

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2015

Date of Reserving the Order	Date of Pronouncing the Order
28.01.2015	11.02.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No. 34048 of 2013 &
M.P.Nos.1&2 of 2013 & M.P.No.1 of 2014

Indus Sea-farers Training Academy,
Formerly known as Indian Sea-farers Training Academy,
Rep., by its Chairman Sri.CH.Rama Rao,
Indus Campus, Manalisaravana Street,
Gangai Ammal Koil,
Kunrathur Main Road,
Mangadu, Chennai - 600 122. Petitioner

Vs

- 1.The District Collector,
Collectorate,
Kancheepuram,
- 2.The Sub-Divisional Magistrate cum
The Revenue Divisional Officer,
Kancheepuram.
- 3.The Tahsildar,
Sriperumbudur Taluk,
Kancheepuram.
- 4.The Cine Technicians Association of South India,
Rep., by its former Secretary,
Mr.K.RamachandraKurup,
S1&S2, 5th floor, Nathan Building,
4/7, North Usman Road,
T.Nagar, Chennai - 600 017.
- 5.Mr.C.Ravichandran
- 6.L.Mohana Krishnan
- 7.R.Arulmurugan

8.M/s.Geetham Foundations Pvt Ltd.,
Rep., by N.Prasanna Balu,
New No.166, Old No.140/1,
NMK Street, Ayanavaram,
Chennai - 600 023.

9.C.Sivalingam

10.Mr.Raghu Babu

11.M.Ravichandran

12.M.Saravanan

13.The Inspector of Police,
Mangadu Police Station
Chennai - 600 122.

14.M.Jagatheesan

15.Arulmugan Respondents
(R6 to R13, R14&R15 impeaded as per order dated 28.01.2015 in
M.P.Nos.1&2 of 2014 in W.P.No.34048 of 2013)

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to quash the impugned order of the third respondent on one or more grounds set out hereunder and to consequently forbearing the fourth and fifth respondents, their men and agents or anyone claiming under them from interfering or disturbing with the peaceful enjoyment of the said property during the subsistence of the Lease under the Lease Deed dated 08.07.2002.

For petitioner .. Mr.V.Raghavachari for
Mr.Swarnam J.Rajagopalan

For Respondent .. Mr.R.Vijayakumar AGP for RR1to3

Mr.T.T.Ravichandran for R4

Mr.R.Subramanian for R5

Mr.T.Mohan for
Mr.S.Jim Raj Milton for
impleaded parties

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O R D E R

The petitioner seeks for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the third respondent, dated 25.11.2013, and to forbear the private respondents from interfering or disturbing with the possession of the property, which has been leased out to the petitioner vide lease deed, dated 08.07.2002.

2. The petitioner's case is that the fourth respondent owned lands measuring an extent of 5.92 acres in Survey Nos.538, 539, 541 and 546/2, Mangadu Village, Sriperumbathur Taluk, Kancheepuram District, out of which an extent of 3.00 acres was leased out to the petitioner for a period of 99 years to establish a Training Academy to Impart Maritime Education. A lease deed dated 08.07.2002, was executed in favour of the petitioner registered as document No.3780 of 2002, on the file of Sub-Registrar, Kunrathur and the petitioner was put in possession of the said property. The petitioner is said to have put up construction after obtaining necessary sanction from the local authority and established a Training Academy. It is stated that during 2004, members of the fourth respondent association attempted to encroach into the northern side of the property and therefore, the petitioner has filed a Suit in O.S.No.1145 of 2004, on the file of the District Munsif Court, Poonamallee against the fourth respondent and its members for a decree of permanent injunction. The trail Court by order dated 30.09.2005 in I.A.No.3525 of 2004, granted an order of status-quo. Subsequently, the case has been transferred to the District Munsif Court, Sriperumbudur and renumbered as O.S.No.1232 of 2008 and the same is pending.

