

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.11109 of 2014

Kamatchi .. Petitioner

Vs.

1.The Inspector of Police,
P4, Basin Bridge Police Station,
Chennai.
2.Govindammal
3.Parameswari
4.Dass
(RR2 to 4 impleaded vide order
dated 2.6.14 in M.P.No.1 of 2014) .. Respondents

The writ petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to provide necessary police for a week continuously to put the superstructure in the petitioner's property, viz., 300 sq.ft. in R.S.No.1735/219, comprised in Door No.13/4, Gurusamy Nagar, 4th Street, Chennai-12, by procuring the materials and completing the superstructure work to make the petitioners family reside in the suit property.

For Petitioner : Mr.A.S.Narasimhan

For Respondents : Mr.K.Dhananjayan, Spl.G.P. for R1
Ms.V.Yamuna Devi for RR2 to 4

ORDER

Heard.

2 This writ petition has been filed, praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondent to provide necessary police protection, enabling the petitioner to put up the superstructure in the property, said to be belonging to the petitioner, bearing Door No.13/4, 4th Street, Gurusamy Nagar, Chennai.

3 The petitioner had stated that she is the daughter-in-law of one late Chockalingam. The petitioner has been residing at Door No.13, 4th Street, Gurusamy Nagar, Chennai. It had been stated that late Chockalingam had purchased the property from one Pottaiah, during the year, 1961. A dispute had arisen between Pottaiah and Chockalingam, with regard to the ownership of the property in question. After the death of Chockalingam, Amaravathiammal, wife of Pottaiah, had filed a suit, in O.S.No.2381 of 1981, on the file of the City Civil Court, Chennai. She had obtained a decree, for recovery of possession of the property in question. While so, the legal heirs of late Chockalingam had filed a suit, in O.S.No.1759 of 1984, on the file of the City Civil Court, Chennai, seeking a decree of permanent injunction. An ex parte decree had been passed, declaring the title of the legal heirs of Chockalingam. A decree of permanent injunction had also been granted against Amaravathiammal and certain other persons claiming through her. Even though Amaravathiammal had sought to set aside the ex parte decree, the application filed by her had been dismissed for default. After the death of Amaravathiammal, one Govindammal, claiming to be the legal representative of Amaravathiammal and Pottaiah, had filed R.C.O.P.No.1749 of 2003. The said petition had been dismissed for default, on 24.4.2004.

4 It had been further stated that when the petitioner had attempted to repair the superstructure of her house, in which she was residing, Govindammal had prevented her from doing so. Even though the petitioner had approached the first respondent police to provide the necessary police protection to carry out the repairs in the superstructure of her residence, based on the decree passed in O.S.No.1759 of 1984, no protection had been given by the first respondent. Govindammal had been threatening the petitioner with dire consequences and had also been preventing the petitioner from putting up the superstructure, by taking the help of goondas. The first respondent police had not taken any action against Govindammal and the other persons, who are interfering with her rightful ownership and enjoyment of the property in question. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5 The learned counsel appearing on behalf of the petitioner had relied on a decision of the Supreme Court, made in P.R.Murlidharan and others Vs. Swami Dharmananda Theertha Padar and others, reported in (2006) 4 SCC 501, wherein, it had been held that the writ jurisdiction may be invoked for compelling compliance with a decree or injunction in favour of the writ petitioner.

6 The learned counsel had also relied on a decision of this Court, made in E.Sundaresan (deceased) Vs. Tamil Nadu Wakf Board, reported in 2014 (2) CTC 622, wherein it had been held that the High Court, in exercise of its writ jurisdiction, may also issue a Writ of Mandamus to the police, when they are bound to accord police protection, but had failed to do so.

7 He had also relied on a decision of this Court, made in Radhika Sri Hari and another Vs. Commissioner of Police, Coimbatore City, Coimbatore and others, reported in 2014 (2) CTC 695, wherein it had been held that the police should not insist on a specific court direction to provide police protection when the right of the petitioner, with reference to an immovable property had been upheld by the competent civil court and by the appellate court.

8 A counter affidavit, dated 30.8.2016, had been filed on behalf of the respondents 2 to 4, denying the allegations made by the petitioner, in the affidavit filed in support of the writ petition. It had been stated that the petitioner had taken all necessary steps to agitate the matter before the Civil Court in the Civil Suits, in O.S.Nos.1759 of 1984 and 1901 of 2007. Since the petitioner is entitled to seek necessary reliefs before the Civil Court concerned, the present writ petition filed by the petitioner is liable to be rejected.

9 The learned counsels appearing on behalf of the respondents had submitted that the allegations made by the petitioner, in the affidavit filed in support of the writ petition, are incorrect and false in nature. It had also been stated that the present writ petition filed by the petitioner is not maintainable, as this Court would not, in normal circumstances, issue a direction for providing police protection, as prayed for by the petitioner, in the present writ petition. It had been further stated that it is open to the petitioner to prefer a private complaint, if the complaint made by her, to the first respondent police, had not been acted upon, as alleged by her. Further, the writ jurisdiction of this court cannot be invoked by the petitioner, for enforcing the decree obtained from the civil court. It would also be open to the petitioner to obtain a necessary direction against the first respondent police, with regard to the complaint said to have been made by her, by invoking Section 482 of the Criminal Procedure Code.

