

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.60/2019

MR MUZAFFAR MANZOOR KADRI,
son of late Mr. Sayed Manzoor Aslam
Kadri, 43 years of age, resident of Kamat
Harmony-18/304/19, Flat No.205,
Tambdi Mati, Taleigao, Caranzalem,
North Goa-403002. Email:-
muzu@jamsons.in

... Petitioner

Versus

THE STATE GOVT. OF GOA, GOVT.
OF GOA, T.H.R. ITS CHIEF
SECRETARY TO GOVT. AND ORS.

... Respondents

Mr I. Agha with Mr K. Morajkar, Advocates *for the Petitioner.*
Mr D. Pangam, Advocate General, with Ms Maria Correia,
Additional Government Advocate *for the State.*
Mr N. Vaze, Advocate *for Respondent No.4.*
Mr Sandesh Padiyar, Advocate *for Respondent No.5.*
Mr Aamir Jamadar, Advocate *for Respondent No.6.*
Mr A. D. Bhohe, Advocate *for Respondent No.7.*

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

**Reserved on: 3rd OCTOBER 2022
Pronounced on: 12th OCTOBER 2022**

P.C.:

1. This Public Interest Litigation concerns the establishment, upkeep and maintenance of crematoria, cemeteries and kabrastans in the State of Goa. The pleadings, at least *prima facie*, reveal a

shortage extending to about 43 crematoria, 50 cemeteries and about 172 kabrastans in the State of Goa. Therefore, the Petitioner seeks mandamus to the State and local authorities to make good this shortfall and further upkeep and maintain the existing facilities.

2. This order, however, concerns and disposes of the issue of establishing a kabrastan at Sonsodo within the municipal limits of the Margao Municipal Council (MMC). This issue has been pending at least since October 2009, when the National Commission for Minorities, by its communication dated 20.10.2009, drew the attention of the State administration towards the acute lack of place for burials of those professing the Muslim and allied faiths. Accordingly, all Counsel were heard at length.

3. As discussed hereafter, the acquisition of land admeasuring approx. 30,100 sq.mtrs. at Sonsodo for establishing a kabrastan was completed in the year 2011. However, for the past 11 years, despite the State administration and the MMC not once doubting or questioning the dire necessity of a kabrastan, no such kabrastan is provided either due to inactivity and bureaucratic obscurantism or for something more than what meets the eye.

4. The records would bear out that the Project advances substantially on paper. Still, the moment actual execution is to commence, there are obstacles from some quarter or the other, as a consequence of which, today, even after 11 years, there is no kabrastan at the acquired site. Presently, we are at the stage where the State administration is keen to provide a kabrastan at this site. Still, after having supported this site for the last several years, the MMC has suddenly made a volte-face, attempted to question the feasibility of the site, and in short, expressed reluctance to establish a kabrastan at a site acquired for this very purpose almost 11 years ago.

5. Neither the State administration nor the MMC has ever disputed the legal and constitutional position that they must provide for an adequate and decent burial place (kabraстан). The legal and constitutional provisions indeed obligate the State administration and the local authorities to provide reasonable facilities to all communities in this regard.

6. Section 246 of the Goa Municipalities Act, 1968 provides that it shall be the duty of the Councils, with the previous sanction of the Collector, to provide suitable places for burning or burying or otherwise disposing of dead bodies. Further, Section 246(2) provides that no person shall, after the appointed day,

open or provide any new place within the municipal area for the disposal of the dead bodies, except with the permission of the Council. Provided that the Council shall grant no such permission without the sanction of the Collector. Section 246(3) empowers the Council by a general or special notice to require any person owning or maintaining any place for the disposal of the dead to take such measures to maintain such place in good order and in a safe sanitary condition as may be specified. Section 246(4) provides that the conditions to be imposed under sub-section (2) or the measures required to be taken under sub-section (3) shall not be inconsistent with any bye-laws framed by the Council for the maintenance of places for the disposal of the dead, due regard being had to the religious usages of the community or section of the community entitled to use of such place. Section 246(5) provides that any person who contravenes any provision of sub-section (2) shall, on conviction, be punished with fine which may extend to ₹2,000/-.

