

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 29.03.2016

Pronounced on : 02-06-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 20132 of 2015
and
W.M.P. No. 8007 of 2016

D. Vijayalakshmi ... Petitioner

Versus

1. The Registrar General
Madras High Court
Chennai - 600 104
2. The Registrar (Vigilance)
Madras High Court
Chennai - 600 104
3. The Secretary
Law Department
Secretariat, Fort St. George
Chennai - 600 009
4. The Chairman
Bar Council of Tamil Nadu
Madras High Court Buildings
NSC Bose Road, Parry's
Chennai - 600 104
5. The Chairman
Tamil Nadu Electricity Board
800, NPKRR Maaligai
Anna Salai, Chennai - 600 002
6. The Secretary
Municipal Administration and
Water Supply Department
Secretariat, Fort St. George
Chennai - 600 009

7. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai - 600 004

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 1 to 7 to consider and to take necessary action on the representation dated 24.03.2015 and 22.04.2015 on the persons and officers who involved and helped the illegal eviction and demolition of the property.

For Petitioner : Mrs. D. Vijayalakshmi
Petitioner-in-Person

For Respondents : Mr. Vijayashankar for RR1 and 2

V. Jayaprakash Narayanan
Special Government Pleader for RR3,
5 to 17

Mr. S.Y. Masood for R4

ORDER

The petitioner seeks for issuing a Writ of Mandamus directing the respondents to take appropriate action against the persons mentioned in her representation dated 24.03.2015 and 22.04.2015 in accordance with law for having illegally dispossessed her from the property bearing Old Door Number 31/105, New Door No.288/291, Nanjappa Gounder Street, Marakkara Town, Coimbatore District.

2. The Petitioner-in-Person would contend that she was in possession of the premises bearing Old Door Number 31/105, New Door No.288/291 along with other tenants therein. According to the petitioner, the total extent of the property mentioned above measures 5 cents and 205 square feet which originally belonged to Mrs. Lingammal. During her life time, Mrs. Lingammal executed a registered Will in favour of her son Mr. T. Gopalasamy, who is the brother of the petitioner herein. During the life time of Mrs. Lingammal, she has filed RCOP Nos. 58, 60, 94 and 96 of 1983 on the file of District Munsif Court, Coimbatore as against the tenants. Out of the four Rent Control Original Petitions, RCOP Nos. 58, 60 and 94 of 1983 were ordered and the tenants were evicted. As far as RCOP No. 96 of 1983 is concerned, it was filed against Mr. Dharmalingam, one of the tenants in the above said property. After the death of Mrs. Lingammal, the Will came into effect and Mr. Gopalasamy was in possession of the above said property without any disturbance and he also prosecuted the RCOP No. 96 of 1983 against

Dharmalingam. Ultimately, eviction was ordered in the above RCOP No. 96 of 1983 as against the tenant Mr. Dharmalingam. In the meantime, Mr. Gopalasamy has executed a registered Will dated 23.11.2000 respect of a portion of the property in favour of the petitioner and another Will dated 04.06.2013 whereby he executed the remaining property in favour of the petitioner's son Nithyanandam. Thus, according to the petitioner, by virtue of the above said Will dated 23.11.2000 and 04.06.2013, the petitioner and her son have become exclusive owners of the property aforesaid. By virtue of such ownership, the petitioner and her son have also impleaded themselves in the Execution Petition filed in the above RCOP No. 96 of 1983. It appears that the legal heirs of the above said Gopalasamy made a rival claim over the property. According to the petitioner, at the time of execution of the decree passed in RCOP No. 96 of 1983, the above said legal heirs, in collusion with the advocate commissioner appointed by the Court, have illegally demolished the property of the petitioner and her son with an ulterior motive thereby they were dispossessed. Immediately, the petitioner and her son have filed Civil suit in O.S. Nos. 269 and 455 of 2010 on the file of Sub-Court, Coimbatore. In the meantime, the above said property was fraudulently purchased by some third parties and they have also mutated the revenue records and obtained patta in their name. Therefore, the petitioner and her son have impleaded those third parties as parties in the above said suits in O.S. Nos. 269 and 455 of 2010 filed by them. According to the petitioner, the suit in O.S. Nos. 269 and 455 of 2010 are pending adjudication before the Civil Court. It is the specific case of the petitioner that even as on date, the name of the petitioner is incorporated as assessee in the property tax demand register and she is continuously paying the same to the authorities concerned. Highlighting the above aspects, the petitioner has given a representation dated 24.03.2015 and 22.04.2015 to the respondents herein. According to the petitioner, as the respondents did not take any action on her complaint, she has come up with this writ petition.

