

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM:

THE HON'BLE MR.JUSTICE R.MALA

Crl.O.P. Nos.22443 of 2015
& 4403 of 2016

- 1.K.B.Rajendran
- 2.K.Pushpalatha
- 3.K.Dhanalakshmi
- 4.K.Vasanth
- 5.K.Devi

... Petitioners in both the
Petitions

-Vs-

1. The Commissioner of Police
Office of the Police Commissioner,
Egmore, Chennai 600 009.
2. The Inspector of Police,
V-1, Villivakkam Police Station,
M.T.H.Road, Villivakkam, Chennai.
3. M.C.Thannarasi alias Thennagam
4. Muthuraman
5. Farida Begum
6. Mohammed Azeezullah
7. Jayawathi

... Respondents in
both the Crl.O.Ps.

Crl.O.P.No.22443 of 2015 has been filed under Section 482 of the Code of Criminal Procedure, to direct the second respondent to register an FIR against the respondents 3 to 7 and officers mentioned in the petitioner's complaint dated 07.02.2015 and file a charge sheet in appropriate forum.

Crl.O.P.No.4403 of 2016 has been filed under Section 482 of the Code of Criminal Procedure, to issue directions to the first and second respondents to provide adequate police protection for the safety, security and protection to the lives and to the property

of petitioners residential building from the illegal acts of the respondents 3 to 7 and their henchmen, supporters on the basis of the complaint dated 17.02.2016.

For Petitioners in : Mr.K.B.Rajendran
both the petitions Party in Person

For respondents : Mr.C.Emalias
Government Advocate (Crl. side)
for R1 & R2
Mr.V.Shanmugam for R3 to 6
R7 - No Appearance

COMMON ORDER

The 1st petitioner/party-in-person has come forward with Crl. O.P.No.22443 of 2015 along with the other petitioners, who are his sisters, seeking a direction to the second respondent police to register FIR against the respondents 3 to 7 on the basis of the complaint dated 07.02.2015. Crl.O.P.No.4403 of 2016 has been filed by the very same 1st petitioner/party-in-person along with the other petitioners, seeking a direction to the first and second respondents to provide adequate police protection for the safety, security and protection to the lives and to the property of petitioners residential building from the illegal acts of the respondents 3 to 7 and their henchmen, supporters on the basis of the complaint dated 17.02.2016.

2. Petitioner-Party-in-person would submit that he is the absolute owner of the property on the basis of the joint patta and the respondents 3 to 7 have no right over the property and the petitioner had already filed a suit for bare injunction in O.S.No.6407 of 2015 before the VIII Assistant City Civil Court, Chennai, and also obtained an order of interim injunction against the respondents 3 to 7. However, the said injunction was subsequently, set aside and the petitioner has also preferred an appeal which is pending on the file of the XII Additional Judge, City Civil Court, Chennai. Now, the respondents 3 to 7 without having any right and claim over the property, after obtaining a patta from the Tahsildar, had put up construction, even without obtaining permission from the Member Secretary, Corporation of Chennai. Hence, the 1st petitioner filed writ petition in W.P.No.13169 of 2015 seeking a direction to update the Chitta and Adangal records and also to issue a fresh patta in his favour. While disposing the above writ petition, this Court has given a direction to the court below to dispose of the appeal filed by the petitioner on the interlocutory application without placing reliance upon the joint patta.

3. The petitioner also filed a writ petition in W.P.No.38555 of 2015 seeking a direction to take action on the illegal, unauthorised construction of the respondents, since the respondents 3 to 7 herein have violated the earlier directions of this Court made in W.P.No.13169 of 2015.

4. The Division Bench of this Court had taken up the said writ petition and after issuing notice to the parties concerned, had also issued a direction to the Member Secretary, Chennai Metropolitan Development Authority, Chennai and the Commissioner, Corporation of Chennai, to have a spot inspection and to take necessary action in case of any unauthorised construction made by the respondents 3 to 7 herein as alleged by the 1st petitioner.

5. In the interregnum, the petitioners preferred a complaint against the respondents 3 to 7 on 07.02.2015, and since no action was forthcoming on the side of the respondent police, they came forward to file CrI.OP.No.4020/2015 before this Court and this Court passed an order on 13.07.2015, directing the respondent police to complete the enquiry with a further direction to the petitioners herein to appear before the police in person and to produce all the relevant records. Despite the Sub Inspector of Police and a Police Constable visiting the property in question on 25.07.2015 and despite the factum of the petitioners appearing before the respondent police on the same day and on the next day, i.e., on 26.07.2015, the complaint came to be registered only on 03.08.2015 in CSR.No.310/2015 as "Land Dispute". It is the contention of the petitioners that respondents 3 to 7 are highly influential persons and that despite their criminal activities, the complaint came to be taken on file as a "civil dispute" and since the said respondents have caused damages to their properties, they sought for police protection in CrI.OP.No.4403/2016.

6. Learned Additional Public Prosecutor submitted that despite the summons/notice issued to the petitioners to appear for an enquiry on 05.10.2015, they never appeared and when another notice was issued on 19.10.2015, they refuse to receive the same. Petitioners are not cooperating with the respondent police for enquiry and the main intention of the petitioners is to take action against the respondents 3 to 7 without any basis. It is his further submission that already a civil suit is pending before the Court concerned. Hence, he prays for dismissal of the above petitions.

