



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2014

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P. (MD) No.3889 of 2014

and

M.P. (MD) .Nos.1 & 2 of 2014

G.Amrutal Jain

... Petitioner

Vs.

1.The Superintendent of Police,
Thanjavur District.

2.The Deputy Superintendent of Police,
Kumbakonam.

3.The Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam.

4.T.K.Nagarajan

5.N.Santhanam

6.N.Vijayakumar

7.M.K.Rajasekar

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents 1 to 3 to provide protection to the petitioner and his family members and also to the shop premises in Door No.109-A, Shri Nageshwaran Kovil, North Street, Kumbakonam, Thanjavur District and further direction to take suitable action against the respondents 4 to 7.

For Petitioner : Mr.H.Lakshmi Shankar

For respondents : Mr.V.Pandi,
1 to 3 Government Advocate

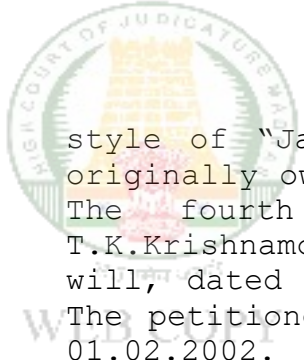
For respondents : Mr.N.S.Ponnaiah
4 to 6

For 7th respondent : Mr.S.Muthukrishnan

ORDER

The present writ petition has been filed by the petitioner for a writ of Mandamus, directing the respondents 1 to 3 to provide Police protection to the petitioner and his family members and also to the shop premises in Door No.109-A, Shri Nageshwaran Kovil, North Street, Kumbakonam, Thanjavur District and further direction to take suitable action against the respondents 4 to 7.

<https://hcservices.courts.gov.in/hcservices/>
In the affidavit, it has been averred that the petitioner has been running a garment shop in a rental building at Door No.109-A, Shri Nageshwaram Kovil Street, North Street, Kumbakonam, under the name and



style of "Jaihind Gents Wear" from 1993 onwards. The said building was originally owned by one T.K.Krishnamoorthy Pillai. He died on 24.10.2001. The fourth respondent herein, who is the son of the said T.K.Krishnamoorthy Pillai, claimed that his father had executed registered will, dated 15.02.1985, as per which he has inherited the said property. The petitioner has been continuing his tenancy by renewing the same from 01.02.2002. The petitioner has been paying the rent to the fourth respondent regularly without fail. The tenancy has also been recorded under a lease agreement. The tenure of the tenancy is extended upto 31.01.2017. While so, on 26.01.2014, when the petitioner was away from Kumbakonam, the fourth respondent, along with his sons viz., 5th and 6th respondents and also with the 7th respondent, who claims to be the Town Secretary of a political party, came to the shop and threatened the petitioner's son stating that he should vacate the shop within a week. The seventh respondent has also threatened the petitioner over mobile phone. While so, on 31.01.2014 the 7th respondent has again come to the shop and threatened the petitioner to hand over the shop to the fourth respondent. The fourth respondent also refused to receive the rent. Hence, the petitioner has sent his rent by way of demand draft along with a lawyer notice dated 01.02.2014 to the petitioner.

3. In the affidavit, it has been further averred that while the situation stood thus, on 03.02.2014, the respondents 5 to 7 came to the shop, along with rowdy elements and locked the shop. On the same day, the petitioner has given a complaint to the respondents 1 to 3 in person, with regard to the illegal activities committed by the respondents 4 to 7. Since no action was taken, the petitioner has sent various petitions to the authorities in the District as well as in the State level, praying for interference in the matter. On 11.02.2014, the petitioner has again met the first respondent and given a petition in person, enclosing all the details, the photographs and also the compact disc recording of the CCTV. Not less than Rs.50 lakhs worth stocks are inside the shop. Hence, the petitioner has come forward with this writ petition, for the relief stated supra.

4. Along with the writ petition, the petitioner has filed M.P.(MD).No.1 of 2014, praying for interim direction, directing the respondents 1 to 3 to provide protection to the petitioner to break open the lock put up by the respondents 4 to 7 in his shop premises, pending disposal of the writ petition and M.P.(MD).No.2 of 2014, praying for the appointment of an Advocate Commissioner to open the shop premises and to take inventory of the articles and to submit a report before this Court.

5. The fifth respondent has filed a counter stating that originally the property was in the name of his grandfather viz., Krishnamoorthy Pillai and he has executed a registered will on 15.02.2013 in favour of his heir, under which the said property was bequeathed to his father viz., the fourth respondent herein. Subsequently, the fourth respondent has executed registered settlement deed in favour of himself and his younger brother / the sixth respondent herein. The petitioner herein was once a tenant under his grandfather. But, subsequently his tenancy was terminated. The petitioner is having his own building adjacent to the subject property. He is in the habit of grabbing the property of the poor people. In fact, the petitioner had demanded respondents 5 & 6 to sell the property to him for the cheap rate. When they refused to sell the property, the petitioner has threatened the respondents 5 & 6. He has



