

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.372 of 2016

S.Kannan

.. Appellant

Vs.

1.The State of Tamilnadu,
rep by the Secretary to Government,
Home Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

3.The Superintendent of Police,
Dharmapuri District,
Dharmapuri-636 701.

4.Ashokkumar
Inspector of Police,
Athiyamankottai Police Station,
Athiyamankottai-636 807
Dharmapuri District.

5.Kabilan,
Inspector of Police,
Anti-land Grabbing Special Wing,
District Police Office,
Dharmapuri-636 701,
Dharmapuri District.

6.R.Singaram

7.S.Selvi

8.S.Ashokan

9.Sellappan

10.Durai.

.. Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 24.07.2015 passed in W.P.No.4661 of 2014, Petition filed under Article 226 of the Constitution of India Praying to issue a Writ of Mandamus to direct the respondents 1 to 3 to protect the life and property of the petitioner and his family after restoring his possession over an extent of 48 cents comprised in S.No.987/3A Athiyamankottai Village Dharmapuri District which has been illegally disturbed by the respondents 6 to 10 with the aid of the respondents 4 and 5 and also direct them to pay compensation of Rs.25 lakhs for violation of the fundamental right to life and property under article 21 of the constitution of India by considering the representation dated 16.12.2013.

For Appellant Mr.N.Manokaran

For respondents Mr.P.S.Sivashanmugasundaram,
Spl.G.P.

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 24th July, 2015 passed in W.P.No.4661 of 2014.

2 The appellant / petitioner preferred a writ petition, seeking a direction to respondents 1 to 3 to restore his possession over an extent of 48 cents comprised in S..No.987/3A, Athiyamankottai village, Dharmapuri District, illegally taken over by the respondents 6 to 10 with the aid of respondents 4 and 5 and also to pay compensation to the tune of Rs.25 lakhs for violation of the fundamental right to life and property property by considering his representation dated 16th December, 2013.

3 The right and title as well as possession over the land in question is disputed between the appellant and respondents 6 to 10. The appellant seeks direction against the official respondents to restore the possession allegedly taken over by private respondents 6 to 10 from him. It is noted that a civil suit, being O.S.No.237/2013 was filed by the appellant / petitioner after the other suit filed by the 7th respondent for delivery of possession was decreed and the suit filed by the petitioner's mother seeking for permanent injunction was dismissed. Thereafter, one more suit, as aforesaid, was filed by the petitioner against 7th respondent, wherein initially interim injunction was granted, which was subsequently vacated. On the basis of the complaint made by 7th respondent, the 5th

respondent Inspector of Police directed the petitioner and his mother to appear for an enquiry. It is also alleged that their house was ransacked and the property was demolished on 1st December, 2013 by the 5th respondent. The petitioner and his mother were arrested and later on enlarged on bail. Thus, there was a complaint against each other. The official respondent No.5 is taking action unauthorisedly against the petitioner, leading to his arrest without any authority of law.

4 Examining all facts, the learned Single Judge held as under :

"11.In the preceding paragraph, this Court, after taking note of the manner in which the fifth respondent Police has dealt with the complaint of the seventh respondent, and it was pointed out that there has been a roving enquiry into a civil claim, which obviously would not be within the realm and jurisdiction of a Police Officer investigating a crime. In fact, the counter affidavit seeks to grant a seal of approval to the title of the seventh respondent which is uncalled for and without jurisdiction. It is for the seventh respondent to take advantage of the decree of the Civil Court passed in her favour declaring her title.

12.All that, the fifth respondent Police should have considered is whether there was an attempt to forcibly take away the land from the seventh respondent. In the counter affidavit filed by the fifth respondent, it is admitted that the fifth respondent levelled the land on her own volition. The counter affidavit is silent as to who erected the superstructure and the circumstances under which the buildings standing on the land, was raised to the ground. Hence, this Court is of the view that the manner in which the fifth respondent dealt with the complaint given by the seventh respondent and whether there was any overreach has to be independently considered. This has to be necessarily done by a Superior Officer above the rank of Superintendent of Police and such officer should not have dealt with the case on hand."