7. Learned Counsel for the respondents 3 to 7 submitted that the entire property in question belonged to one Muniammal, paternal grandmother of the respondents 3 and 4 and that after her demise, the said property was inherited by her only son Murugesan and subsequent to his death, the same came in the hands of one Rameswari and respondents 3 and 4, the legal heirs of Murugesan. They divided the property subsequent to the filing of the Partition suit and the 3rd respondent herein had sold her share, to one Ashraf Unnissa, who sold the same to the petitioners' mother in the year 1992. Till the year 2014, there was no dispute among the parties. All of a sudden, the petitioners filed O.S.No.6407/2014 and obtained an order of interim injunction, not only restraining the respondents 3 to 7 herein from the peaceful possession and enjoyment of the property but also from interfering with the petitioners' ingress and egress to their house through the passage till the disposal of the suit. But, the said interim order was modified in respect of the passage in question. It is stated that the petitioners have also preferred a Civil Miscellaneous Appeal against the modified interim order and the same is pending consideration. Learned counsel for the respondents 3 to 7 would further states that instead of contesting the civil suit on merits, the petitioners is having the habit of filing series of applications and making complaints against the officials. Hence, he prays for specific direction to dispose of the suit on merits.

8. In reply, the first petitioner/Party-in-person would submit that the patta has been granted in his name wherein, the pathway has been shown as private pathway. To prove his contention, he relied upon the sale deed dated 29.12.2000.

9. This Court heard the rival submissions made on either side and also perused the materials placed before it.

10. No mention has been made in the Sale deed dated 29.12.2000 through which the petitioners' mother inherited the property that the passage is a common pathway. It is also seen that the entire extent of the property is 2,856 sq.ft. and the same belongs to one Muniammal. She died intestate leaving behind her son Murugesan. The property was then sold to one Asharaf Unnisa. It is also an admitted fact that before filing of O.S.No.64 of 2007, there was no dispute between the parties. Petitioners have also filed a suit for injunction restraining the defendants not to interfere with the peaceful possession and enjoyment of the suit property in Old No.25 A, New No.32, Dr.Ambedkar First Street, Villivakkam, Chennai 600 049, which is morefully described in the schedule of property. It is seen

that the petitioner had not only mentioned the description of the property but also the description of the passage in the schedule of property to the plaint.

11. Considering the rival submissions made on either side, it is true that a specific direction had been issued to the petitioners' in Crl.O.P.No.4020 of 2015 to appear before the respondent police and to cooperate with the enquiry. However, as rightly contended by the learned Additional Public Prosecutor, the petitioners did not chose to appear on 05.10.2015 and refuse to receive the notice dated 19.10.2015, for the reasons best known to them and did not co-operate for enquiry. In such circumstances, I am of the view that once CSR has been assigned on 03.08.2015, it is the duty of the petitioners to appear before the respondent police and cooperate for enquiry. Petitioners have not chosen to do so.

12. While dictating the order, the petitioner/Party-in-person interfered and shown the undertaking filed in the typed set of papers along with Crl.O.P.No.4403 of 2016 and submits that the same had been obtained by force by the Sub Inspector of Police, Villivakkam Police Station, Chennai.

13. However, the learned Additional Public Prosecutor submits that there is change of circumstance and the said Sub Inspector of Police is not working in the said station now.

14. In view of the aforesaid submissions, the present Inspector of Police, who is the second respondent herein is directed to enquire the complaint dated 07.02.2015, by following the dictum laid down in Lalitha Kumari's case and register a case, if any cognizable offence is made out. However, it is needless to mention that the petitioners shall co-operate with the enquiry. Accordingly, Crl.O.P.No.22443 of 2015 is disposed of.

15. The submissions made on either side would disclose that the dispute between the petitioners and the respondents 3 to 7 is as to whether the passage is common pathway or private pathway, which, in my view, cannot be decided by this Court, either by invoking Section 482 of Cr.P.C. or by invoking writ jurisdiction under Article 226 of the Constitution of India. It has to be decided only by the competent Civil Court in the civil suit. Hence, a direction is issued to XVIII Assistant Judge, City Civil Court, Chennai to dispose of the suit in O.S.No.6407 of 2014, within a period of three months, from the date of receipt of copy of this order.

16. In so far as the prayer sought for in CrI.O.P.No.4403 of 2015 is concerned, the respondent police is hereby directed to consider the representation dated 07.02.2015 for providing police protection to the petitioners only with regard to their personal lives. In view of the civil dispute pending between the parties, I am of the view that there is no need to provide police protection in respect of the property concerned. Accordingly, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police
Office of the Police Commissioner.
Egmore, Chennai 600 009.
2. The Inspector of Police,
V-1, Villivakkam Police Station,
M.T.H.Road, Villivakkam, Chennai.
3. The Public Prosecutor,
High Court, Madras - 600 104.

+2cc's to Mr.K.B.Rajendran, Advocate, S.R.No.12830
+1cc to Mr.V.Shanmugam, Advocate, S.R.No.12997

सत्यमेव जयते

CrI.O.P. Nos.22443 of 2015
& 4403 of 2016

EV(CO)
CA(11/03/2016)

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