10 It had also been stated that the petitioner had not shown sufficient evidence, before this Court, to substantiate her claim that Govindammal and her henchmen are threatening the petitioner and preventing her from repairing and erecting the

superstructure in her residential house. Therefore, the present writ petition filed by the petitioner is liable to be dismissed, as it is devoid of merits.

11 The learned counsel appearing on behalf of the respondents 2 to 4 had relied on a decision of this Court, made in Mrs. Nagina Hussian Vs. The State, rep by Inspector of Police, K-1, Sembium Police Station, Chennai, dated 16.07.2012, in CrI.O.P.No.15921 of 2012, to state that the decree of a civil court is executable, in accordance with law. While so, it would not be open to the party concerned to prefer criminal original petition, under Section 482 of the Criminal Procedure Code, to execute such a decree.

12 In view of the submissions made by the learned counsel appearing on behalf of the parties concerned and on a perusal of the records available, this Court is not inclined to issue a Writ of Mandamus, directing the first respondent to give police protection to the petitioner, while repairing or constructing the superstructure in her residence, located at Door No.13, 4th Street, Gurusamy Nagar, Chennai. Sufficient evidence has not been placed before this Court to prove, prima facie, that Govindammal and her henchmen are threatening the petitioner with dire consequences and that they are preventing her from putting up the superstructure, as claimed by her.

13 Further, the writ jurisdiction of this Court cannot be invoked for the execution of the decree passed by the Civil Court. It is also noted that when alternate remedies are available to the petitioner to file a private complaint, under the relevant provisions of the Criminal Procedure Code, this Court is not inclined to compel the first respondent police to act on the complaint said to have been made by the petitioner. Therefore, this Court is not inclined to issue such directions, as prayed for by the petitioner, in the present writ petition.

14 It is a well settled position of law that the remedy, under Article 226 of the Constitution of India, is a discretionary remedy, as held by the Supreme Court, in Ghulam Rasool Lone Vs. State of J&K and another, reported in (2009) 15 SCC 321. This Court does not find sufficient cause or reason to issue a direction to the first respondent police, to provide police protection to the petitioner, for repairing and for putting up the superstructure in her residence, as prayed for by the petitioner, in the present writ petition. However, it may be open to the petitioner to pursue her remedies, by invoking the power of this Court, prescribed under Section 482 of the Criminal Procedure Code, if so advised. As such, this Court finds it appropriate to hold that the present writ petition

filed by the petitioner is devoid of merits. Therefore, it is liable to be dismissed. Hence, this writ petition stands dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vvk

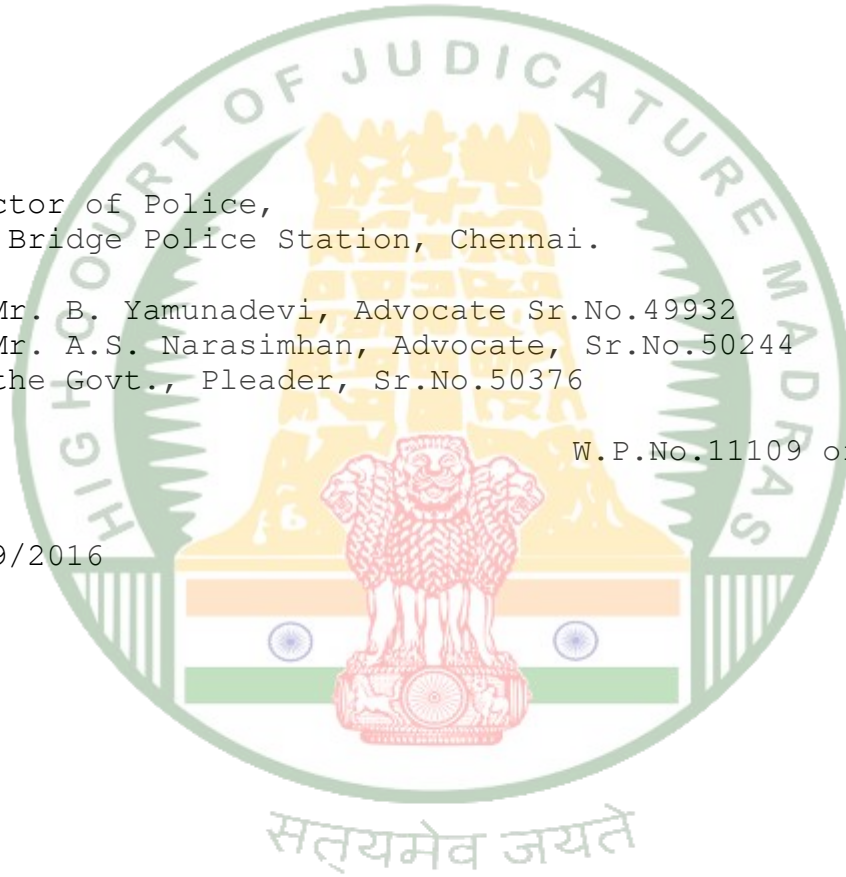
To

The Inspector of Police,
P4, Basin Bridge Police Station, Chennai.

+1 CC to Mr. B. Yamunadevi, Advocate Sr.No.49932
+1 CC to Mr. A.S. Narasimhan, Advocate, Sr.No.50244
+1 CC to the Govt., Pleader, Sr.No.50376

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ALA (CO)
MD : 20/09/2016



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