

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.No.1606 OF 2016

C.R.Tamilvanan,
Prop: CRT Granite Park
5/157, Teachers Colony
NGO Colony Post,
Dindigul 624 005.

.. Appellant /Petitioner

-vs-

1.The Commissioner of Police
Salem.

2.The Inspector of Police
Sooramangalam Police Station
Sooramangalam, Salem Town.

.. Respondents/Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the common order dated 23.08.2016 rendered in W.P.No.29159 of 2016.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to consider the petitioners representation dated 12.07.2016 as expeditiously as possible by passing appropriate orders thereon thereby directing the concerned officers working under his esteemed control to register FIR against (1) Duraiswamy residing at No.3-47 (New No.3-221) KSV Nagar Salem Town (2) Area Manager Sriram Equipment Finance Co. Ltd. Theerthamalai Commercial Complex Salem and Mr.Manivarman Inspector of Police Sooramangalam Police Station Salem Town for theft and unauthorized removal of Petitioners Tata Machine (Tata Hitachi Ex.350 LCH Super Machine-Chase No.350-V0473) from the place which was stationed within the jurisdiction of 2nd respondent subsequent to the order dated

26.05.2016 passed by the Hon'ble High Court in CRL OP No. 10841/16 directing registration of FIR on the Petitioner's Complaint.

For Appellant : Mr.R.Shanmugham for
M/s Shanmugha Asso.

J U D G E M E N T

This in-house appeal is preferred against the order and Judgment rendered by our learned brother Justice P.N.Prakash, who by his order dated 23.08.2016, dismissed the Writ Petition, observing that since the petitioner has already instituted a Civil Suit in O.S.No.16 of 2016, before the Sub Court, Dindigul, seeking an injunction to restrain the defendant in the Suit from dispossessing him with the JCB, a movable asset in his possession, he should work out the remedies available in that regard.

2.W.P.No.29159 of 2016, has been instituted seeking for issuance of a Writ of Mandamus, directing the first respondent Commissioner of Police, Salem, to consider the petitioner's representation dated 12.07.2016, as expeditiously as possible, by passing appropriate orders thereon, by directing the concerned officers working under his administrative control to register F.I.R against (1) Duraisamy, residing at No.3-47, (New No.3-221) KSV Nagar, Salem Town (2) Area Manager, Sriram Equipments Finance Co., Ltd., Theerthamalai Commercial Complex, Salem and (3) Mr.Manivarman, Inspector of Police, Sooramangalam Police Station, Salem Town, for theft and unauthorised removal of the JCB machine, which was in his possession.

3.Shorn of all unnecessary details, the controversy centers around the possession, actual or constructive, of a movable asset, an earth moving machine commonly known as JCB machine. The writ petitioner/appellant claims to be the owner of JCB. There were certain disputes between the writ petitioner/appellant on the one hand and Duraisamy, Salem Town (2) Area Manager, Sriram Equipments Finance Co., Ltd., Theerthamalai Commercial Complex, Salem, on the other hand. The petitioner alleges that contrary to the terms of lease agreement, Mr.Duraisamy has not delivered possession of JCB, but, somehow, the Writ Petitioner/Appellant has repossessed the said machine and apprehending a possible dispossession of the said machine forcibly at the instance of Duraisamy and others, mentioned above, he has filed a Suit in O.S.No.16 of 2016, on the file of the Additional Sub Court, Dindigul. He has also moved an Interlocutory Application in I.A.No.21 of 2016,

seeking for an exparte ad-interim injunction. The Court while entertaining the Suit on 06.01.2016, granted an order of status quo till 18.01.2016.

4.We do not have, on record, before us any further orders from the said Additional Sub Court, Dindigul, extending the said interim order of status quo beyond 18.01.2016.

5.Be that as it may, pursuant to the direction issued by this Court, F.I.R.No.386, has been registered by Suramangalam Police Station of Salem City on 22.06.2016, based on the complaint of the writ petitioner/appellant that he has been forcibly dispossessed of the machinery on 13.05.2016, by waylaying him.

6.Now the grievance of the writ petitioner is that the representation submitted by him to the Commissioner of Police, Salem has not been taken up for consideration and necessary follow up action has also not been taken thereon. Therefore, writ petition has been instituted, which has been dismissed by the learned single Judge. Hence this Appeal.

7.Heard Mr.Shanmugham, learned counsel appearing for the appellant for a considerable length of time.

