“36. Moreover, after Rules, 1999 came into force, any burial in the place other than the place already registered or licenses as burial ground, goes in contravention to Rule 7(1). Any body buried in contravention to the Rules 5 and 7, is to be exhumed and buried in the designated place. If such violation is brought to the notice within the reasonable time and despite notice to exhume the body for to be buried in the designated place not adhered by the person concerned, the body is to be exhumed by the authority and collect the costs from the person who is cause for that illegal burial. The exhumed body must be buried in the designated place, taking into consideration the public health. Person who defies the law and refuses to exhume the body, cannot take umbrage in the delay of enforcing the law and make the court 'fait accompli'. Accordingly, the order of reference is answered in negative.”

30. Though the judgment was premised on the Tamil Nadu Village Panchayat (Provision of burial and burning grounds) Rules 1999, the law enunciated therein is that there can be no burial of the dead in any place but the designated place. Hence, I find force in the submission of the learned counsel for

the petitioner. The 5th respondent shall exhume the bodies, failing which the respondents 1 and 2 with aid of the 4th respondent shall conduct the exhumation and bury the bodies in designated burial grounds, however, if the official respondents conduct the exhumation and burial, the 5th respondent shall bear the costs. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. However, the 5th respondent is at liberty to file fresh application after the approval of the Rules by the Government. On such application being made, the 1st respondent shall consider the same, strictly in accordance with the statutory provisions, Rules and guidelines issued. No costs. Consequently, the connected miscellaneous petitions are closed.

03.11.2025

AP/dsn
Index : Yes
Speaking Order: Yes
Internet : Yes
Neutral Citation: Yes

To

- 1.The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai 600 003.
- 2.Deputy Director [Public Health]
/Zonal Health Officer, Zone 12,
Greater Chennai Corporation,
No.1, New Street [Near GST Road]
Alandur, Chennai 600 016.
- 3.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
- 4.The Inspector of Police,
T14 Police Station,
Sri Chakra Nagar,
Kamakshi Amman Nagar,
Mangadu, Chennai 600122.

WP.No.35426 of 2024

N.MALA, J.

AP/dsn

Order in
WP.No.35426 of 2024

03.11.2025