7. Section 248 of the Municipalities Act prohibits certain acts in connection with the disposal of the dead. This provision states that except with the permission of the Chief Officer, no person shall burn, bury or otherwise dispose of any corpse except for the place provided for the purpose. Several other acts are also prohibited under this Section. Any person contravening the

provisions of Section 248(1), shall, on conviction, be punished with fine which may extend to ₹5,000/-.

8. Thus, for obvious reasons, there are restrictions on burying or cremating the departed at places other than those designated by the local authorities in consultation with the State. Correspondingly, there is a duty cast upon the local authorities and the State to provide reasonable facilities for the burial and cremation of the departed. These are primary duties. These are essential duties. These duties cannot be delayed or denied. At least in discharging these duties, there ought to be no red tape or sustained inaction. In particular, there ought to be not even a hint of discrimination. Death, they say, is the greatest equalizer, for it levels all distinctions. Therefore, without apportioning blame upon any particular entity or agency, we would fail if we were not to say that there is a failure of Legal and Constitutional duty in not providing a Kabrasthan after the completion of the acquisition process at Sonsodo almost 11 years ago.

9. The Constitution (74th Amendment) Act, 1992, which entered force on 01.06.1993, introduced Article 243-W and the XIIth Schedule in the Constitution of India. Article 243-W *inter alia* provides that subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Municipalities

with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to the preparation of plans for economic development and social justice and the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. Entry 14 of the XIIth Schedule refers to: *burials and burial grounds; cremations, cremation grounds and electric crematoriums.*

10. Consistent with the above constitutional amendment, the State Legislature introduced Section 322-A in the Goa Municipalities Act, 1968, which provides that the Council shall prepare plans for economic development and social justice *and perform the functions and implement the schemes as may be introduced by it including those in relation to the matters listed in the Xth Schedule.* Entry 7 of the Xth Schedule provides: *burials and burial grounds; cremations, cremation grounds and electric crematoriums.*

11. Thus, both under the Constitutional and Statutory scheme, there is no dispute about the State Administration and local

authorities being enjoined to provide reasonable facilities towards burials and burial grounds, cremations, cremation grounds and electric crematoria. Such an obligation also stems from the provisions of Article 21 of the Constitution, which mandate that fair and dignified treatment extends not only to the living but also the dead.

12. In *Pt. Parmanand Katara v/s. Union of India & Anr.*¹, the Hon'ble Supreme Court held that the right to dignity and fair treatment is not only available to a living man but also the dead body after his death. In *Ashray Adhikar Abhiyan v/s. Union of India & Ors.*², the Hon'ble Supreme Court reiterated that the dignity of the dead must be maintained and respected. Moreover, it extended the right to homeless deceased persons to have a decent cremation according to the religious customs to which one belongs. The corresponding duty was also established on the State to ensure that such a decent cremation is offered to such a person, irrespective of their financial circumstances.

13. Similar views have been expressed by several High Courts in *Gottumukkala Rattaiah v/s. State of Andhra Pradesh*³,

1 (1995) 3 SCC 248

2 (2002) 2 SCC 27

3 2021 SCC Online AP 2399

*Ramji Singh @ Mujeeb Bhai v/s. State of U.P. & Ors.*⁴,
*Vineet Ruia v/s. The Principal Secretary, Ministry of Health
& Family Welfare, Govt. of West Bengal & Ors.*⁵, *S. Sethu
Raja v/s. Chief Secretary, Government of Tamil Nadu &
Ors.*⁶, *Anandhi Simon v/s. State of Tamil Nadu & Ors.*⁷ and
*Vikash Chandra @ Guddu Baba v/s. The Union of India*⁸.
The Division Bench of our Court in *Sayed Zulfikar Ahmed &
Anr. V/s. State of Maharashtra & Ors.*⁹, observed that the
Bombay Municipal Corporation has a primary responsibility to
provide plots/lands to be used as burial grounds. That was also a
case where a plot had been reserved for use of Muslim community
as a burial ground in the year 1970, but for some reason or the
other, the plot was not being allotted for the reserved use.

