



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P (MD) No.15575 of 2016

R.Alphonse

.. Petitioner

vs.

1.The Superintendent of Police,
Economic Offences Wing II,
SIDCO, Old Corporate Building I Floor,
Garment Complex II,
Thiru.Vi.Ka.Salai, Industrial Estate,
Guindy, Chennai - 600 032.

2.The Inspector of Police,
Economic Offences Wing,
Madurai.

3.The District Registrar,
Madurai South,
Madurai District.

4.The Sub Registrar,
Arasaradi, Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Certiorarified Mandamus calling for the records pertaining to the impugned Document No.L21/2008 from the office of the 4th respondent whereby the letter of the 2nd respondent annexed with the G.O.Ms.No.834 Home (Police XIX) Department, dated 23.07.2008, has been registered for the attachment of the petitioner's property quash the same and direct the respondents 3 and 4 to cancel the said registration and remove the encumbrance made on the said property.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.A.Muthukaruppan

Additional Govt. Pleader

O R D E R

This writ petition has been filed challenging the impugned Document No.L21/2008 on the file of the 4th respondent, whereby the letter of the 2nd respondent annexed with the G.O.Ms.No.834 Home (Police XIX) Department, dated 23.07.2008, has been registered for



the attachment of the petitioner's property and seeking further direction to the respondents 3 and 4 to cancel the said registration and remove the encumbrance made on the said property.

2.The petitioner claims to be the owner of the property in Plot No.25, Block 15, Ward No.28-V-A, State Bank Colony, Ponmeni Village, Madurai. When he applied for an Encumbrance Certificate from the fourth respondent, the certificate issued reflected as though the said property was attached in pursuant to a proceedings pending before the Economic Offences Wing II, Madurai. On further enquiry, the petitioner was informed that the second respondent police made a request for making such encumbrance in view of the pendency of the criminal case against the petitioner.

3.The learned counsel for the petitioner submitted that a criminal case filed against the petitioner and others in Crime No.2 of 2014 was pending and the same was settled before the Lok Adalat on 18.12.2014 and in view of such settlement, all the accused persons were acquitted. Therefore, he contended that the encumbrance made in respect of the petitioner's property has to be deleted.

4.The second respondent filed a counter affidavit, wherein it is stated at paragraph No.6 as follows:-

"6.It is respectfully submitted that the amount of only Rs.Six Laksh out of Rs.26,51,600/- due to the defacto complainant has been settled as full and final settlement and thereupon all the accused in the said case acquitted as stated above. No other complaint received from any defaulted persons against the petitioner till date. Further, more ever from the date of registration of the case the petitioner is in peaceful possession and enjoyment of the property in question and nowhere else the respondent has disturbed his possession as per law taking the advantage of order passed the in G.O.Ms.No.834 Home, (Police XIX) Department dated 23.07.2008. In the said circumstances, in respect of the encumbrance made before the 4th respondent, this respondent leave it to the Hon'ble Court to pass order considering the above submissions."

5.The fourth respondent has filed a counter affidavit stating that such encumbrance was made only because the Inspector of Police has requested to do so.

6.The learned Additional Government Pleader appearing for the respondents produced the order made in the Lok Adalat on 18.12.2014 which reads as follows:-



"IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
C.C.7 / 2007

Vino @ Vincenza and others

.. Petitioner/Accused

WEB COPY

Vs.

State thro' S.I. Of Police,
EOW II P.S., in
Cr.No.2/2004

.. Respondent/Complainant

Orders

18.12.2014: In view of Settlement of Lok Adalat, Settlement
Memo filed and recorded. Complainant and all
accused are present. Enquired.

Matter settled at Lok Adalat.

In view of settlement, all accused acquitted.

(Sd)xxx,

Chief Judicial Magistrate
Madurai.

7.The learned Additional Government Pleader further submitted that there is no other claim against the petitioner by any person and therefore, the encumbrance made in respect of the petitioner's property may be directed to be deleted.

8.Considering the above-stated facts and circumstances and in view of the specific averment made by the second respondent in the counter affidavit as extracted supra and the order passed in the Lok Adalat on 18.12.2014, this Court is of the view that there cannot be any impediment for the fourth respondent to remove the encumbrance made in respect of the petitioner's property.

9.Accordingly, this Writ Petition is allowed and impugned communication issued by the second respondent police is set aside. Consequently, the fourth respondent is directed to delete the subject matter encumbrance made in respect of the petitioner's property, if there is no other encumbrance not connected with the present issue. Such exercise shall be done by the fourth respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

/True copy/



To,

1.The Superintendent of Police,
Economic Offences Wing II,
SIDCO, Old Corporate Building I Floor,
Garment Complex II,
Thiru.Vi.Ka.Salai, Industrial Estate,
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Madurai.

3.The District Registrar,
Madurai South,
Madurai District.

4.The Sub Registrar,
Arasaradi, Madurai District.

+1cc to Mr.R.Subramanian, Advocate SR.No.10446

+1cc to special Government Pleader Sr.No.10498

skn

sm:MR:14/03/2017:4P/7C

W.P (MD) No.15575 of 2016
23.02.2017