3. The petitioner would state that 18 persons attempted to trespass into the property alleging that they have purchased on different dates, portions of the land in Survey No.359 part from the fourth respondent, which according to the petitioner falls within the leasehold area. Therefore, the persons who had purchased the plots, have filed Suits in O.S.No.296 to 303 of 2006, on the file of the District Munsif Court, Tambaram, praying for a decree of permanent injunction. Subsequently, the Suits have been transferred to the District Munsif Court, Sriperumbudur and renumbered as O.S.Nos.376 to 383 of 2008. The Suits have been decreed and the petitioner has been restrained by a decree of permanent injunction. Aggrieved over the same, the petitioner has preferred an appeal in A.S.Nos.8 to 11 of 2010, before the Sub-Court, Kancheepuram and the appeals are pending. The petitioner lodged a Police Station before the Mangadu Police Station alleging that 18 persons (plaintiffs in the suit) attempted to trespass into the Suit property.

4. The petitioner would state that the attempt of the fourth respondent is to defeat the purpose of the lease granted in favour

of the petitioner and that is why, they have sold the property to third parties. The petitioner has filed O.S.No.4036 of 2011 on the file of the XV Assistant Judge, City Civil Court, Chennai and it is stated that an order of interim injunction has been granted in the Suit and not to interfere with the petitioner's leasehold right. It is stated that inspite of the order of injunction, there was interference with the petitioner's possession and an Criminal case has been registered in Crime No.365 of 2011, against the fifth respondent and the fifth respondent has also given a counter complaint, which has been registered as Crime No.366 of 2011, against the Chairman of the petitioner's Academy and his daughter Malathi Devi, who is managing the Academy. It is submitted that the Police complaints have been forwarded to the Revenue Divisional Officer, Kancheepuram, second respondent, who is said to have conducted a preliminary enquiry and direct the Taluk Surveyor to measure the property. The second respondent by order dated 30.01.2012, ordered both parties to maintain status-quo. The Suit filed by the petitioner in O.S.No.4036 of 2011, before the City Civil Court was dismissed for default and according to the petitioner, they were not aware of the same. The petitioner would state that taking advantage of the dismissal of the Suit, the fifth respondent obtained an order from the second respondent on 10.12.2012 and attempted to put up a fence around the property on the northern side. The petitioner filed Writ Petition in W.P.No.35399 of 2012, challenging the said order, dated 10.12.2012 and an order of interim stay was granted. Subsequently, another order was passed by the second respondent on 09.01.2013, and the fifth respondent filed W.P.No.2575 of 2013, challenging the said order, dated 09.01.2013, and the Writ Petitions were allowed and the orders dated 10.12.2012 and 09.01.2013, were quashed and the second respondent was directed to conduct an enquiry after hearing all the parties concerned and complete the same before 31.10.2013. The impugned order is pursuant to the direction issued by this Court and consequent upon an enquiry conducted by the second respondent.

5. The learned counsel appearing for the petitioner submitted that the impugned order has been passed erroneously by invoking Section 145 CrPC attempting to decide the rights of parties and possession of the petitioner and exceeded in his jurisdiction. It is submitted that the impugned order is erroneously as no survey was carried out by the Taluk Surveyor on 05.11.2013. Further, it is submitted that the impugned orders could not have been passed, when the Appeal Suits in A.S.Nos.8 to 11 of 2010, filed by the petitioner are pending before the Sub-Court, Kancheepuram. Further, it is submitted that while passing the impugned order, the rights of the petitioner as a lessee under the lease deed, dated 08.07.2002, has been wholly ignored and therefore, the impugned order is liable to be set aside. The learned counsel referred to the relevant conditions in the lease deed and pointed out that the impugned order is wholly without jurisdiction.