14. In *Pradeep Gandhi v/s. State of Maharashtra*¹⁰, the
Division Bench of our Court observed as follows:-

*"Before concluding our discussion in relation to WP-I, a
parting remark is considered necessary. In the system of
governance prevailing in our country, it is highly unlikely
that a Governmental decision would please each and every
citizen. While dissent on valid grounds could contribute to*

4 2009 SCC OnLine All 310

5 2009 SCC OnLine All 310

6 2007 SCC OnLine Mad 1670

7 2021 SCC OnLine Mad 1284

8 2008 SCC OnLine Pat 905

9 PIL No.15-2015 – Order dtd 13.03.2019

10 2020 SCC OnLine Bom 662

newer developments in the matter of framing of policies, resentment of the nature out forth by the Petitioners in WP-I leaves a bad taste in the mouth. We have found the petitioners to be rather insensitive to others' feelings. The founding fathers of the Constitution felt that the people of India would strive to secure to all its citizens FRATERNITY, assuring the dignity of an individual. That is the preambular promise. In Parmanand Katara (Pt) v. Union of India, reported in (1995) 3 SCC 248, it has been held that right to dignity and fair treatment under Article 21 of the Constitution is not only available to a living man but also to his body after his death. Right to a decent burial, commensurate with the dignity of the individual, is recognized as a facet of the right to life guaranteed by Article 21 of the Constitution."

15. Recently, in *Mohammad Latief Magrey v/s. Union Territory of Jammu and Kashmir & Ors.*¹¹, the Hon'ble Supreme Court referred to with approval the above decisions in *Vineet Ruia (supra)*, *Anandhi Simon (supra)*, *Pradeep Gandhi (supra)*, *S. Sethu Raja (supra)*, *Ramji Singh @ Mujeeb Bhai (supra)* and *Vikash Chandra @ Guddu Baba (supra)*. In *Mohammad Latief Magrey (Supra)*, the Hon'ble Supreme Court also reiterated the view taken in *Pt. Premanand Katara (supra)* and *Ashray Adhikar Abhiyan (supra)*.

16. The National Human Rights Commission, in its Advisory dated 14.05.2021 for upholding the dignity and protecting the

¹¹ 2022 SCC OnLine SC 1203

rights of the dead, also referred to the legal position articulated by the above decisions and held that it is a well-accepted legal position that the right to life, fair treatment and dignity derived from Article 21 of the Constitution of India, extends not only to the living persons but also to their dead bodies. Therefore, the Advisory *inter alia* directs the local Government and administration to ensure that the condition of the crematoriums, burial grounds, electric crematoriums are properly maintained to keep them in effective working condition.

17. The material placed on record by the Petitioner, which is not seriously disputed by any of the respondents, bears out that the Muslim community of Margao and the surrounding areas were allotted a burial ground at Pajifond, Margao, several years ago and that the same is now found to be inadequate. This area admeasures hardly 14,000 sq. mtrs. and has been in use for over 50 years at least, though some claim that this allotment was made about 120 years ago. Therefore on 16.07.1999, resolution no.26 was moved before the Goa State Legislative Assembly for allocation of sufficient comunidade land or Government land in and around Margao to solve the burial problems faced by the Muslim community.

18. The Petitioner has produced on record at Annexure 44 the extracts from the Goa State Legislative Assembly records concerning the discussions and, ultimately, the unanimous passage of resolution no.26. The resolution was moved by Mr Digamber Kamat, who was then the M.L.A. for the constituency of Margao. In his opening remarks, Mr Kamat pointed out that the existing facility at Pajifond was allotted almost 50 years ago. However, this burial ground is inadequate due to the increase in the Muslim population. He, therefore, strongly recommended allotment of comunidade land or Government land in and around Margao to solve the burial problems.

19. Shri Shaikh Hassan Harun, who spoke on the motion, also pointed out that the existing burial ground is saturated due to paucity of space. He supported the motion. Shri Luizinho Faleiro, the then Chief Minister of Goa, agreed with the members that the Muslim community was facing problems and hardships because of the inadequate burial ground at Margao. He then discussed various options, and finally, a resolution was passed unanimously by the Goa State Legislative Assembly on 16.07.1999.