8.The learned counsel would urge that when once a representation is submitted to the Commissioner of Police, he is supposed to take appropriate action by coming to the rescue of a helpless citizen. Far from coming to the rescue, inaction of the Commissioner of Police would be, sending a wrong signal to his own subordinates that any wrong doing on their part could not be viewed very seriously by the Commissioner of Police. Further, if Police do not protect the rights of citizens or their properties, perhaps the citizens cannot lead a peaceful life and hence the Commissioner of Police ought to have dealt with the representation submitted by the writ petitioner and should have promptly initiated necessary action against his own subordinate officers, who have extended assistance and helped the wrong doers.

9.The learned counsel would further contend that the Court is required to come to the rescue of a helpless citizen by entertaining the Writ Petition. If the Court fails to exercise its jurisdiction to correct the visible failure of public duty of a responsible officer occupying the rank of Commissioner of Police, one would wonder as to when such exercise of jurisdiction under Article 226 can be carried out.

10.The learned counsel for the petitioner has also placed reliance upon the Judgments rendered by the Hon'ble Supreme Court in REAL ESTATE AGENCIES v. GOVT. OF GOA AND ORS. [AIR 2012 SC 3848] and in THE RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION v. SUBHASH SINDHI CO-OPERATIVE HOUSING SOCIETY, JAIPUR & ORS [AIR 2013 SC 1226], in support of the above pleas.

11.There is no gain, saying that the jurisdiction to be exercised under Article 226 is far and wide, however, the Courts have been consistently adopting a policy of not to meddle with an issue which is mired in factual controversy, resolution of which requires collection of evidence, both oral and documentary. There is no bar for the High Courts in exercise of its jurisdiction under Article 226 of the Constitution of India to collect evidence, both oral and documentary, but, as a matter of prudent practice, such exercise is seldom indulged in. When the facts and circumstances of a case project grave injustice and they prick the conscience of the Court, as a matter of principle, to sustain the glory of rule of law and its effectiveness, the Courts would be willing to walk an extra mile and gather evidence, both oral and documentary.

12.It is not uncommon sometimes for the Courts while exercising the jurisdiction under Article 226 of the Constitution to entrust the task of collecting evidence to any other agency including, entrusting such a task to any Subordinate Court and then record its own findings based thereon. However, if a party has already availed the remedy by approaching a competent Civil Court and the parties are contesting the matter before the Civil Court, it is a prudent principle that the Civil Court should be allowed to go full steam and decide the controversy at issue.

13.As at any other later stage, the revisional or appellant jurisdiction can always be exercised by the High Court, for correcting any possible error committed by the Civil Court in adjudicating the rights of the parties before it. Therefore, when the parties are seeking to settle the dispute by taking recourse to the Civil Court, the Constitutional Court in exercise of jurisdiction under Article 226 of the Constitution would do well to allow the findings of the facts and the questions of law to be answered first by the Sub Court, as the aggrieved party has a right to approach the High Court, even at a later stage. As is too well known, the Appellate jurisdiction of the High Court is far more wider in its scope and content than the jurisdiction exercisable under Article 226 of the Constitution of India.

14. In the present case the writ petitioner/appellant has asserted before the Civil Court that he was in possession of the asset-JCB machine as on 06.01.2016, however, he is yet to establish the said fact before the Civil Court by leading appropriate evidence. It is his claim that he was dispossessed on 13.05.2016, forcibly. That fact also has to be established by leading appropriate evidence and then only the Civil Court would draw an appropriate decree. In the meantime, the Commissioner of Police cannot make any parallel enquiry and then record his conclusion one way or the other that the writ petitioner/appellant has been forcibly dispossessed of his asset.

15. The reason is that the Commissioner of Police may err in his enquiry as he cannot collect evidence and weigh it in the same manner as the well trained Civil Court normally does. It is in this background, the learned single Judge, in our opinion, has rightly declined to exercise the discretion available under Article 226 of the Constitution and hence did not direct the Commissioner of Police, Salem to take up the representation said to have been submitted by the petitioner / appellant for necessary follow up action thereon.

16. It is only apt to notice that the Hon'ble Supreme Court in REAL ESTATE AGENCIES (sited supra), has set out the relevant principle in paragraph No.8 in the following words:

"8. A reading of the order of the High Court would go to show that its refusal to interdict the developmental works undertaken or about to be undertaken is on the ground that the Petitioner has an efficacious alternative remedy, i.e. a suit for injunction. The Writ Court exercising jurisdiction under Article 26 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the Writ Court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated.

(Emphasis is brought out now)

Significant to note in the above passage is the caution administered towards the end of the above passage by the Hon'ble Supreme Court itself.

