

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.01.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.15032 of 2015

M.S.Jain

... Petitioner

Vs.

1.The Assistant Commissioner of Police,
Thirumangalam Range,
Chennai-600 101.

2.Mrs.N.Sheela

... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., praying to direct the 1st respondent-Police to provide adequate protection to the petitioner and his workmen to construct the Compound wall in the property bearing Plot No.A4, Survey No.207/24, 14th Main Road, Koaymbedu Village, Anna Nagar, Chennai-40

For Petitioner : Mr.R.Swarnavel

For Respondents : Mr.C.Emalias, APP (For R1)
Mr.P.Kumaresan (For R2)

* * * * *

ORDER

This petition has been filed by the petitioner praying to direct the 1st respondent-Police to provide adequate protection to the petitioner and his workmen, for constructing compound wall in the property bearing Plot No.A4, Survey No.207/24, 14th Main Road, Koaymbedu Village, Anna Nagar, Chennai.

2.In the affidavit filed in support of this petition, it has been stated by the petitioner as follows:-

2-1.The subject land in Survey No.207/24, Koyambedu Village was purchased by the petitioner from the Tamil Nadu Housing Board. Originally, there were three trespassers into the said land, viz., 1.Mrs.R.Vijayalakshmi, 2).R.Elumalai and 3)D.Viajayalakshmi, who had unlawfully encroached the property. The Tamil Nadu Housing Board had taken steps to evict the trespassers from the site during the year 2007. But, the said

encroachers had filed three writ petitions in W.P.Nos.4737, 7289 & 7668 of 2007 before this Court to restrain the Housing Board from evicting them. But, this Court by order dated 26.04.2013 dismissed the said writ petitions and the said trespassers had been declared as encroachers and the Housing Board was permitted to take steps to evict the said encroachers, after two weeks time to enable the encroachers to prefer an appeal. Thereafter, out of said three persons, Mr.Elumalai who had encroached upon the property in Plot A4 in Survey No.207/24, did not prefer an appeal and other encroachers filed appeal before the Tamil Nadu Housing Board; the Housing Board considered the appeal and passed an appropriate order with regard to eviction. Hence, steps were taken to evict the encroachers on 06.06.2013.

2-2.In the meantime, on 26.10.2009, the encroachers preferred a letter to the Special Cell in Secretariate seeking their intervention to stop Tamil Nadu Housing Board from evicting them. They claimed right over the subject property through certain documents which were originally pertaining to a different location. However, the said request letter was rejected and all the encroachers were asked to vacate the premises through a letter dated 24.05.2013 by Executive Engineer, Tamil Nadu Housing Board, which was circulated to the encroachers and the same was duly acknowledged as well.

2-3.On 06.06.2013 the encroachers brought a huge crowd and objected the eviction process, which was covered by the press extensively at that time. During that process, a person named Mr.R.Neelamegam was present in the site occupied by said Elumalai, and he has signed on behalf of Mr.R.Elumalai and prevented the officials of TNHB from eviction and filed a writ petition before this Court in W.P.No.15877/2013 with some false evidence and stalled the eviction. However, the said writ petition was also dismissed by this Court, by order dated 26.07.2013 with the following observation_

"No other document has been produced before this Court to substantiate his possession and enjoyment of the subject property. Merely because the petitioner got ration card, it cannot be said that he is in lawful occupation of the property belonging to the Tamil Nadu Housing Board. The issues raised by the petitioner cannot be decided by this Court. Similarly placed persons have already filed civil suits. It is open to the petitioner also to approach the Civil Court to redress his grievance."

Pursuant to the said order of this Court, the 2nd respondent herein Mrs.N.Sheela, who is the wife of said R.Neelamegam filed a civil suit in O.S.No.5506 of 2013 before the City Civil Court, Chennai. She has also filed an Interlocutory Application

No.14805 of 2013 seeking interim injunction. Since no interim relief was granted by the Civil Court, the 2nd respondent herein was evicted on 04.10.2013 from the subject property by the Housing Board, with the help of the 1st respondent-police, under due process of law. In the said suit, the 2nd respondent herein/plaintiff referred the subject property as Old Survey No.233 and New Survey No.207/24, which is totally contrary to the findings in the Writ Petitions in W.P.No.5529 & 32989 of 2006. In the said writ petitions, it was found that the Survey Nos.233 & 207/24 are belonging to two different properties at different locations. The 2nd respondent herein inherited the property situated in S.No.233 only. In order to usurp the property in S.No.207/24, the 2nd respondent conveniently referred both the survey numbers in the suit with new nomenclature as New and Old.

