

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6969 of 2018
and
W.M.P.No.8620 of 2018

J.Sekar

... Petitioner

Versus

1.Inspector of Police
G-1 Police Station,
Vepery,
Chennai-600 007.

2.Loganathan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the 1st respondent not to interfere with the petitioner premises as matter pertains to civil dispute.

For Petitioner :: Mr.T.Mohan
for Mr.P.M.Bakthavatchalam

For Respondents:: Mr.D.Raghu, Government Advocate for R1
Mr.S.Partheeban for R2

सत्यमेव जयते
O R D E R

The relief sought for in this writ petition is for a direction to direct the 1st respondent, not to interfere with the petitioner premises as matter pertains to Civil disputes.

2.The learned counsel for the writ petitioner states that the property situated at No.6/8, Dharmaraja Koil Street, Choolai, Chennai - 600 112 comprised in Survey No.1597 R.S.No.1025 in C.C.No.4478, Purasawakkam Village, admeasuring 1436 square feet registered within registration District of Central Chennai and Purasawakkam S.R.O belongs to Sri.Saraswathi

and the same acquired by her by way of a settlement deed executed by her mother.

3.It is stated by the writ petitioner that he was inducted as a tenant by 2nd respondent's father during the year 1998 to run a cycle shop at their premises for an extent of 240 square feet and the father of the 2nd respondent has received a sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only) from the petitioner, for which, he executed a sale deed for acknowledgement of the above amount in favour of writ petitioner. It is admitted by the writ petitioner that the said sale deed said to have been executed by the father of the 2nd respondent, was not registered. It is further stated that the partition between the brothers were not materialized, and that is the reason why, the father of the 2nd respondent was unable to register the sale deed. The petitioner claims that he is in absolute possession from the year 1998 onwards and the father of the 2nd respondent expired. At that point of time, the 2nd respondent was a minor. However, the petitioner continued to enjoy the possession without any hindrance in respect of the property. The mother of the 2nd respondent also has assured that she will not cause any disturbance in respect of the possession till her son and daughter attain the age of majority and further, she assured that she will execute a sale deed after the children attaining the age of majority. The 2nd respondent attained the age of majority in February-2018 and the petitioner has sought for the execution of sale deed for an extent of 240 square feet. However, the 2nd respondent and his sister has sought time to execute a sale deed by assigning various other reasons.

4.The petitioner claims that he is running a Cycle Shop Business from the year 1998 onwards and the building roof was covered with Mangalore tiles and the same were broken. In order to remove the broken tiles, the writ petitioner has taken steps to repair the same. The writ petitioner made a request to the 2nd respondent that he has to protect the property and the damage caused will affect the very structure of the building. When the 2nd respondent has forced the writ petitioner to vacate the premises on 10.02.2018, the petitioner has refused to do so and thereafter, the second respondent issued a legal notice to the petitioner to vacate and hand over the possession of the said property. However, the writ petitioner filed a Civil Suit in O.S.No.1390 of 2018 before the IIIrd City Civil Court, Chennai. The 2nd respondent also filed a petition for eviction before the XVth Small Causes Court at Chennai. Under these circumstances, the writ petitioner has filed the present writ petition with a prayer to direct the 1st respondent, not to interfere with the petitioner premises as matter pertains to civil dispute.

5.The learned counsel appearing on behalf of the 2nd respondent made a submission that the 2nd respondent and his sister are the lawful owners of the property in question. The mother of the 2nd respondent is also residing with them and the sister of the 2nd respondent also has not married. The mother, the 2nd respondent and the sister are residing in the premises. The 2nd respondent has just completed 18 years of age and the 2nd respondent is working as a load man(Daily Coolie). The sister of the 2nd respondent has completed graduation and the mother of the 2nd respondent is also residing with them.

6.The learned counsel for the 2nd respondent states that the writ petitioner, beyond his capacity, as a tenant made an attempt to demolish the property, which is under his occupation. He has involved in the Act of demolishing the property and the mother of the 2nd respondent questioned the same. The learned counsel for the 2nd respondent states that the writ petitioner has threatened the mother of the 2nd respondent and used vulgar and abusive language against the mother of the 2nd respondent, who is a widow. The mother of the 2nd respondent preferred a complaint before the 1st respondent Police Station, who in turn received the complaint and when the 1st respondent has made an attempt to initiate all further actions, the writ petitioner preferred the present writ petition with a prayer to direct the 1st respondent, not to interfere with the petitioner premises as matter pertains the civil dispute. Thus, further actions in this regard by the 1st respondent, are kept in abeyance on account of the pendency of the present writ petition. This apart, the 2nd respondent also filed a suit in O.S.No.2134 of 2018 for an injunction, restraining the writ petitioner from putting up any new construction. The civil suit is also pending.