17. Similarly, the Hon'ble Supreme Court in THE RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION (referred supra), has traced out all the legal principles on the subject in paragraph Nos. 16 & 17, in the following words:

16. Thus, a party seeking relief on the ground of discrimination must take appropriate pleadings, lay down the factual foundation and must provide details of the comparable cases, so that the court may reach a conclusion, whether the authorities have actually discriminated against that party; and whether there is in fact any justification for discrimination, assessing the facts of both sets of cases together.

17. The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice, (ex debito justiceiae) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or establish a legal right but, to enforce one that stood already established.

While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice.

The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are

being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded.

Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand. (Vide: Commissioner of Police, Bombay v. Govardhandas Bhanji, AIR 1952 SC 16; Praga Tools Corporation v. Shri C.V Imanuel & Ors., AIR 1969 SC 1306; Punjab Financial Corporation v. Garg Steel, (2010) 15 SCC 546; Union of India & Ors. v. Arulmozhi Iniarasu & Ors., AIR 2011 SC 2731; and Khela Banerjee & Anr. v. City Montessori School & Ors., (2012) 7 SCC 261)."

Noteworthy is the caution administered in paragraph No.17 by the Hon'ble Supreme Court that the Writ Court must exercise discretion duly taking into consideration the circumstances and the exigency that warrants such an exercise.

18. We are of the opinion that the learned single Judge has exercised the discretion in this matter on proper lines by leaving it to the Civil Court to determine the controversy in question of both fact and law first, so that the aggrieved party can still have a right to approach this Court later on either in its exercise of appellate/revisional jurisdiction. Therefore, no interference is called for with the order passed by the learned single Judge.

Accordingly, the Appeal stands dismissed at the admission stage. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Commissioner of Police
Salem.

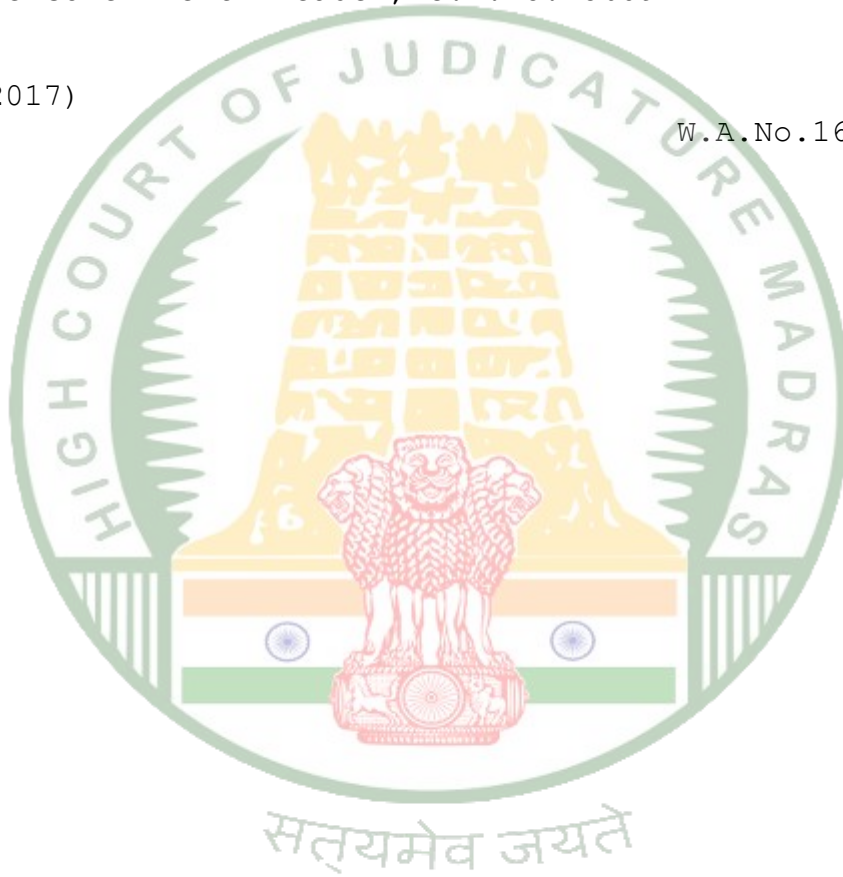
2.The Inspector of Police
Sooramangalam Police Station
Sooramangalam, Salem Town.

+1cc to Mr.Shanmugam, Advocate, S.R.No. 73539

+1cc to the Government Pleader, S.R.No.73689

CNR(CO)
RS(18/01/2017)

W.A.No.1606 OF 2016



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