



CONT.P(MD)No.1645 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CONT.P(MD)No.1645 of 2022

1.S.Boomiraja Subbu
2.B.Saritha

... Petitioners

VS.

Sundaramanickkam,
Inspector of Police,
C-3, Manamadurai,
Town Police Station, Manamadurai.

... Respondent

PRAYER: Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971 to punish the contemnor/respondent for the contempt committed by him by wilfully violating the order passed by this Court passed in Crl.O.P.(MD)No.15451 of 2018, dated 30.08.2018 in accordance with law.

For Petitioners :Mr.G.Jeremiah
For Respondent :Mr.S.Manikandan
Government Advocate (Crl.Side)



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ORDER

The Contempt Petition was filed alleging wilful disobedience of the order passed by this Court in Crl.O.P.(MD)No.15451 of 2018, dated 30.08.2018.

2.The Criminal Original Petition was disposed of on 30.08.2018 in the following terms:

“2. The learned counsel for the petitioner would submit that the vendor of the petitioners had filed a suit in O.S.No.311 of 1991 against the father of the fourth and fifth respondents seeking for relief of declaration and permanent injunction with regard to the property which is the subject matter of the present petition. The suit was decreed on 18.08.1995 and the same was also confirmed by the appellate court in A.S.No.133 of 1996. He would further submit that this judgment has become final and in spite of their being an order of permanent injunction, the fourth and fifth respondents who are legal heirs of Ramakrishnan, who was the defendant in the suit are preventing the petitioners from enjoying the petitioner's property. The petitioners gave a representation dated 20.08.2018 to the respondent police to give them police protection.

3. The learned Additional Public Prosecutor would submit that earlier the fourth respondent had given complaint and the petitioners gave a written undertaking that they will workout their remedy before the civil court. He would further submit that since the petitioners have obtained relief in the judgement and decree passed in O.S.No.311 of 1991, the parties can be directed to appear before the third respondent. The third respondent on being satisfied with the right of the petitioners based on the judgement and decree made in O.S.No.311 of 1991 will take appropriate action in accordance with law.



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4. The third respondent shall call the parties for enquiry based on the representation dated 20.08.2018. During enquiry if the third respondent finds that the petitioners are tracing rights by virtue of the judgement and decree passed in O.S.No.311 of 1991 which is confirmed in A.S.No.133 of 1996, the third respondent shall direct the fourth and fifth respondent to work out their remedies in the manner known to law. Thereafter the fourth and fifth respondents are at liberty to work out their rights.”

3.It is stated that in spite of the civil Court decree passed in favour of the petitioners' vendor's father, which was contested by the father of the fourth respondent in the Criminal Original Petition, wherein, the title was declared and permanent injunction was granted, which was confirmed in an appeal, the fourth and fifth respondents in the Criminal Original Petition have managed to trespass into the property. Therefore, the Criminal Original Petition was filed before this Court and in spite of the order passed in the Criminal Original Petition, no steps have been taken by the respondent Police to enquire the parties. Therefore, the petitioner has alleged that there is wilful disobedience of the order passed by this Court.



4. When the matter came up for hearing on 28.11.2023, this Court

passed the following order:

“When the matter was taken up for hearing today, the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the respondents 4 and 5 in Crl.O.P. (MD)No.15451 of 2019 filed a Writ Petition in W.P.(MD).No. 23674 of 2018 against the Police as well as the petitioners herein and this Court disposed of the Writ Petition by order, dated 16.10.2019 in the following terms:

“3. Without going into the merits of the case, the 2 nd respondent is directed to consider the representation of the petitioner dated dated 05.09.2018 and pass orders thereon, on merits and in accordance with law, after issuing notice to the respondents 5 and 6, within a period of 4 weeks from the date of receipt of a copy of this order.”

2. The learned Additional Public Prosecutor further submitted that when the Police went to the spot for carrying out the order passed by this Court, there was a huge commotion, since a group of lawyers assembled in the place and they prevented from taking over the possession from the respondents 4 and 5 in the Criminal Original Petition. In view of the same, the Police is not in a position to take over possession of the property.

3. The respondents 4 and 5 in the said Criminal Original Petition had filed a Writ Petition before this Court and the Writ Petition was disposed of with a direction to the Inspector of Police to consider the representation after calling the parties for enquiry. The learned Additional Public Prosecutor shall take instructions from the Inspector of Police as to the further development that took place after the Writ Petition was disposed of. If no enquiry has been conducted till date, the respondent is directed to call the parties for an enquiry and take a decision and report the same before this Court. It is made clear that the respondent Police will not entertain any Advocates on either side at the time of conducting the enquiry.

4. Post this Contempt Petition under the same caption on 15.12.2023.”



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5. When the matter was taken up for hearing today, the respondent was present before this Court. The learned Government Advocate produced the proceedings of the respondent dated 09.12.2023. On going through the same, it is clear that an enquiry was conducted by the respondent Police and the respondent has concluded the proceedings in the following manner:

