

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.28563 of 2015
Reserved on 27.11.2015

Miss R.C.Mini

... Petitioner

Vs

1. The Commissioner of Police,
Vperry, Chennai.

2. State represented by
Inspector of Police,
Anti Land Grabbing Cell -I,
Central Crime Branch, Team XVI,
Veperry, Chennai-07. ... Respondents

Criminal Original Petition filed under Section 482
Cr.P.C. seeking a direction to order de novo/fresh investigation
in Crime No.298 of 2014 by directing any other independent
investigation agency by appreciating the facts of the case.

For Petitioner : Mr.V.Lakshmi Narayanan for
Mr.M.Guruprasad

For Respondents : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

The present criminal original petition has been filed
seeking a direction to conduct de novo/fresh investigation in
Crime No.298 of 2014 by directing any other independent
investigation agency by appreciating the facts of the case.

2. The petitioner herein lodged a complaint before the
Deputy Commissioner of Police, CCB on 05.04.2013 and based on
the same, the second respondent police registered a case in
Crime No.298 of 2014 against the accused persons for the alleged
offences punishable under Sections 465, 467, 468 r/w 471 and 420
r/w 120 (b) of IPC on 01.07.2014.

3. The petitioner is the great grand-daughter of one Late P.Damodaran Pillai, who is the owner and in possession of the land bearing Survey No.130/1 and 130/2 of Velachery village, Mambalam - Guindy taluk, Chennai. The said Damodaran Pillai died on 26.01.1995 and before his death, he had executed a registered Will bearing No.151/92 at Sub Registrar Office, Trivandrum in favour of the petitioner, bequeathing the above said property to her. Pursuant to the said Will, the petitioner approached the Tahsildar, Mambalam Guindy taluk for effecting mutation in the revenue records and to pay land tax in her name along with the original registered Will. However, to her dismay, she came to know that the ownership of the property was transferred in the name of one K.P.Shyamalakumari alleged to be the mother of one K.Vinod Kumar. But the said K.P.Shyamalakumari was the servant maid of the said P.Damodaran Pillai. The transfer was effected on the basis of a forged legal heirship certificate obtained by K.P.Shyamalakumari from the Tahsildar, Mambalam-Guindy taluk dated 8.7.1999 in D.Dis 74861/97 as if she is the only legal heir of said Late P.Damodaran Pillai. Hence, the petitioner lodged a complaint before the District Collector, Chennai against the illegal grant of patta in favour of K.P.Shyamala Kumari. The District Collector passed an order in RC No.J5/9165/99, dated 5.10.1999, cancelling the patta in favour of Syamala Kumari and also legal heirship and also directed the Tahsildar, Mambalam-Guindy taluk to restore the patta in the name of original owner of the property, namely, Late P.Damodaran Pillai. The matter was informed to the Tahsildar. But the Revenue authorities, in spite of the direction given by the District Collector, Chennai, did not come forward to cancel the illegal patta. Later, the petitioner came to know that they were the close associates of the father of K.Vinod Kumar. In the meanwhile, K.P.Shyamalakumari instituted a frivolous suit before the City Civil Court, Chennai in O.S.No.7334 of 1999 and later it was not pressed on 24.6.2004. But on the strength of illegal patta, the accused persons had alienated the property to a builder, namely, Kurinjis' Homes Pvt.Ltd. The purchaser had constructed a multi storied flat over the said property. Since the petitioner is a permanent resident of Thiruvananthapuram, she was nursing her aged mother Smt.S.Charulatha, who was suffering from ailments, she could not know the illegal acts of the accused persons. The petitioner could trace out the details of the sale transaction carried out in his property by the accused persons. Hence, a complaint was lodged against accused persons by the petitioner. But the said complaint was not enquired into. Hence the petitioner moved a petition in Crl.O.P.No.20929 of 2013 before this Court and pursuant to the order, dated 13.12.2013 of this Court, the second respondent registered a case in FIR No.298 of 2014 for the alleged offences under Sections 465, 467, 468 r/w Section 471 and 420 r/w Section 120(b) IPC. Though the case was registered, there was no progress. Hence the petitioner had

again approached this Court by way of filing Crl.O.P.No.1828 of 2015 for proper investigation by the Land Grabbing Unit, Central Crime Branch. The Investigating Officer sought extension of time and this Court also granted the same. However, the Inspector of Police, Central Crime Branch XVI, Veperi, Chennai filed a final report on 11.7.2015 closing the FIR as 'civil in nature'. Aggrieved over the same, the petitioner has come forward with the present petition.