3. The petitioner-in-person would contend that the petitioner and her son are the owner of the property in question by virtue of the Will dated 23.11.2000 and 04.06.2013 executed by Gopalsamy. On the strength of such ownership, the petitioner impleaded herself as a party in EP No. 16 of 2014 to evict the tenant in respect of the property and to handover the possession of the shop to the petitioner. However, according to the petitioner, the advocate commissioner appointed by the Civil Court in collusion with the local police have demolished the property on 13.03.2010. According to the petitioner, the property in question ought not to have been demolished and such demolition had taken place at the instance of the son and daughter-in-law of the testator who executed Will in favour of

the petitioner and her son. It is further stated that the petitioner has given a detailed representation to the respondents to take action against the offenders with reference to the illegal demolition of the property in question, but so far no action has been taken. Therefore, the petitioner-in-person prayed for issuing appropriate direction to the respondents to pass orders on her representation dated 24.03.2015 and 22.04.2015 within a specified time limit to be fixed by this Court.

4. The learned counsel appearing for the respondents 1 and 2, relying on the counter affidavit filed by the first respondent, would contend that the petitioner in her complaint dated 13.03.2010 complained that the wife and son of Gopalasamy, in collusion with the police department and advocate commissioner, demolished the property in question with rowdy elements and at the time of demolition they have stolen Rs.2 lakhs in cash and 60 sovereigns of gold ornaments. In this context, the petitioner also sent several complaints to the I Additional District Munsif, Coimbatore but it is stated that she has not received any reply. One of the complaints received from the petitioner by the first respondent was forwarded to the concerned Portfolio Judge. The Portfolio Judge of this Court in turn directed the learned Principal District Judge, Coimbatore to enquire and report. The learned Principal District Judge, Coimbatore, after enquiry, reported that judicial orders have been passed after hearing the petitioner and the petitioner, who could not succeed in the litigation, has falsely given the complaint. In the light of such report, the complaint given by the petitioner was closed in the year 2012. Once again, at the instance of the petitioner, another report was obtained from the Principal District Judge, Coimbatore as per the directions issued by the Portfolio Judge of this Court and thereafter, the complaint of the petitioner was closed in the year 2014. In spite of the same, the petitioner has repeatedly made wild allegations against the Judicial Officers, Staff, Advocate and others which is not proper. According to the learned counsel for the first respondent, if all the unsuccessful litigants indulge in making such wild allegations against the judicial officers, it will only add the burden of this Court in adjudicating stale and dead claim. In this case, the petitioner has conveniently suppressed the closure of her complaints in the year 2012 and 2014 and filed this writ petition before this Court. If the petitioner is really aggrieved by the order passed by the Civil Court, it is open to her to file an appeal and this writ petition is not maintainable. Therefore, the learned counsel appearing for the respondents 1 and 2 prayed for dismissal of the writ petition.

5. On behalf of the seventh respondent, the Assistant Commissioner of Police, Coimbatore West Sub-Division, Law and

Order, Coimbatore City has filed a Counter affidavit repudiating the various allegations made by the petitioner. The learned Special Government Pleader appearing for the seventh respondent, by placing reliance on the counter affidavit, would contend that Nagammal and Raghunathan, legal heirs of Gopalsamy have filed Execution Application 67 of 2010 in EP No. 16 of 2004 in RCOP No. 96 of 1983 before the learned I Additional District Munsif, Coimbatore to break open the closed Door of the building with Police protection. For such purpose, the learned I Additional District Munsif, Coimbatore appointed Mr. Vivekanandan, Advocate, as an advocate commissioner to handover the possession of the property to the petitioners. Accordingly, the Advocate Commissioner visited the premises and handed over the same to Nagammal and Raghunathan and submitted his report to the Court indicating the factum of handing over the possession of the property on 13.03.2010. In the report, it was also stated by the advocate commissioner that the premises in question is in a dilapidated condition. Therefore, according to the learned Special Government Pleader, the property in question was demolished with the aid of the police is false and incorrect. Even in the report of the Advocate Commissioner, it was stated that the occupants of the building have already vacated and the possession of the property has been handed over to the applicants in EA No. 67 of 2010. The petitioner was never in possession of the property at the time of taking possession of the same by the learned Advocate Commissioner on 13.10.2010. The police protection given to the advocate commissioner to take possession of the property covered in E.A. No. 67 of 2010 is lawful. The learned Special Government Pleader therefore would contend that the allegations made by the petitioner against the police officials cannot be countenanced. The learned Special Government Pleader therefore prayed for dismissal of the writ petition.

