

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

Contempt Petition No.1081 of 2013
and Sub.A.No.690 of 2013

C.Govindan

... Petitioner

Vs

1.Krishnamoorthy,
The Inspector of Police,
M-1, Madhavaram Police Station,
Madhavaram, Chennai-110.

2.R.Umarani

3.Ranganathan

... Respondents

Contempt Petition filed under Section 11 of Contempt
of Courts Act praying to punish the respondents for
disobeying the orders passed by this Hon'ble Court in
WP.No.24442 of 2012 dated 28.11.2012.

For Petitioner : Mr.R.Chandrakumar
for Mr.M.Muruganandam

For Respondents : Mr.S.Diwakar, Addl. Govt. Pleader [for R1]
Mr.V.Prakash, Senior Counsel [for R2,R3]
for Mr.R.Gokul Raj

ORDER

This case has got a chequered history. Its
journey started in the year 1985 and no one knows, when it
eventually end.

2. The petitioner obtained a decree in OS.No.594 of 1985 on 30.10.1985. The suit filed by the respondent No.2 in OS.No.91 of 1991 renumbered as OS.No.350 of 1997 was dismissed for default. The petitioner obtained another decree in OS.No.1338 of 1997 on 19.01.1999 filed for declaration and recovery of possession. The Execution Petition was ordered on 27.12.2005. The attempt made in revision in CRP [NPD] No.993 of 2006 also failed vide order dated 21.08.2006.

3. The petitioner filed another WP.No.16885 of 2007, wherein, this Court by order dated 30.04.2008, held as follows:

"15. In such circumstances, petitioner is entitled to get an order in this writ petition. If the second respondent has not locked the petitioner's house it is the duty of the second respondent to give protection to the petitioner to enter into his property as his right is already determined in the Civil Court. Hence a writ of mandamus is issued directing the second respondent to permit the petitioner to enter into his house bearing plot No.219, Swamy Ramalingam Colony, Ponnamman Medu, Madhavaram, Chennai-110,

period of one week from the date of receipt of copy of this order."

4. Thereafter, MP.No.2 of 2008 was filed in the said Writ Petition by the respondent No.2 in this Contempt Petition and it was also dismissed. Another revision was filed on 30.09.2008 challenging the order passed in IA.No.646 of 2001 which was also dismissed in CRP [NPD] No.2694 of 2008. WA.No.245 of 2009 was filed against the order passed in MP.No.2 of 2008, which was disposed of by the order dated 26.03.2009 in the following manner:

"4. It is not disputed that the first respondent is put in possession from 2nd August 2008. In this situation, in our view, the only remedy for the aforesaid appellant-Umarani is to seek a declaration that the particular house shown in this photograph is on survey No.1173 and whatever decrees obtained by the first respondent are not valid. As it is disputed question of fact as to whether this particular house is situated in survey No.1173 or not, we do not entertain this writ appeal and the same is dismissed.

5. When the civil suit is filed, it will be

<https://hcservices.ecourts.gov.in/hcservices/> decided on its own merits without being

influenced by the observations made either by the learned Single Judge or in this appeal. The suit, when filed, will be decided expeditiously, preferably within a period of six months from the date of filing of such suit. However, there shall be no order as to costs."

5. The respondent No.2 filed a suit in OS.No.93 of 2009 raising the same prayer as sought for in the earlier suit in OS.No.350 of 1997. The petitioner filed an application in IA.No.65 of 2011. The application filed for injunction was allowed.

6. The petitioner filed one more WP.No.24442 of 2012. By the order dated 28.11.2012, it was disposed of in the following manner:

"The prayer in the writ petition is for issuance of a Writ of Mandamus directing the respondent to give protection to the petitioner in pursuant to the earlier order of this Court in WP.No.16885/2007 dated 30.04.2008.

2. The second respondent has filed today a counter affidavit dated 27.11.2012 stating that due to heavy rain, the second respondent had taken shelter, even though earlier she has

permitted to vacate the property on 31.01.2013.

3. The learned counsel appearing for the petitioner submits that the said undertaking stated in the counter affidavit filed by the second respondent may be recorded and the writ petition may be disposed of with a further direction that the respondents shall not permit anyone else to encroach upon the land.

4. In the circumstances, the writ petition is disposed of as per the undertaking which is now recorded with a direction to vacate the premises by 31.01.2013 and not to allow any person to encroach the land. No costs.

For reporting compliance, post on 01.02.2013."

Despite all these orders, as the respondents, instead of handing over possession, are obstructing the same by their henchmen, the present contempt application has been filed, after filing a complaint to the police.