20. After the resolution, some steps were taken by acquiring land admeasuring 99,500 sq. mtrs. at Aquem, Margao Goa.

Necessary notifications were also issued. However, in and around 2004, these notifications were dropped or allowed to lapse for reasons that are not entirely clear.

21. The Petitioner has placed on record a communication dated 10.02.2004 addressed by Shri Luizinho Faleiro, the Ex-Chief Minister of Goa and an M.L.A. In this letter, Mr Faleiro complained about the pathetic condition of the kabrastan at Pajifond when attending the funeral of the late Shri Shaikh Siraj and the hardships suffered by the people at the funeral. He forwarded the Legislative Assembly's unanimous resolution dated 16.07.1999 to the President of Masjid-e-Aksa, Fatorda. He pointed out that once a resolution is passed unanimously in the Legislative Assembly, it reflects the will of the State, and nobody has a right to neglect the same and deny burial facilities to the people. He urged the Masjid-e-Aksa to take up the issue with the Government so that the acquisition of land could be resorted to by invoking the urgency clause as the topmost priority.

22. In 2009, a news item appeared in "Times News Network" about the lack of adequate burial facilities in Pajifond, Margao and the demand for a new kabrastan at Margao. The National Commission for Minorities (N.C.M.) took *suo moto* cognizance of this news item and requested the Chief Secretary, State of Goa,

to apprise the N.C.M. of the latest position in this regard. The N.C.M. also informed the Chief Secretary about the proposed visit and requested for action taken report. The Chairperson of the N.C.M. also addressed a communication dated 20.10.2009 to Shri Digamber Kamat, who was by then the Chief Minister, State of Goa. The letter requested Mr. Kamat to ensure implementation of resolution no.26 moved by Mr. Kamat on 16.07.2009, then in his capacity as M.L.A.

23. Despite the above communications, there was no response. Therefore, by communication dated 17.12.2009, requested the Chief Secretary to send the requisite report latest by 08.01.2010 failing which the N.C.M. would consider action under the relevant provisions of the National Commission for Minorities Act, 1992 for the issue of summons.

24. Finally, a notification under Section 4 of the Land Acquisition Act, 1894 (L.A. Act) was published on 23.08.2010 proposing to acquire land at Sonsodo, Margao admeasuring 30,191 sq. mtrs. Section 17 (urgency clause) was also invoked. Despite the same, some people objected to the acquisition. There is a report dated 19.10.2010 prepared by the Deputy Collector and S.D.O., Margao, Goa, that was submitted to the appropriate Government recommending the issue of notification under

Section 6 of the L.A. Act. This report refers to the MMC as the acquiring department. This report refers to the urgent need for acquisition to establish a kabrastan and also the efforts made towards such acquisition.

25. The last three paragraphs of the report dated 19.10.2010 are important in the present context and read as follows:

The demand for the burial ground for the minority community belonging to Muslim faith had been a long pending issue before various authorities. The Government did try its level best to acquire land in the past but somehow or other the proposals did not see the light of the day. In the first ever proposal which was mooted in the year 2002, the Margao Municipal Council had proposed the land at Fatorda within the city of Margao but the lack of seriousness of the Acquiring Department led to the lapsing of the said proposal due to efflux of time. Similarly in the year 2006 another proposal was mooted by Sunni-Jamat-Ul-Musalleem to acquire additional land adjoining to the existing Kabrastan at Pajifond. Although the land was notified under Section 4, due to a number of objections, the acquiring office i.e. Suni-Jamat-Ul-Musaleem itself requested for dropping of the proceedings. Thereafter the All Margao Muslim Jamat Association proposed to acquire land in the Village of Davorlim, which village is situated on the outskirts of Margao Town. The Village Panchayat of Davorlim resisted the proposal and hence it did not find favour and the proceedings did not take of.

In the backdrop of the efforts made by the Government, it makes me to realize that the need to have a decent burial

ground for the minority community is the need of the hour.