2-4.In fact, in W.P.Nos.5529 & 32989 of 2006, this Court has directed the Tahsildar, Egmore, Nungambakkam Taluk, Chennai, to inspect the property in question and submit a report. The report of the Tahsildar would clearly state that the suit property in S.No.207/24 is Ryotwari Manai. The Housing Board in the Writ Petition Nos.5529 & 32989 of 2006 had given the details of the encroachers, in which it was stated that the suit property was encroached by one Mr.Elumalai, the petitioner in W.P.No.7289 of 2007, and that neither Mr.Neelamegham nor his father K.C.Ragavelu was in the possession of the suit property. The said Neelamegham and Mrs.Sheela/R2 have suppressed these facts as well in subsequent Writ Petition No.15877 of 2013 and civil suit in O.S.No.5506 of 2013.

2-5.Subsequent to the orders of this court in W.P.No.7289 of 2007, after undergoing due process of law, the Housing Board evicted the encroachers on 04.10.2013 and put up the property for sale through a public auction. The petitioner herein had participated in the public auction and he was declared as highest bidder and he purchased the property through a registered sale deed bearing No.886 of 2015 in Sub-Registrar Office, Thirumangalam, Chennai, on 02.03.2015. Thereafter, the petitioner has taken up the compound wall construction work at the site on 09.03.2015. But, the 2nd respondent along with some miscreants threatened the petitioner and his workers with dire consequences. Hence, the petitioner lodged a compliant with the 1st respondent-Police; but, 1st respondent-Police refused to provide police protection. Hence, the matter was referred to the Housing Board authorities on the same day and in response, on 13.03.2015 the Executive Engineer, Tamil Nadu Housing Board, Thirumangalam, has requested the 1st respondent-Police to provide adequate security to the petitioner for the said compound wall work. But, the 1st respondent-Police refused to give police protection. Hence, the petitioner has come forward with the present petition before this Court.

3.The 2nd respondent has filed a counter affidavit stating, inter alia, as follows:-

3-1.The residential land in No.4A, Anna Street, 14th Main Road, Anna Nagar West, Chennai and larger extent of property initially belongs to one Mr.C.Raghavel, who inherited the same from his ancestors and thus, he had been in absolute possession and enjoyment of the said property and the said land is classified as Gramanatham. The said Raghavel died on 07.05.1996, leaving behind him one Mrs.Gowri, Kannika and Mr.Neelamegam as his legal heirs and till his death, he lived in the said property. The said Raghavel had executed a Will in respect of all his properties. After the death of Mr.Raghavel, his legal heirs sold a portion of the property, measuring to an extent of 2508 sq.ft to one Mrs.Uma Jayachandran through power agent of one Mr.U.Arputharaj, by way of registered sale deed dated 21.02.1997 vide Doc.No.360/1997 registered at Sub-Registrar's Office, Anna Nagar. The remaining portion measuring about 2280 sq.ft was shared to Mr.Neelamegam (the 2nd respondent's husband) who is having absolute right, possession and enjoyment over the said property. The Tahsildar, Egmore, Nungambakkam Taluk, issued an enjoyment certificate to the said Mr.S.Raghavel stating that he was a resident in the said property for more than 25 years, who is the father of the said Neelamegam (2nd respondent's husband). The said property was vested with him from all encumbrances and he is living in the said place along with his family and thus, he is in continuous possession and enjoyment for more than three decades.