7. An Advocate Commissioner was appointed to file a report before this Court. The relevant portion of the Advocate Commissioner's report is extracted hereunder:

"7. Admittedly the subject property in

physical appearance is consisting of three

portions 'A', 'B', 'C' shown in RED, GREEN AND YELLOW colours respectively in the Rough sketch. Both the petitioner and the respondents 2 and 3 admits that keys for the iron gate fixed facing the Road in the 'B' portion and two other rooms inside the 'B' portion were handed over to the petitioner, but the petitioner alleges now some other lock was put up by the respondents 2 and 3 and this was denied by the respondents 2 and 3 and the respondents 2 and 3 said they have no objection to break open the lock found in 'B' portion. This portion is measuring 37.3 feet x 40 feet = 1490 sq.ft. of land consisting of a ground floor building and vacant land.

8. Further in the 'A' marked portion, which is measuring 480 sq.ft. Admittedly it is under the occupation of one Mr. Ravikumar, son of the respondents 2 and 3 herein and he kept some building and he kept some building materials, such as iron sheets and casuarina poles and wooden logs and they allege that this land will not come under the subject property.

9. Further in the 'C' portion, which is measuring the total extent of 20.3 feet x 40 feet

<https://hcservices.ecourts.gov.in/hcservices/> = 810 sq.ft. and it is alleged by one Mrs. Moppil

Madathi who is residing opposite to the subject property that her son Mr.Kannan is the lease holder of this 'C' portion under one Mr.Regupathy, but both the said Mr.Kannan and the alleged owner Mr.Regupathy are not available at the time of my inspection and it was locked by iron gate and where some iron scraps are stored and cloths are dried. No documents for lease is produced by them.

10. In view of the above, the 'A' marked portion is under the occupation of one Mr.Ravikumar, son of the respondents 2 and 3 herein and 'B' marked portion is vacant, but under lock and key and 'C' marked portion is alleged to be under the occupation of one Mr.Kannan. But the respondents 2 and 3 have expressed they are not claiming possession in respect of 'B' marked portion and the keys of which were already handed over to the petitioner."

These are all the background facts, which speak for themselves, about how a judicial process can be used. This Court is not willing to say anything more.

8. The learned Senior Counsel for the respondents 2 and 3 submitted that the possession has been in fact handed over, in compliance of the orders passed above. The temporary shed put up by the respondents was also removed. There is no objection for the petitioner to take over the possession, in the presence of the police. The learned Senior Counsel also submitted that the above said facts may be recorded, without prejudice to the contentions of the respondents in the pending suit.

9. The learned Counsel appearing for the petitioner submitted that the petition is at advance stage. The continuous proceedings has made him fatalistic. However, the possession would be taken, with the aid of the police.

10. The present Inspector of Police, M-1, Madhavaram Police Station is present. The learned Government Pleader submitted that the said Inspector would extend all co-operation, enabling the smooth taking over by the petitioner with respect to the subject matter property.

11. Accordingly, the Contempt Petition is disposed of, by directing the present Inspector of Police, M-1, Madhavaram Police Station to accompany the petitioner,

so as to enable him to take over the possession of the property situated in Door No.219 to the extent of 2400 sq.ft. within two weeks, from the date of receipt of a copy of this order. The Inspector of Police is directed to be present before this Court "for reporting compliance on 28.09.2015".

12. This order is passed without prejudice to the parties in the pending suit. Already appropriate directions has been issued by the Division Bench of this Court. The possession will have to be handed over to the petitioner, as per the report of the learned Advocate Commissioner dated 11.10.2013. It is also made clear that the petitioner is permitted to put a compound wall, which act would be subject to the judgment and decree to be rendered by the jurisdictional court, in the pending suit. It is also made clear that any encroachment or alienation would be hit by *lis pendens*.

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13. The parties are directed to co-operate, to dispose of the pending suit. It is seen that, despite the order passed by the Division Bench, the suit is yet to be disposed of. The learned Sub Judge, Ponneri is directed to dispose of OS.No.93 of 2009 within a period of three

14. The learned counsel for the petitioner is directed to serve copies of the papers including the Advocate Commissioner's report. Consequently, connected Sub A.No.690 of 2013 is closed.

For reporting compliance, post on 28.09.2015.

gya

SD/
DEPUTY REGISTRAR (CLAA)

//Certified to be true copy//

Dated at Madras this the day of 2015.

COURT OFFICER (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

SS/CO/07/05/2015

One CC to Government Pleader, SR.11873

To

1.The Sub Judge, Ponneri.

2.The Inspector of Police,
M-1, Madhavaram Police Station,
Madhavaram, Chennai-110.