6. The learned counsel appearing for the fifth respondent submitted that he has purchased nine housing plots under sale deeds dated 20.02.2013 and 14.03.2013 and the petitioner claiming that he is a lessee of an extent of three acres, was attempting to encroach upon the lands. It is further submitted that the Suit filed by the petitioner in O.S.No.1145 of 2004, which was transferred to the District Munsif Court, Sriperumbudur and renumbered as O.S.No.1232 of 2008 was dismissed for default on 19.12.2011 and the Suits filed by the fifth respondent's vendor in O.S.Nos.376 to 383 of 2008, were decreed by the District Munsif Court, Sriperumbudur on 03.09.2009 and the appeals filed by the petitioner are pending and there was no interim order. Further, it is submitted that the Suit filed by the petitioner before the City Civil Court in O.S.No.4036 of 2011 was also dismissed for default on 16.08.2012. It is submitted that pursuant to the orders passed in the earlier Writ Petitions, the second respondent conducted an enquiry measured the property with the help of Surveyors and factually found that the petitioner is in possession of more than 3.00 acres of the land that was leased to them by the fourth respondent association. Therefore, the second respondent passed the impugned order recalling the preliminary order dated 30.01.2012, issued under Section 145 CrPC., which is now being challenged in this Writ Petition. Therefore, it is submitted that the petitioner is in occupation of more than the extent leased out to him by the fourth respondent and he has also encroached upon the Poromboke land in Survey No.540. Further, it is submitted that the impugned order is perfectly legal and valid and the second respondent has only directed the parties to abide by the decision of Civil Court and the petitioner having been unsuccessful before the City Civil Court is now attempting to invoke the jurisdiction of this Court by filing this Writ Petition and attempting to achieve what he could not achieve before the City Civil Court.

7. The respondents 6 to 15 who have been impleaded, have also taken a similar stand as that of the fifth respondent and have also stated about the manner in which they have acquired title over the property.

8. The learned counsel appearing for the fifth respondent produced before this Court the copies of judgment and decree in O.S.No.95 of 2008 and the decree in O.S.No.1232 of 2008 and 4036 of 2011 to substantiate their contentions that the Suits filed by the petitioner were dismissed and the Suits filed by the plot owners have been decreed.

9. Heard Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the official respondents.

10. The impugned proceedings has been passed in exercise of the powers conferred on the second respondent under Section 145

Cr.P.C. In fact, the impugned proceedings sets out in detail, the Civil litigation between the parties. From the facts noted above, it is evidently clear that as on date, the petitioner does not have any decree of the Civil Court protecting his interest, rather the plot owners who are the private respondents herein have succeeded before the Civil Court and obtained an order of permanent injunction against the petitioner. Further, it is seen that the the Suits filed by the petitioner have been dismissed for default and the appeal filed by the petitioner as against the decree obtained by the private respondents, there is no interim order. Therefore, the observations made by the second respondent in the impugned order is perfectly justified by directing the parties to work out their rights before the Civil Court. The petitioner appears to be aggrieved by the observations made in the penultimate line of the impugned order, wherein a direction has been issued stating that Police Assistance would be sought for. The private respondents having obtained a decree of permanent injunction, if there is any violation of decree, it is always open to them to approach the competent authority seeking Police aid. Therefore, any observations in the impugned order can only be held to be superfluous, merely because, the second respondent has made such observation, it cannot automatically mean that the second respondent can direct the Police to interfere in the matter. It is for the private respondents to work out their rights in the manner known to law, if there is any violation of the decree of injunction obtained by them.

11. Hence, no grounds have been made to interfere with the impugned order and accordingly, the Writ Petition is dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1.The District Collector,
Collectorate,
Kancheepuram,
- 2.The Sub-Divisional Magistrate cum
The Revenue Divisional Officer,
Kancheepuram.

3.The Tahsildar,
Sriperumbudur Taluk,
Kancheepuram.

4 The Inspector of police
Mangadu police station
Chennai-122

1 cc to mr.R. Subramanian, Advocate, Sr. 7726
2 ccs to Mr. Jim Raj Miltan, Advocate, Sr. 7598
1 cc to Mr. Swarnam, J. Rajagopalan, Advocate, Sr. 7532

W.P. No. 34048 of 2013

TS (CO)
kk 12/2



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