3-2.It is further stated by the 2nd respondent that her husband Neelamegam transferred the electricity connection in his name in respect of the subject property. On 06.01.2012, the said Mr.Neelamegam executed a registered settlement deed in the favour of the 2nd respondent herein, which was registered as Doc.No.51 of 2012 at Sub-Registrar's Office, Anna Nagar, Chennai. After the settlement deed, the 2nd respondent herein has taken steps for mutating the government taxes and other relevant records in her name. Thereafter, the 2nd respondent continued the absolute possession and enjoyment of the said property. Suddenly, during the 1st week of June 2013, the officials from the Tamil Nadu Housing Board came and threatened the 2nd respondent and her husband to vacate the premises, stating that the property belonged to Tamil Nadu Housing Board. The Housing Board also made attempt to demolish her neighbour's buildings and partly demolished the compound walls of her neighbour's land. Immediately, the 2nd respondent's husband issued telegram to the higher officials not to take any steps to vacate the premises since they are living more than three decades. After receipt of the telegram, the Housing Board issued a letter dated 07.06.2013 rejecting the request made by the 2nd respondent. Hence, the 2nd respondent's husband filed

Writ Petition No.15877 of 2013 for forbearing the Housing Board from evicting the 2nd respondent. At the time of moving W.P.No.15877 of 2012, a petition in M.P.No.1 of 2013 was moved for interim injunction and the same was granted on 12.06.2013. Subsequently, the writ petition was disposed of, directing the petitioner therein/husband of the 2nd respondent herein, to approach the Civil Court to redress his grievance. Thereafter, the 2nd respondent made a representation dated 22.09.2013 to the Housing Board to recognize the right of the 2nd respondent in respect of the subject land, since they are residing there for more than three decades. After receipt of the said representation, immediately on 04.10.2013 the Housing Board officials came along with other persons to threaten the 2nd respondent and her husband to vacate the premises, stating that they would take immediate steps to vacate them. During the month of October 2013, the 2nd respondent filed the suit in O.S.No.5506 of 2013, along with I.A.Nos.14805/2013 & 1395/2014. In I.A.No.14805 of 2013, notice was served to the Officials of the Tamil Nadu Housing Board and they are set exparte on 24.10.2013. Later they filed set aside petition in I.A.No.18450 of 2013 and the same was allowed on 25.06.2014 and the said Interim Injunction petitions are pending for enquiry. While so, all of a sudden, on 28.02.2014, the Officials of the Housing Board came along with rowdy elements with JCP machine and demolished the entire building of the 2nd respondent. Immediately, the son of the 2nd respondent gave police complaint before the V5, Thirimangalam Police Station, Chennai on the same day, which was registered in C.S.R.No.79/SR/V5PS/14. The Police enquired about the same and advised the 2nd respondent to approach the Court to get remedy in the pending suit. Meantime, the Tamil Nadu Housing Board issued paper publication for bringing the same property for auction. The 2nd respondent also objected and filed writ petition to quash the same in W.P.No.26796 of 2014 before the High Court. The High Court disposed the said writ petition with a direction to approach the civil court by filing interlocutory application, since the matter is pending before the Civil Court. Hence, the 2nd respondent filed I.A.No.15073 of 2014 for interim injunction against the Tamil Nadu Housing Board, not to allot the suit property to any third party and the Housing Board also took notice and the same is pending. Now, the main case itself is posted for Trial before the learned XV Assistant City Civil Court, Chennai, since the matter is ripe for Trial. In the meantime, the Tamil Nadu Housing Board created forged documents and passed the proceedings dated 31.10.2014 as though the suit land is allotted to one Mr.M.S.Jain, petitioner herein. Hence, the act of the Officials of the Housing Board was purely fraudulent to Court as well as the Housing Board Act. The said officials misused their power to create several forged documents to execute a sale deed in favour of Mr.M.S.Jain, alleged to be highest bidder of the auction purchaser. Thus, the 2nd

respondent sought for dismissal of the petitioner.

4. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that he had purchased the property from the Housing Board and the 2nd respondent was only an encroacher and she was evicted from the property by the Housing Board, since the property was vested with the Board. As the petitioner purchased the subject property, he is entitled to put up compound wall around the property. Since the 2nd respondent is threatening the petitioner, the learned counsel for the petitioner sought for police protection for constructing compound wall around the subject property.