The National Commission of Minorities has also taken cognizance of this fact and hence called upon the Government to give a serious thought towards the sentiments of the Muslim faith. In consonance with these circumstances the Acquiring Department has identified the land which is ideal for the purpose of construction of burial ground as the surrounding atmosphere is also conducive for the same. One side of the proposed burial ground is touching the boundary of the Catholic cementary and the land is also zoned as Cementry & partly Natural cover by the Town and Country Planning Department. We live in a secular India where there is no discrimination made on the basis of religion. Though the number of Muslim populace has increased no impetus has been laid to respect and create infrastructural development. By and large to respect the religious sentiments and so as to abridge the gap in the society the need to have a decent burial ground is an essentiality.

In view of the same I summarily recommend the proposal for acquisition of land so that notification under Section 6 can be issued.

*(Johnson Bedy Fernandes)
Dy. Collector & S.D.O.
Margao Goa."*

26. Since 2010, the MMC has supported the acquisition proposal at Sonsodo, conscious of its duty to provide a Kabrasthan. The Petitioner has placed on record a resolution of

the MMC dated 28.06.2010. The operative portion of the said resolution bearing no.3808 reads as follows:-

"Resolution No:-3808

It was unanimously resolved to submit a proposal to the Collector (South) for acquisition of (1) land admeasuring 30191 sq. mts. at Sonsodo, Margao bearing Chalta No.1 P.T. Sheet No. 50 for Burial Ground for all 3 communities and (2) land bearing Chalta No. 52 of P.T Sheet No. 228 admeasuring 99513 sq.mts. at Aquem, Margao for community projects of this Council. The Council also decided that incase any objection is received inspite of this proposal, the Collector should decide such objection at his a level.

(Action By Technical Section)

*(Savio H. Coutinho)
Presiding Authority,
Margao Margao Council"*

27. The N.C.M. held a hearing on 24.05.2011 on this issue of kabrastan at Margao. The Secretary (revenue) attended the meeting as the representative of the Chief Secretary. The N.C.M., after hearing both parties, held that the Government had failed to comply with the direction of the Commission. Therefore, the Commission *took strong objection and a dim view of the Chief Secretary deputing an officer who is not concerned with the subject at issue and could not give up to date information on the*

current status of the process of identification of suitable alternate sites as directed by the Commission. The Commission viewed this as action bordering dangerously on contempt.

28. Finally, the acquisition proceedings appear to have been completed in 2011. The land at Sonsodo, admeasuring 30,191 sq.mtrs., was vested in the State Government free from all encumbrances to enable the State and the MMC to establish a kabrastan.

29. The Petitioner has placed on record a communication dated 13.05.2013 addressed by the Government of Goa, Revenue Department, to the Director (Waqf), Ministry of Minority Affairs, New Delhi. This communication states that the Collector, South Goa District, Margao inspected the site on 21.01.2013, and the Executive Engineer, Fatorda, has also informed that the work of kabrastan at Sonsodo has been awarded to M/s. Gaj Construction vide Work Order dated 23.12.2011. However, the work could not be commenced due to a significant variation in the earthwork excavation due to the ground level difference in the sanctioned estimates. Therefore, revised plans have been prepared and are awaiting approval.

30. The Petitioner has also placed on record a communication dated 10.06.2014 addressed by the Engineering Department of MMC to the Deputy Collector (Revenue) regarding the establishment of kabrastan for the Muslim community at Sonsodo. Then, as per the Council's resolution no.3808 dated 28.05.2010 and Government decision under File No.17/84/2009-RS dated 19.09.2011, which directed to execute agreement for management and maintenance with Sunni Jamat-e-Muslameen, Margao, Goa for construction of kabrastan. This agreement is dated 09.12.2011.

31. Even though the acquisition was completed in 2011 and the construction works were awarded in 2012, there was no progress at the site. Instead, there was some correspondence from some quarters about the site not being appropriate. Therefore, the Collector of South Goa addressed a communication dated 29.06.2015 to the Under Secretary (Revenue), pointing out that if some of the Councillors had any objections, then it was for the MMC, in terms of Section 322-A of the Goa Municipalities Act to identify and acquire alternate lands.

32. The Petitioner has also placed certain records concerning the South Goa Planning and Development Authority (SGPDA). This includes permission dated 11.02.2016 issued by the SGPDA

under Section 17-A of the Town and Country Planning Act for constructions in Chalta No.1 P.T. Sheet No.50 and 49 (part), i.e. the Sonsodo land.