7.It is contended that frequent disputes are arising between the writ petitioner and the mother of the 2nd respondent, who is always residing in home. The petitioner is causing harassment and using abusive language against the mother of the 2nd respondent. At one point of time, when the building was under demolition by the writ petitioner, the mother of the 2nd respondent rushed to the Police station and made a complaint to the Station Officer. The Station Officer also visited the spot and found that the writ petitioner was in the process of demolishing the roof with the help of some labourers. On identifying the action of the writ petitioner, the 1st respondent / Police was taking steps to register a case against the writ petitioner. At that point of time, the present writ petition has been filed.

8.The learned Government Advocate appearing on behalf of the 1st respondent also states that a complaint was received from the mother of the 2nd respondent as well as from the 2nd respondent. On enquiry, the 1st respondent found that the writ petitioner has made an attempt to demolish the building and further, it was found that there was a wordy quarrel and disputes between the writ petitioner and the mother of the 2nd respondent. The learned counsel for the petitioner clarified that the 2nd complaint was filed after filing of the writ petition. However, the fact remains that the writ petitioner has taken an attempt to demolish the building belongs to the 2nd respondent and her sister. The mother of the 2nd respondent being a Widow, prevented the writ petitioner from demolishing the building. The petitioner used indecent and abusive languages against the mother of the 2nd respondent as well as the 2nd respondent on certain occasions.

9.At the outset, the idea of the writ petitioner is to grab the property in one way or other, which is a valuable one.

10.Under these circumstances, the complaint filed by the 1st respondent is pending. The learned Government Advocate further states that on enquiry, the 1st respondent found that the petitioner has committed an Act of using abusive languages and indecent behavior against the mother of the 2nd respondent as well as against the 2nd respondent on certain occasions. The Mother of the 2nd respondent is a Widow Women and the 2nd respondent is just completed 18 years of age and working as a Daily Coolie and the sister of the 2nd respondent also has completed graduation.

11.This apart, Mr.T.Veerakumar, the Inspector of Police, G1. Vepery Police Station, who is present before this Court also informed to this Court that the writ petitioner is a habitual money lender in that locality and a "notorious" person. His behavior in that locality is creating issues amongst the public at large. At the outset, the conduct and the character of the writ petitioner is not satisfactory and he has involved in number of such allegations.

12.At the outset, the conduct and behavior of the writ petitioner is indifferent and on enquiry also, the 1st respondent found the same.

13. Considering the facts and circumstances of the case, this Court is of an opinion that on account of increase of value in respect of the properties in Chennai City, such disputes like showing highhandedness, real estate mafia, Rowdyism and grabbing the properties and other activities are increasing. The Real Estate Mafia and the persons by showing highhandedness are attempting to grab the valuable property of poor people, aged people, more specifically, in Chennai City. Courts are also witnessing large number of cases in these category. Aged women and men living separately are targeted and the women living alone are also targeted frequently by this gang and some individuals, in order to grab the valuable property belongs to such individuals. This Court is of an undoubted opinion that all such actions are to be dealt strictly in accordance with law and the officials concerned are bound to deal with such cases with iron hand. There cannot be any leniency in respect of such attitude of the persons, if they initiate any steps to grab the property belongs to others.

14. In respect of the present writ petition on hand, admittedly, the writ petitioner was inducted as a tenant. Further, it is stated that the father of the 2nd respondent, who died, received a sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) from the father of the 2nd respondent. However, these transactions were not known to the 2nd respondent and to her sister, who were minors even at the time of the death of their father. Even at the time, when the father of the 2nd respondent received the said amount of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) he was not the owner of the property. Even at that point of time, the 2nd respondent was the owner of the property. Thus, the transactions between the deceased father of the 2nd respondent and the writ petitioner was not known to the 2nd respondent and he was no way connected with any such transactions. Even as per the averments made in the writ affidavit, no sale deed was executed by the father of the 2nd respondent. Even if a sale deed was registered, such a sale deed is certainly null and void. Admittedly, the 2nd respondent is the owner of the property even when he was a minor and the settlement was executed in his name. Thus, the 2nd respondent, his sister and mother are no way connected with the transactions between the writ petitioner and the deceased father of the 2nd respondent. At no point of time, the 2nd respondent has executed any agreement or deed in favour of the writ petitioner. The tenancy period also expired. Admittedly, even as per the writ petitioner, he is continuing only on the ground that he has paid a sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) to the deceased father of the 2nd respondent. Even though, the writ petitioner is not holding a valid lease agreement as of now nor any such agreement has been produced before this Court

in the present writ petition. Contrarily, it is pleaded that the civil litigations are pending between the Civil Courts and all merits shall be adjudicated before the Civil Courts.