5. The learned counsel for the 2nd respondent submitted that since the civil suit is pending, the Police cannot be directed to give protection to the petitioner for constructing compound wall, till the disposal of the civil suit. In this regard, the learned counsel for the 2nd respondent has also relied upon the decision of this Court reported in 2009 (2) MWL (Cr.) 228 [G.Meena Vs. Commissioner of Police (Sub-urban), St. Thomas Mount, Chennai and others], wherein it has been held that when right of the petitioner to the possession of property was not determined at interlocutory stage in unambiguous manner, merely basing reliance on the order of interim injunction, the petitioner cannot seek police protection under Section 482 of Cr.P.C and it is not open to the High Court to adjudicate upon disputed question of title and possession of the property while exercising jurisdiction under Section 482 of Cr.P.C.

6. Keeping the submissions made on either side, I have carefully perused the materials available on record and I find that the petitioner herein has purchased the subject property from the Housing Board. However, the 2nd respondent herein has filed civil suit in O.S.No.5506 of 2013 before the City Civil Court, Chennai against the Housing Board and the said suit is still pending. In the present petition, under Section 482 of Cr.P.C., this Court cannot conduct any roving enquiry on the disputed questions of facts.

7. This Court has to see whether the Police protection could be ordered to enable the petitioner to put up compound wall. No doubt, the petitioner has purchased the property from the Housing Board. But, when the civil suit is pending as against the Housing Board, at this juncture, if the Police Protection is ordered, it would lead only to further complication in the matter. Therefore, at this juncture, this Court cannot order for police protection as sought for by the petitioner. However, the petitioner is at liberty to approach this Court for Police Protection, immediately after the disposal of the said civil suit, if he is so advised.

Accordingly, the criminal original petition is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

SSV

To,

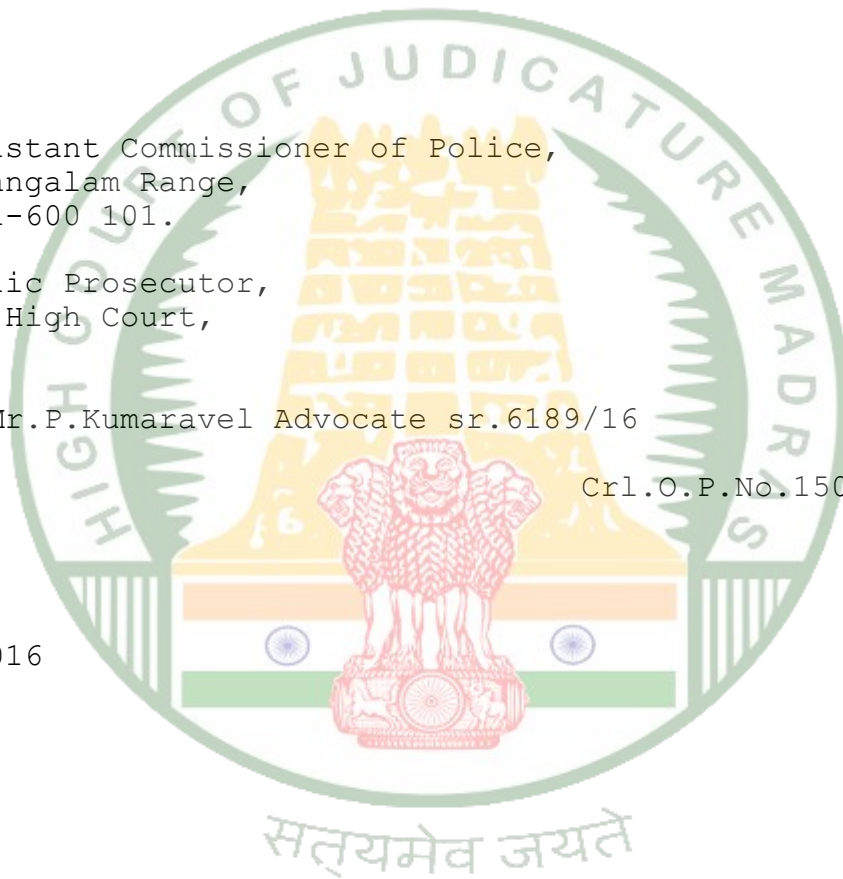
1.The Assistant Commissioner of Police,
Thirumangalam Range,
Chennai-600 101.

2.The Public Prosecutor,
Madras High Court,
Madras.

+1 cc to Mr.P.Kumaravel Advocate sr.6189/16

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