33. On 21.04.2021, Shri Agnelo Fernandes, the then Chief Officer of MMC, filed a very casual affidavit in this Petition. In this, he stated about the acquisition of 30,191 sq. mtrs. of land at Sonsodo for setting up a kabrastan under the award dated 16.05.2011. He then stated *that though the Council resolved to hand over this land to the Government for development as the Council had neither technical expertise nor funds, an agreement dated 09.12.2011 was executed with Sunni Jamat-ul-Muslameen in terms of the Council's decision for management and maintenance of burial grounds.* Next, he referred to the work order dated 23.12.2011 issued by the P.W.D. to M/s. Gaj Construction for construction of kabrastan. He claimed a contractor had informed the P.W.D. about his inability to undertake these works and how the contract was closed in terms of Clause 13. He then referred to the Council's objections to identifying the acquired land at Sonsodo as forest and the feasibility issue because of its hilly nature. He ended by stating that efforts are being made to search alternate lands for setting up kabrastan.

34. Since there was no clarity in the affidavit dated 21.04.2021, particularly in the last statement about the MMC searching for alternate lands, the Counsel for MMC was heard on the issue. On 15.09.2021, after hearing Mr Padiyar, the learned Counsel for the MMC, we made the following order:-

*“ CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ
DATED: 15th September 2021*

P.C. :

1. Mr. S.D. Padiyar, the learned Counsel for Margao Municipal Council states that land has already been acquired and handed over to MMC for establishment of crematorium at Sonsodo, Margao. He states that this land is identified as Chalta No.1 of P.T. Sheet 50 and 49/1(P) at Sonsodo, Margao, Salcete, Goa.

2. Mr. Padiyar states that a contract for development of this land into a crematorium was awarded by the State of Goa to one M/s. Gaj Constructions (a contractor). He states that this contractor did undertake some works but the site was not developed as a crematorium. Mr. Padiyar, however, admits that as of date there is no crematorium developed at the site.

3. Mr. Padiyar then states that the MMC by an M.O.U. dated 09.12.2011 entrusted the management of this site to Sunni Jamaat-ul-muslameen, Malbhat, Margao Goa (Jamaat). Mr. Padiyar states that this agreement dated 09.12.2011 is to remain in force for 30 years. He states that

this agreement is still in force. He states that this Jamaat was supposed to develop this site as a crematorium and, thereafter, manage and maintain the same. He states that even now the MMC will have no objection whatsoever to this Jamaat developing this site as a crematorium and, thereafter, managing and maintaining it for the period specified in the agreement.

4. Accordingly, we direct the Petitioner to implead the Jamaat as respondent to this Petition. Necessary amendment to be carried out forthwith.

5. Once the amendment is carried out, issue notice to the Jamaat through its President, returnable on 27.09.2021. The Petitioner will have to pay process fees and give copies so that notices can be served immediately.

6. In addition to the usual mode of service, private service is also permitted.

7. Stand over to 27.09.2021."

35. On 05.11.2021, a meeting was held in the chamber of the Director of Urban Development (Municipal Administration) to discuss the issue of kabrastan within the jurisdiction of the MMC. The Chief Officer of MMC and the members of the Jamat also attended this meeting. After discussions and deliberations, this meeting took a decision to cancel the existing work order in favour of M/s. Gaj Construction and that the

MMC should submit a proposal to the Goa State Urban Development Agency (GSUDA) to take up the works of burial grounds at Sonsodo. It was agreed that GSUDA would expedite the development. It was also pointed out to the Director of the Municipal Administration that there are no legal impediments to developing and constructing the burial ground at Sonsodo.

36. In our order made as late as 03.08.2022, we recorded Mr Padiyar's statement on behalf of the MMC that the Council stands by the decision recorded in the minutes of the meeting held on 05.11.2021. Mr Padiyar submitted that by the next date necessary proposal would be forwarded to GSUDA for taking up the kabrastan/burial ground construction at the location indicated in the minutes. Mr Padiyar also stated that an affidavit would be filed by the next date indicating the timeline within which this work will be completed.

