

HIGH COURT OF MEGHALAYA
AT SHILLONG

PIL No. 5 of 2020

Date of Order: 17.04.2020

Justice S.R.Sen (R)

Vs.

State of Meghalaya & 5 Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. N. Syngkon, Adv.

For the Respondent(s) : Mr. A. Kumar, AG
Mr. K. Barua, Adv. for R 5

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Per W. Diengdoh, (J):

1. The Petitioner has approached this Court by way of this PIL with a prayer that a Writ in the nature of Mandamus/ Certiorari or any other appropriate writ/ order or direction be issued directing the State respondents to provide/ allot land for cremation/ burial ground by assessing the need in various places of the District.
2. An interim prayer was made for direction to the State respondent, including the Police, to provide space and ensure that the body of (L) Dr John L. Sailo Ryntathiang, who died after contracting novel corona virus aka COVID-19 early on Wednesday, be cremated/ buried without any difficulty according to the guidelines of the Centre and World Health Organisation.

3. The interim prayer also relates to a similar prayer made by the Petitioner in MC (PIL) No 2 of 2020 in this instant PIL.
4. Learned Counsel for the Petitioner, Mr. N.Syngkon, at the outset has submitted that the interim prayer as far as cremation/burial of (L) Dr. John L. Sailo Ryntathiang is concerned is not pressed as the same has become infructuous, the burial of the late Doctor has since been conducted on 16th April 2020 at the cemetery of the Raitsamthiah Presbyterian Church, Lawmali, Shillong.
5. It is also the submission of the learned Counsel for the Petitioner that in connection with the case of opposition for cremation and burial of the late Dr. Sailo by the Dorbar Shnong of Jhalupara and Nongpoh respective, the said Dorbar Shnongs has clearly violated the law of the land and has acted as parallel government and as such, the State Government may be directed to file FIR and take necessary action in this regard.
6. However, Mr. Syngkon has argued that the fact that there is no allotment of land by the State for use as public cremation and burial ground has led to the present imbroglio as far as opposition to the cremation of late Dr. Sailo is concerned.
7. The learned Counsel has submitted that this Court has taken up the issue of allotment of cremation ground in the case of “Seng Khasi Myllem Vs. Shri Midnightborn Kharlukhi and others” in [WP(C) No 134 of 2017] and also in the case of “Worter Kharmalki and Ors Vs. State of Meghalaya and Ors.” [WP(C) No 73 of 2005] taken up by the Shillong Bench of the Gauhati High Court, which essentially addressed the matter of non-allotment of land for proper cremation of the deceased.
8. The learned Counsel has further submitted that Entry 10 of the State List in the Seventh Schedule of the Constitution of India empowers the State to make law on burial and burial grounds and Section 252 of the Meghalaya Municipal Act, 1973 also empowers the Municipal Board to provide fitting places for burial or burning grounds as stipulated by Article 243 (W) read with Entry 14 of the 12th Schedule to the Constitution of India, however, till date there in no single burial

ground of the Shillong Municipal Board allotted by the State Government.

9. Another submission of the learned Counsel for the Petitioner is that on an emergency basis, the Government may be directed to provide and arrange a place outside the residential area to set up a crematorium or burial ground especially for dealing with cases arising out of the COVID-19 fallout.
10. The learned Advocate General, in his response, has submitted that the interim prayer of the Petitioner as far as the burial of (L) Dr. John L. Sailo Rynthiang is concerned, the same has become infructuous as the late Doctor has since been given a decent burial with the consent of the family members in the Raitsamthiah Presbyterian Church's Cemetery, Shillong in accordance with the guidelines prescribed by the Government of India following the protocol in respect of COVID-19 deaths.
11. The learned AG has also raised the point of maintainability of this instant PIL in as much as the relevant rules of this High Court in PIL matter have not been complied with by the Petitioner. The Learned AG has particularly referred to Rule 10 (1) (c) and (d) of the High Court of Meghalaya (Public Interest Litigation) Rules, 2013.
12. As regard the issue of dead body management for deceased COVID-19 patients, the learned AG has submitted that the same has been dealt with and necessary directions were issued by this Court vide order dated 16.04.2020 passed in PIL No 4 of 2020.
13. As to the prayer of the Petitioner for allotment of burial grounds, the learned AG has submitted that the State Government is not the appropriate authority to provide/ allot land for the said purpose as the Government does not own land in Meghalaya except the land acquired or purchased from private persons and public land is owned by the Community, allotment of which is governed by the laws made by the concerned Autonomous District Council which has been authorized in Paragraph 3 of Schedule VI to the Constitution of India. The concerned Autonomous District Council has not been made a party herein, further, submits the learned AG.

14. It is finally submitted that this matter may be taken up on a future date to allow the State respondent to file a detailed affidavit in this regard.
15. Mr. K. Barua, the learned Counsel for the respondent/ Shillong Municipal Board, has submitted that due to the prevailing situation, he is yet to receive proper instructions from the Municipal Board and has prayed for some time to file proper affidavit. However, it is submitted that the Shillong Municipal Board does not have any land for use as burial ground and there are also no bio-medical plant to dispose of the burial waste.
16. We have heard the learned Counsels for the parties and having given due and considerable thought to the same, we find that the interim prayer as far as the mode and manner concerning the burial of Late Dr. John L. Sailo Rynthiang as noted above, has been given a quietus and requires no further consideration by this Court.
17. With regard to the prayer for allotment of cremation/ burial ground, we are in agreement with the learned AG that the matter would require a detailed hearing for which necessary and further materials are to be placed before this Court.
18. The issue of maintainability will also be taken up on filing of necessary response by the respondents in this case.
19. In view of the above, we direct that this matter be listed after three week allowing the parties to comply with the directions aforementioned.
20. List accordingly.
21. This matter was taken up via video conferencing and as such, the signed copy of the same is placed on the record of the case.

(W.Diengdoh)
Judge

(H.S.Thangkhiew)
Judge

Meghalaya
17.04.2020
“D.Nary- PS”