5 In respect of the grant of compensation, a liberty was granted to the petitioner to work out his remedy in the manner known to law after conclusion in the criminal proceedings. The Inspector General of Police of the concerned area was directed

to nominate an officer above the rank of Superintendent of Police to examine as to whether the investigation done by 5th respondent police on the complaint given by the 7th respondent was in accordance with law or the 5th respondent had exceeded his jurisdiction. The direction has been made, as stated to the Inspector General of Police to examine the entire facts.

6 We do not find any infirmity or illegality in the order. However, with consent of the learned Special Government Pleader appearing for respondents 1 to 3, we clarify that the officer nominated, as directed by the learned Single Judge, by the Inspector General of Police, shall issue notice to all concerned parties and examine as to whether the dispute falls within the domain of civil dispute and also as to whether the 5th respondent has exceeded his jurisdiction or shown undue interest or favour to some private parties.

7 With the aforestated clarification / observation, the writ appeal stands disposed of. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
The State of Tamilnadu,
Home Department,
Fort St. George,
Chennai-600 009.

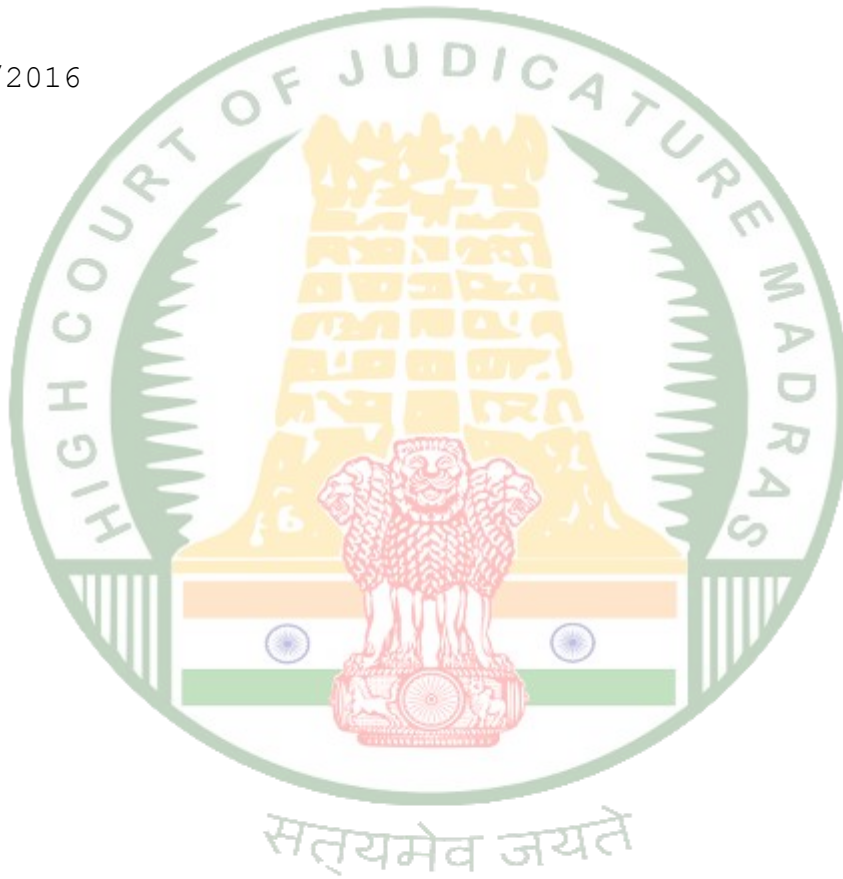
2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

3.The Superintendent of Police,
Dharmapuri District,
Dharmapuri-636 701.

+1cc to Mr.N.Manoharan, Advocate Sr.19785
+1cc to the Government Pleader Sr.20200

W.A. No.372 of 2016

kgk[co]
srg 22/04/2016



WEB COPY