37. The order dated 03.08.2022 reads as follows:

*“ CORAM: DIPANKAR DATTA, CJ &
M. S. SONAK, J.
DATED: 3rd August 2022*

P.C. :

1. Mr. Padiyar, learned Counsel for the Margao Municipal Council states that the Council stands by the decision

recorded in the minutes of the meeting held on 05.11.2021. He submits that by the next date, necessary proposal will be submitted to GSUDA for taking up the proposal for construction of the Kabrastan/ burial ground at the location indicated in the minutes.

2. Mr. Padiyar states that an affidavit will also be filed by the next date indicating the timeline within which this work will be completed.

3. Let this matter be placed on 29.08.2022 for further consideration."

38. Thus, at least up to 03.08.2022, we were informed that there are no legal impediments whatsoever for proceeding with the work of construction and development of a kabrastan at Sonsodo and that by the next date, we would be informed about the timeline within which such work would be completed. At least to this date, all the Authorities, including the MMC, fully supported the proposal for the construction and development of kabrasthan at Sonsodo. The only issue was the actual commencement of works by GSUDA and the timeline within which such works would be completed.

39. On 29.08.2022, the MMC applied for an adjournment on the ground of the unavailability of Mr Padiyar. On 08.09.2022, however, Mr Rohit Kadam, the Chief Officer of MMC, filed an affidavit. In this affidavit, he stated that on 12.08.2022, the

MMC called for a feasibility report from the SGPDA for developing and constructing a kabrastan. He then referred to SGPDA's communication dated 19.08.2022. He interpreted this letter and, based on the same, proceeded to State that the MMC would now not comply with the decision reached and recorded in the minutes dated 05.11.2021. However, necessary steps in terms of the Council's resolution for locating a new site will be initiated immediately.

40. This volte-face on behalf of the MMC was claimed to be based entirely on the communication dated 19.08.2022 issued by the Member Secretary of SGPDA. This volte-face, at such a belated stage, to say the least, was surprising. Therefore, by our order dated 27.09.2022, we directed the Member Secretary to file an affidavit along with necessary plans to explain the position.

41. The Member Secretary filed his affidavit on 28.09.2022 as directed. The learned Advocate General explained that the Member Secretary's communication dated 19.08.2022 was misinterpreted by the MMC. The communication only points out that some portions of the acquired land may not be developed without obtaining further permissions under Section 17-A. As noted earlier, permissions under Section 17-A had already been issued by the SGPDA, subject no doubt to certain conditions.

Learned Advocate General made it clear that the SGPDA or its Member Secretary had never stated that construction or development of a kabrastan would not be feasible at the Sonsodo site but only that some portions of the Sonsodo site may not be developable.

42. The Member Secretary's affidavit dated 28.09.2022, quite surprisingly, refers to the earmarking of a portion of this acquired land for low-cost housing (residential S-1) and for setting up 33 K.V. electrical sub-station. Since this land was acquired for a kabrastan, we were quite surprised at how any portion of it, which is itself not entirely adequate, could be earmarked for low-cost housing or setting up an electrical substation. Further, if a portion could be earmarked for such purposes, surely the authorities cannot raise doubts about the acquired land's feasibility for constructing and developing a kabrastan.

43. Learned Advocate General was clear in his submission that the acquired land could be used to construct and develop a kabrastan. Still, only a small portion may not be used for construction. He pointed out that the structures were mainly to come up in the areas indicated in the plans and for which necessary permissions were in place. The learned Advocate General also referred to the provisions of the Goa Compensation

to the Project affected persons and vesting of land in the Government Act, 2017. He submitted that in terms of Section 4, notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974, the Legislative Diploma No.645 dated 30.03.1933 in its application to the State of Goa, the Goa Land Use (Regulation) Act, 1991 (Act 3 of 1991) or any other law for the time being in force, or decree, judgment or direction of any Court or rules, regulations, notifications or Orders issued by the Government, where the land is needed for public and all such land purchased/acquired by the Government shall vest in the Government free from all encumbrances of whatsoever nature and the Government shall use such land for setting up of Project. He submitted that in terms of these provisions as well, there can be no impediment for using the Sonsodo land for the purpose of construction and development of kabrastan.