4. The learned counsel appearing for the petitioner would submit that it is not an ordinary case of civil nature, but a patta land belonging to the petitioner was grabbed by the accused persons by obtaining illegal patta on production of forged Will and documents and though the petitioner had prima facie made out the ingredients of provisions of the Land Grabbing Act and IPC by submitting all the required original documents, the respondent police had not conducted enquired the matter in a proper perspective and the entire investigation is biased and impartial. Hence, the learned counsel sought for a direction as prayed for. Relying on the decision reported in "(2013) 5 SCC 762 (Vinay Tyagi versus Irshad Ali @ Deepak and others)", the learned counsel would urge that considering the peculiar facts and circumstances of the case, this Court can direct the respondents police to conduct de novo enquiry.

5. The learned Additional Public Prosecutor would submit that the petitioner had no co-operated with the enquiry and after conducting a detailed enquiry, the case was closed as 'civil in nature' and the petitioner was served with RCs Notice No.158 of 2015, dated 11.07.2015 through registered post with acknowledgement due. Now the remedy available for the petitioner is to file a protest petition before the concerned Court. The learned Additional Public Prosecutor also invited the attention of this Court to the order of this Court, dated 8.7.2015 in Crl.O.P.No.1828 and 15473 of 2015 and submitted that a specific direction was given by this Court to the respondents police to proceed with the available records and take action by filing appropriate report before the concerned Magistrate and pursuant to the said direction, based on available records available, investigation was conducted and a final report has been filed.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor and perused the entire materials placed on record.

7. In fact, pursuant to the directions of this Court in Crl.O.P.No.15473 of 2015, the respondents/police have issued notice to the petitioner to appear for enquiry on 29.06.2015 and submit all necessary documents and co-operate with the investigation. However, for the reasons best known to the

petitioner, she did not appear for enquiry on the said date, which prompted the respondents/police to move M.P.No.1 of 2015 in CrI.O.P.No.1828 of 2015 seeking for extension of time by six more months for completing the investigation. While disposing the above petition by order, dated 8.7.2015, this Court has observed as under:

"5. To a pointed question posed by this Court, whether Mini R.C. (the petitioner herein) appeared before the police pursuant to the order of this Court dated 25.06.2015 in CrI.O.P.No.15473 of 2015 from 26.02.2015 onwards, the answer was in the negative. Thus, it is clear that, Mini R.C. for the reasons best known to her is not appearing before the respondent police for enquiry. Hence, the police is seriously handicapped. It is the assertion of Ms.Asha that, all the documents that are required by the police for investigation have been handed over and there are no further documents to be handed over to the police.

In view of this categorical stand taken by Mini R.C., no useful purpose will be served by extending the time for investigation. Hence, this petition is dismissed. The police is directed to proceed with the case with the available records and take action by filing appropriate report before the concerned Magistrate."

8. Pursuant to the above, the respondents/police have filed the present report based on the available records with them, closing the FIR, by categorizing case of the petitioner as 'civil in nature' and they also served RCs Notice No.158 of 2015, dated 11.07.2015 to the petitioner through registered post with acknowledgement due. Therefore, it is failure only on the part of the petitioner to participate in the enquiry by producing relevant documents and her non-cooperation with the respondents/police, which constrained the respondents/police to proceed with the available records with them and file the present report. It is well settled that since the power to direct fresh/de novo/reinvestigation is of wide plenitude, it has to be exercised sparingly and the principle of rarest of rare cases would squarely apply to such cases and unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a fresh/de novo investigation. In

the present case, this Court does not find any unfairness in the investigation made by the respondents/police warranting to direct de novo investigation. In fairness, the respondents/police had moved a petition before this Court in M.P.No.1 of 2015 in Crl.O.P.No.1828 of 2015, seeking for extension of time to complete the investigation since the petitioner was not co-operating with them. However, considering the attitude of the petitioner in not cooperating with the investigating agency, this Court has directed the respondents/police to proceed with the available records and file appropriate report. In such circumstances, I do not find any irregularity on the part of the respondents/police in filing the closure report based on the materials available with them. Therefore, I am of the considered opinion that the present case does not require any fresh or de novo investigation. However, this would not curtail or restrain the petitioner to work out her remedy by establishing her right and title over the disputed property in the manner known to law.

For the foregoing reasons, the prayer sought for by the petitioner in this criminal original petition cannot be granted. Hence, the present criminal original petition is dismissed. However, the petitioner is at liberty to work out his remedy in a manner known to law, if she is so advised.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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TO

1. The Commissioner of Police, Vpery, Chennai.

2. State represented by
Inspector of Police,
Anti Land Grabbing Cell -I,
Central Crime Branch, Team XVI,
Vepery, Chennai-07.

3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.M. Guruprasad, Advocate Sr.66513

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KSJ(CO)
EU 30.12.15