6. I heard the Petitioner-in-Person and the learned counsel appearing for the respective respondents in this writ petition. I had perused the material records placed before this Court. The grievance of the petitioner is that the Advocate Commissioner appointed by the trial Court, in collusion with the local police officials, have illegally dispossessed. This was stoutly denied by the seventh respondent in the counter affidavit. In the counter affidavit, it was stated that Nagammal and Raghunathan, legal heirs of Gopalsamy have filed Execution Application 67 of 2010 in EP No. 16 of 2004 in RCOP No. 96 of 1983 before the learned I Additional District Munsif, Coimbatore to break open the closed Door of the building with Police protection. In the said application, an advocate commissioner was appointed and he was issued with a warrant to handover the possession of the property to the Execution Applicants. Accordingly, the Advocate Commissioner visited the premises and handed over the same to Nagammal and Raghunathan

with the help of the local police. The Advocate Commissioner also submitted his report to the Court stating that the possession of the property was handed over on 13.03.2010. In the report, it was also specifically stated that at the time of their visit, there was no occupants in the property. It was also stated in the report that the petitioner herein has left the property in question long back and she was not residing in the property in question. In any event, Nagammal and Raghunathan alone have filed the Execution Application before the trial Court and they have not come up with any grievance. The petitioner, who was out of possession of the property in question has come up with this writ petition seeking to take action against the offenders in the light of the representation sent by her on 24.03.2015 and 22.04.2015.

7. As far as the representation of the petitioner dated 24.03.2015 and 22.04.2015 are concerned, they relate to alleged unauthorised demolition of the property by the advocate commissioner in collusion with the local police. As mentioned above, in the report filed by the advocate commissioner, it was clearly stated that the vacant possession of the building has been handed over to Nagammal and Raghunathan in as is where is condition. While so, the allegation of the petitioner that the advocate commissioner and the local police have colluded together and demolished the property in question is unfounded. In fact, in the counter affidavit filed on behalf of the respondents 1 and 2, reference was made to closure of similar complaints made by the petitioner in the year 2012 and 2014 after obtaining a report from the learned Principal District Judge, Coimbatore. In the complaints sent by the petitioner during the year 2012 and 2014, she has made wild allegations against the Judicial Officer and the Advocate and eventually those allegations were found to be false and incorrect. These material particulars have been suppressed by the petitioner in this writ petition. While so, in the present writ petition, this Court is not inclined to direct the respondents to conduct an enquiry on the basis of the representations dated 24.03.2015 and 22.04.2015 of the petitioner. If such a direction is issued, it will only compel the respondents to do certain acts which they are not bound to do. In any event, this Court finds that the grievance putforth by the petitioner in the representations dated 24.03.2015 and 22.04.2015 have already been considered by the official respondents and she was also given a reply thereof. While so, once again, at the instance of the petitioner, this Court need not issue any direction to the official respondents.

8. For all the reasons mentioned above, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CSIII)

True Copy

Sub-Assistant Registrar

To

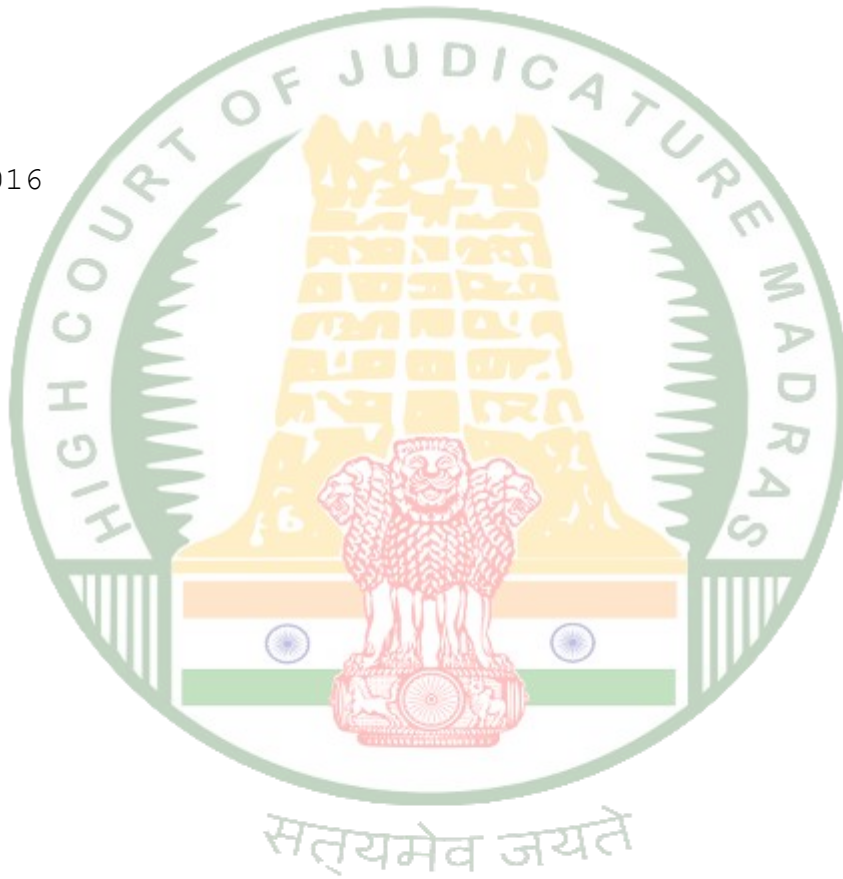
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7. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai - 600 004

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+2 ccs to Mr.D.Vijayalakshmi party in person sr.29411/16

WP No. 20132 of 2015

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