44. At this stage, we do not propose to go into the issue of interpretation of Section 4 of the Goa Compensation to the Project affected persons and vesting of land in the Government Act, 2017. This is because we are even otherwise satisfied that there are no legal impediments to using the Sonsodo land, which was acquired for this very purpose, and developing the same as a kabrastan. Even MMC, time and again, had asserted that it stands

by its earlier decisions of constructing and developing a kabrastan at the acquired land, cannot be permitted to make a volte-face at a belated stage, and that too based upon a gross misinterpretation of the Member Secretary's letter dated 19.08.2022. In any case, since the MMC's objection was based only on the Member Secretary's letter dated 19.08.2022 and the said letter has been explained by both the Member Secretary and the learned Advocate General, the objections or the apprehensions of the MMC no longer hold good.

45. As it is, the MMC had expressed helplessness to construct and develop the kabrastan at the Sonsodo site or, for that matter, at any location for want of technical expertise and finances. Therefore, the MMC requested the P.W.D. to undertake these works. Furthermore, the MMC had also agreed to submit a proposal for these constructions to GSUDA. Accordingly, it is only appropriate that the P.W.D. and/or the GSUDA undertake and complete the works of construction and development of kabrastan at Sonsodo (acquired land) as expeditiously as possible and in any case within six months from today.

46. The Petitioner and the Jamat have supported the provision of the Kabrasthan at the Sonsodo site and urged the Authorities to complete the construction at the earliest. However, the Jamat

must also cooperate in this venture, keeping aside their internal politics or without aligning themselves with any factions. In fact, all the authorities and stakeholders must cooperate in this venture, which all acknowledge is a dire necessity.

47. We urge all the authorities and stakeholders to consider that this work of kabrastan at Sonsodo has been pending since 2011. Already, expenditure has been incurred through the public funds to acquire property at Sonsodo. The Muslim community is in dire need of sufficient space for its kabrastan. None of the authorities had even once disputed the need for having a kabrastan or even the urgency with which such kabrastan is required to be provided. Therefore, based upon some red tape or other extraneous considerations, the construction and development of kabrastan cannot be delayed any further by any of the authorities responsible for undertaking and completing the same.

48. The Learned Advocate General stated that a period of about six months would suffice to complete the construction of the prayer house, other buildings and the development of the kabrastan. Moreover, there is a record that funds have already been sanctioned for this Project, based upon which even a contract had been awarded to an agency in the past. Therefore, no issues of lack of finances were even raised before us. Accordingly,

we direct the P.W.D. and GSUDA to undertake and complete the works of providing a full-fledged kabrasthan at the acquired lands in Sonsodo as expeditiously as possible, and in any case, within six months from today.

49. The MMC should render all possible cooperation to the P.W.D. and GSUDA. However, suppose, for any reason, the MMC refuses to cooperate. Such non-cooperation should not deter the P.W.D. and the GSUDA from proceeding with the work of construction and development of kabrastan and completing the same at the earliest.

50. The GSUDA and the concerned Executive Engineer of the P.W.D. should file a compliance affidavit before us on or before 29.11.2022 indicating the progress of works at the site. Copies of such affidavits must be furnished to the Counsel in this matter by 28.11. 2022. If work does not commence or progress at the site by the said date for any reason. In that case, the Member Secretary must state the names of the persons responsible, failing which the responsibility shall be of the Member Secretary and the concerned Superintending Engineer of the P.W.D.

51. The Managing Director of GSUDA and the concerned Superintending Engineer, P.W.D. having jurisdiction over the

Sonsodo area where the acquired land is located, shall be held personally responsible if the works are not completed within the timeline now indicated. Therefore, they are given the liberty to apply in case of difficulties.

52. The MMC's Chief Officer and the MMC's engineers should also render all possible assistance to ensure the completion of these works within the timeline stated. Even the Chief Officer of MMC will be held personally responsible if the works are not completed within the timeline now indicated.

53. Place this matter for further consideration on 29.11.2022. Accordingly, we propose considering the compliance reports and other issues arising in this Petition on this date.

54. All concerned must act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.