



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 15.09.2017

CORAM

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.[MD].No.24398 of 2016

and

W.M.P(MD)No.17620 of 2016

and

W.A(MD)No.331 of 2017

and

C.M.P(MD)No.3313 of 2017

W.P(MD)No.24398 of 2016

S.Rahmathullah

...Petitioner

Vs.

1.The Commissioner of Police,
Madurai City Police, Madurai.

2.The Inspector of Police,
Thilagar Thidal Police Station,
Madurai, Madurai District.

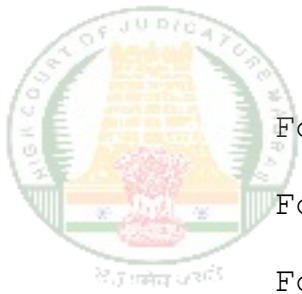
3.Mr.Balamurugan,
The Inspector of Police,
Thilagar Thidal Police Station,
Madurai, Madurai District.

4.Mr.S.Thiagarajan,
S/o.Late. Subramaniya Mudaliar,
No.37,Parthasarathy Street,
S.S.Colony,
Madurai, Madurai District.

5.Sajarath Thaiyaba

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 & 2 to remove the lock & seal illegally put up by the fourth respondent and his henchmen at M/s.Supreme Pipe Syndicate, No.51, West Masi Street, Madurai, Madurai District within the period that may be stipulated by this Court.



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For R1 & R2	: Mr.M.Murugan Govt. Advocate
For R3	: Mr.R.Gandhi for Mr.S.Manikandan
For R4	: Mr.B.Saravanan for Mr.N.Satheesh Kumar
For R5	: No appearance

W.A(MD)No.331 of 2017

Mr.S.Thiagarajan

...Appellant

Vs.

1.S.Rahmathullah

2.The Commissioner of Police,
Madurai City Police,
Madurai.

3.The Inspector of Police,
Thilagar Thidal Police Station,
Madurai,
Madurai District.

4.Mr.Balamurugan,
The Inspector of Police,
Thilagar Thidal Police Station,
Madurai,
Madurai District.

5.Sajarath Thaiyaba

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patents Act, to allow the appeal and set aside the order of the learned Judge of this Court in W.P(MD).No.24398 of 2016, dated 05.04.2017.

For Appellant	: Mr.B.Saravanan
For R1	: Mr.Ajmal Khan Senior counsel for M/s.Ajmal Associates
For R2 & R3	: Mr.M.Murugan Govt. Advocate
For R4	: Mr.R.Gandhi for Mr.S.Manikandan
For R5	: No appearance

O R D E R

[Order of the Court was delivered by M.M.SUNDRESH, J.]

The writ petition has been filed seeking a direction to the respondents to remove the lock and seal alleged to have been put up, illegally, by the fourth respondent.



2.The learned Single Judge after perusing the report submitted by the Additional Deputy Commissioner of Police, PEW, Madurai City was pleased to pass an order directing the respondents 1 and 2 to hand over the possession of the property to the petitioner.

3.Challenging the aforesaid interim order, the fourth respondent filed an appeal in W.A(MD)No.331 of 2017. At the time of entertaining the writ appeal, the following order was passed:-

"7. We have carefully considered the submissions on either side and have taken note of the factual matrix with regard to the maintainability of the appeal. Prima facie we are of the view that the appeal would be maintainable as the impugned order appears to have finally decided the issue that the appellant has forcibly dispossessed the writ petitioner using force. However, this Court will hear the learned counsel for the respondent on the maintainability of the appeal as well. Therefore, the Court has to consider as to what has to be done during the interregnum period that is till the matter is heard and decided finally. As noticed above, the suit has been filed in the name of a firm (which according to the learned counsel for the appellant is not a registered firm and the suit is not maintainable), represented by two partners. One of the partners is the writ petitioner and the other is the fifth respondent in the present appeal. It is not disputed by the writ petitioner that the fifth respondent was the tenant under the appellant. There may have been some arrangements between the fifth respondent's husband and the writ petitioner. However, this aspect cannot be adjudicated in the present proceedings. The case of the appellant as well as the fifth respondent, Smt. Sajarath Thaiyaba is that the fifth respondent has handed over the vacant possession to the appellant and the keys were given him and she has also obtained some money from the appellant by way of goodwill. In such circumstances, the larger question would be as to whether the injunction would continue to operate against the appellant, especially in the light of the conduct of the fifth respondent, who was a co-plaintiff in the suit. This issue has to be decided by the civil Court. We find that the fifth respondent has been consistent in her stand by filing a memo before the civil Court, before the Rent Controller and an affidavit before the Writ Court. Therefore there appears to be a serious disputed question of fact as to who was in possession of the property, whether the writ petitioner or the fifth respondent's husband and this issue is complicated by the fact that both the writ petitioner and the fifth respondent were co-plaintiffs in the suit in O.S.No.690 of 2016.