□மனுதாரர் மற்றும் எதிர்மனுதாரர்கள் இரண்டு தரப்பினரும், பார்வை 2முதல் 7வரை கண்டுள்ளபடி கீழமை நீதிமன்றங்களில் மாற்றி மாற்றி வழக்குகள் தாக்கல் செய்து உத்தரவுகள் பெற்றுள்ளனர். இருதரப்பினரையும் விசாரணை செய்து அவர்களின் வாக்குமூலத்திலிருந்தும் மேற்படி தாவா சொத்தின் அருகிலுள்ள கடைக்காரர்களான S.S.புடவேர் உரிமையாளர் முகமது கனி, எலக்ரானிக்ஸ் ரிப்பேர் உரிமையாளர் இருள்ராஜ், ராதிகா ஜுவல்லர்ஸ் உரிமையாளர் வேலுச்சாமி முருகன் ஸ்டோர் உரிமையாளர் ராமு. கற்பகம் பேக்கரி உரிமையாளர் சுப்புராமன் ஆகியோரை விசாரணை செய்ததிலிருந்தும் மானாமதுரை டவுன் கீழ்க்கரை சிவகங்கை ரோட்டில் ஜி.ஆர்.நம்பர் 44/161-ல் அமைந்துள்ள பழைய கதவு எண்கள் 148, 149, 150, 151 புதிய கதவு எண்கள்.2/13, 2/15, 2/17, 2/19 கொண்ட கட்டிடங்களை எதிர்மனுதாரர் செந்தில்குமார் அனுபவம் செய்து வருகிறார் என்று தெரியவருகிறது.

மேலும் கடந்த 2018-ம் ஆண்டில் மாண்புமிகு சென்னை உயர்நீதிமன்ற மதுரை கிளை W.PNo.23678/2018-ன் பிரகாரம் அப்போது இருந்த மானாமதுரை காவல்துறையினர் மனுதாரர் தாவா இடத்திற்குள் செல்வதற்கு பாதுகாப்பு வழங்கும் முயற்சியில் ஈடுபட்ட போது வழக்கறிஞர்கள் இருதரப்பினராக பிரிந்து பிரச்சனை செய்ததால் சட்ட ஒழுங்கு பிரச்சனை ஏற்படும் சூழ்நிலை இருந்ததால் சட்ட ஒழுங்கு பிரச்சனையை கருத்தில் கொண்டு பாதுகாப்பு வழங்கும் பணியை அச்சமயம் தற்காலிகமாக தள்ளிவைத்துள்ளனர். தற்போது மனுதாரர் சம்மந்தப்பட்ட நீதிமன்றத்தில்



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மனுதாரரின் இடத்திலிருந்து எதிர்மனுதாரரை வெளியேற்ற
உரிய உறுத்துகட்டளை பெற்றுவர சொல்லி அறிவுறுத்தி
விசாரணை முடிக்கப்பட்ட விபரம் மனுதாரருக்கு
தெரிவிக்கப்பட்டது.□

6.The learned Counsel for the petitioners submitted that in spite of getting a civil Court decree and the same becoming final, the petitioners cannot be once again sent back to a civil Court and that they must be able to enjoy the fruits of the decree. To substantiate the same, the learned Counsel for the petitioners relied upon the judgment of Hon'ble Supreme Court in the case of *Prabhakara Adiga vs Gowri and others*, reported in *(2017) 4 SCC 97* and the judgment of this Court in *S.Ashokan and others vs State represented by the Commissioner of Police*, reported in *2015-2-L.W.999*.

7.In the considered view of this Court, it must be seen as to whether there was any wilful disobedience on the part of the respondent by not complying with the order passed by this Court.

8.On going through the materials, it is seen that the fourth and fifth respondents in the Criminal Original Petition filed a suit in O.S.No.9 of 2018 before the Principal District Munsif Court, Manamadurai seeking



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for the relief of permanent injunction. They filed an interim application seeking for interim injunction and the same was granted. The petitioners filed a Civil Revision Petition seeking for striking off the plaint before this Court and the same was not entertained and liberty was granted to the petitioners to work out their remedy in the pending suit. This suit is pending as on date and there is an order of interim injunction operating in favour of the fourth and fifth respondents, in the Criminal Original Petition.

9. Even if the interim order passed in favour of the fourth and fifth respondents is taken to be an abuse of process of Court, the respondent Police cannot disregard such an order and proceed to evict the persons, who are in occupation of the property. On going through the proceedings of the respondent, it is seen that some of the properties are in the possession of third parties, who are running a footwear shop, electronic repair shop, jewellery shop and a grocery shop. Hence, this Court exercising its jurisdiction under Section 482 of Cr.P.C., and in exercise of contempt jurisdiction, cannot straight away direct eviction of those persons.



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10.The petitioners have an effective alternative remedy under Order 21 Rule 32 CPC. If there is any violation of the decree of permanent injunction granted by a competent civil Court, the same can be effectively agitated by filing an execution petition under Order 21 Rule 32 of CPC. While undertaking the same, the civil Court will have an opportunity to take note of the entire facts of the case along with the materials. Ultimately, if the civil Court finds that there is violation of the decree passed, necessary orders can be passed and even police protection can be granted to ensure that the decree holders enjoy the fruits of the decree.

11.In the light of the above discussion, liberty is granted to the petitioners to move an execution petition before the concerned Court under Order 21 Rule 32 CPC. The concerned Court shall deal with the petition in accordance with law and pass final orders within a period of three months from the date of filing of such petition by the petitioners. Ultimately, if the decree has to be executed only with the aid of the



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police, even police protection can be granted by the Executing Court to ensure that the decree holders enjoy the fruits of the decree.

12.This Contempt Petition is disposed of in the above terms.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

15.12.2023

cmr

To

The Inspector of Police,
C-3, Manamadurai,
Town Police Station, Manamadurai.



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N.ANAND VENKATESH, J.

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