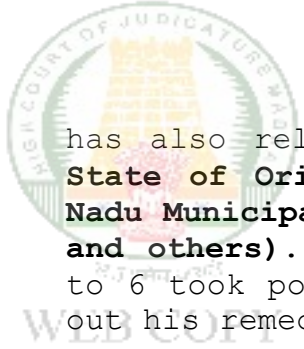
also made an attempt to grab the property by threatening the respondents 5 & 6 through hooligans. Hence, the fifth respondent has made a complaint with the respondent Police and the same was registered in Crime No.76 of 2014, under Sections 147, 148, 448, 294(b) and 506(ii) IPC as against the petitioner. Subsequently, as a counter-blast to the same, the petitioner has given a complaint against the respondents 4 to 6. The petitioner is interested only to break open the shop in order to show as if he is still running the business. The respondents 1 to 3 police have no statutory authority to interfere in the civil dispute. Thus, they sought for dismissal of the writ petition.

6. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the petitioner has been a tenant for a long time in respect of the subject property. Originally the said property was owned by one K.P. Krishnasamy Pillai. After his demise, the fourth respondent herein and his sons viz., the respondents 5 & 6, were in possession and enjoyment of the property. The petitioner has been continuing his tenancy under the respondents 4 to 6 for a long time. The tenure of the tenancy is valid upto 31.01.2017. While so, the respondents 4 to 7 have come to the shop and threatened the petitioner to vacate the premises and also locked the shop. Though the petitioner has lodged a complaint before the respondents 1 to 3 / Police, there is no action. Therefore, the petitioner seeks for police protection only to break open the lock illegally put up by the respondents 4 to 7 and also prayed for police protection to the petitioner and his family members.

7. The learned counsel for the respondents 4 to 6 submitted that the matter between the petitioner and the respondents 4 to 6 is only a civil dispute and the petitioner has to file only a civil suit, if he is aggrieved. Therefore, this writ petition is not maintainable. The learned counsel for the respondents 4 to 6 has further submitted that the petitioner was once a tenant under the father of the fourth respondent. The tenancy was terminated long back. The petitioner has threatened to sell the suit property in favour of him. Since the respondents 5 & 6 have refused to sell the same, he has filed the present writ petition with false allegation.

8. At this juncture, the learned counsel for the petitioner submitted that without any due process of law, the petitioner was sent out of the shop and the same would show that the possession was taken forcibly from the petitioner. Under such circumstances, this Court has power to order for police protection to the petitioner to continue his business in the said shop. In this regard, the learned counsel for the petitioner has also relied upon the judgment reported in **AIR 1982 Madras 431 (Ramakrishnan Vs. The Assistant Director of Ex-servicemen Welfare (District Soldiers, Sailors and Airmen) Board, Trichirapalli)** and submitted that in a similar circumstances, this Court has given police protection in the said case and following the same, the relief sought for in the writ petition can be granted.

9. The learned counsel for the respondents 4 to 6 submitted that it is incorrect to state that the respondents 4 to 7 have locked the subject premises in order to prevent the petitioner from entering into the shop premises and to run the business. Since the respondents 5 & 6 refused to sell the property, a false complaint has been given. In this regard, he



has also relied upon the judgment reported in **AIR (39) 1952 SC 12 (The State of Orissa Vs. Madan Gopal Rungta)** and **AIR 2000 Madras 393 (Tamil Nadu Municipal Shop Merchants Association and etc. Vs. State of Tamil Nadu and others)**. Even assuming for the argument shake, if the respondents 4 to 6 took possession of the property forcibly, the petitioner has to work out his remedy only before the Civil Court.

10. Keeping the submission made on either side, I have carefully gone through the materials available on record.

11. The learned counsel for the petitioner has by mainly relying upon the judgment reported in **AIR 1982 Madras 431**, cited supra, submitted that in similar circumstances, a learned Single Judge of this Court has given a direction to give police protection and hence following the same, similar direction could be given in this case also. But, from the judgment relied upon by the counsel for the respondents reported in **2000 Madras 393 (Tamil Nadu Municipal Shop Merchants Association Vs. State of Tamil Nadu and others)**, I find that when the Judgment reported in the earlier case referred to above was relied upon by the counsel, who appeared for petitioner in the subsequent case, another single Judge of this Court held that the Judgment reported in AIR 1982 Madras 431 is no longer a good law in view of the subsequent decision of the Bench of this Court. Therefore, this Court cannot give any relief based on the Judgment relied upon by the counsel for the petitioner.

12. In my considered opinion, the relief sought for by the petitioner cannot be entertained in the writ petition, as the Writ Court cannot conduct any roving enquiry in the disputed question of fact. The petitioner has to work out his remedy only before the Civil forum for the restoration of the possession of the property. Therefore, this writ petition is dismissed. However, the petitioner is at liberty to approach the appropriate forum for appropriate relief. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police, Thanjavur District.

2. The Deputy Superintendent of Police, Kumbakonam.

3. The Inspector of Police, Kumbakonam West Police Station, Kumbakonam.

+1cc to M/s. N.S.Ponnama, Advocate in SR.No. 27365

+1cc to Mr. H.Lakshmi Shankar, Advocate in SR.No. 26803