8. In the light of all the above facts, we are of the prima facie view that the police authorities should have left the parties to work out their remedy before the civil Court and not intervene in the matter. However, based on a report submitted by the Additional Deputy Commissioner of Police, Madurai City, the Commissioner of Police, Madurai City, directed the Central Crime Branch (CCB) Police officials to register a case, and accordingly a case has been registered against the appellant on 01.04.2017 in Crime No.41 of 2017, for the offences punishable under Sections 143, 341, 457, 395, 427 r/w 109 IPC.

9. Thus we are of the view that till the matter is heard and decided, the premises should be kept under lock and key, so that the parties can first contest the matter before this Court. Therefore, we direct the respondents 2 and 3, namely the Commissioner of Police, Madurai City Police, Madurai and the Inspector of Police, Thilagar Thidal Police Station, Madurai, Madurai District, to immediately seal the premises and take photographs while the sealing process is going on and the sealing shall be done in the presence of two independent witnesses and along with a report, shall hand over the keys of the premises to the Registrar (Administration), of this Bench, to be retained till this Court decides this appeal. The learned Government Advocate is directed to instruct the respondents 2 and 3 to comply the order today, without waiting for the certified copy of this order."

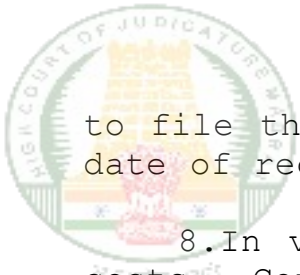
4.The learned Senior counsel appearing for the writ petitioner would submit that the writ petition may be disposed of by permitting the said respondents to remove the materials available in the shop in question.

5.The learned counsel appearing for the fourth respondent also would submit that the aforesaid exercise would be done through the Second respondent, who can take the inventory and give copies of the same to the parties including the petitioner and the fourth respondent.

6.Considering the above, we direct the second respondent to make the inventory of materials available in the shop in question, recording the same and thereafter hand them over to the petitioner with an undertaking that they should be produced the same as and when required.

<https://hcservices.ecourts.gov.in/hcservices/>

7.Considering the submission, we further direct the second respondent to expedite the investigation in Cr.No.41 of 2017 and



to file the final report within a period of three months from the date of receipt of a copy of this order.

8. In view of the above, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

9. In view of the aforesaid order passed in W.P.(MD)No.24398 of 2016, the writ appeal in W.A.(MD)No.331 of 2017 also stands closed. No costs. Consequently, connected miscellaneous petition is also closed.

10. It is made clear that all the issues are left open. It is further made clear that if some more goods/materials belonging to the writ petitioner are recovered by the second respondent, it is well open to the petitioner to file an appropriate application in the manner known to law, for their custody.

11. The Registrar (Admin.,) is directed to hand over the Key to the fourth respondent/appellant.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

1. The Commissioner of Police, Madurai City Police, Madurai.

2. The Inspector of Police, Thilagar Thidal Police Station, Madurai, Madurai District.

3. Mr. Balamurugan, The Inspector of Police, Thilagar Thidal Police Station, Madurai, Madurai District.

Copy to:

The Registrar(Admn),
Madurai Bench of Madras High Court,
Madurai.

+3CC to Mr.N.Satheesh Kumar, Advocate, SR.No. 78997

+1CC to Mr.Ajmal Associates, , SR.No. 79131

+1CC to the Special Government Pleader SR.No. 79335

W.P.[MD].No.24398 of 2016

and

W.A(MD)No.331 of 2017

15.09.2017