15. This Court is of an opinion that understanding the nature of the judicial proceedings and the prolongivity caused on account of various reasons by the Civil Courts and judicial systems, these land grabbers and real estate mafia are utilizing the opportunity for the purpose of taking away the valuable property belongs to poor, aged and widow women, who all are living separately. The Police statistics also shows that such persons are targeted for the purpose of grabbing valuable lands and other properties. Under these circumstances, when certain peculiar circumstances are brought to the notice of this Court, this Court cannot shut its eyes in respect of an injustice caused on account of certain notorious crimes committed by these people in a scientific manner. Courts cannot permit such things to happen.

16. It is brought to the notice of this Court that the writ petitioner is taking steps and demolished a portion of the building already, more specifically, the roof.

17. The learned counsel for the petitioner also states that the roof is in a dilapidated condition and it is falling down. Under these circumstances, as a tenant, it is the duty of the writ petitioner to vacate the premises and hand over the same to the owner, so as to repair the same. Contrarily, the writ petitioner, as a tenant, has no locus standi to demolish the building unilaterally at his choice and repair the same. If the building is in a dilapidated condition or the roof is falling down, it is the duty of the tenant to inform the landlord and the landlord is the authority, and is empowered to repair the building and hand over the same to the tenant, if he decides to do so. Contrarily, the tenant himself cannot demolish the permanent structures. In the present case, the tenancy has not been established by the writ petitioner. There is no lease deed or any other valid document submitted before this Court that the writ petitioner is permitted to continue as a tenant. Contrarily, circumstances established that the 2nd respondent, who is just completed 18 years of age and working as a Daily Coolie and his mother, who were unable to defend the actions of the petitioner somehow allowed the petitioner to continue in the premises. The continuance of the writ petitioner to be construed as a forcible one and, it can never be construed as a natural consent given by the 2nd respondent or his widow mother.

18. This Court has to consider certain peculiar circumstances, where people are compelled to allow an unwanted person to continue in the premises. Such circumstances can never

be neglected by the Courts. It is an indirect way of threat caused to such weak persons. Therefore, this Court is of an opinion that all such circumstances has to be weighed, while granting the relief to the parties concerned.

19.The learned counsel for the petitioner emphasized that the civil suits and civil litigations are pending before the Courts. This Court is aware of the fact that the petitioner, like persons will prolong and protract such civil disputes for years together and to see that either the property is handed over to them or the property is sold to them by the 2nd respondent and his widow mother. It is an indirect way of compelling such people like the mother of the 2nd respondent as well as the 2nd respondent, who is a Coolie.

20.The learned counsel for the 2nd respondent states that the writ petitioner has not paid rent from the year 2010 onwards. The total arrears of rent is about Rs.2,89,000/- (Rupees Two Lakhs and Eighty Nine Thousand only). Therefore, the question of refund of the amount of Rs.2,50,000/- received by the father of 2nd respondent does not arise at all in view of the fact that the rental arrears to be paid by the writ petitioner itself is about Rs.2,89,000/- (Rupees Two Lakhs and Eighty Nine Thousand only).

21.In respect of the complaint filed by the mother of the 2nd respondent and the 2nd respondent, the 1st respondent / Inspector of Police is bound to initiate appropriate legal action including registering of a case under the provisions of the Tamil Nadu Prohibition and Harassment of Women Act, 1988, if the facts and the evidences are available to prosecute the writ petitioner. If the materials are available, a case shall be registered and appropriate actions are to be taken by following the procedures and in accordance with law. The word "harassment" is defined in the Act, so as to include the indecent behavior and use of indecent and abusive language against women.

22.In respect of the relief sought for by the writ petitioner, the petitioner is not entitled for the relief as such sought for in view of the fact that once a complaint is given before the Police Station, the Station Officer is bound to register the case and initiate appropriate action in accordance with law. Such an action initiated can never be prevented by the Courts. It is for the investigating officer to investigate the facts and circumstances, collect evidence and prosecute the persons in the manner known to law. Thus, the very relief sought for is absolutely misconceived and such a relief, preventing the

Inspector of Police from initiating action and the complaints, can never be granted by this Court in a writ petition under Article 226 of the Constitution of India. Thus, the relief as such sought for in this writ petition stands rejected.

23.Considering the peculiar facts and circumstances of the case and considering the plight of the landlord in this case, this Court is of an opinion that further direction also is to be granted. It is an admitted fact that the 2nd respondent is the owner of the property. Further, it is admitted that the building is in a dilapidated condition and the entire roof has been fallen down, and there is no roof in the building. The Inspector of Police states that the writ petitioner is a notorious person in that locality.

24.Under these circumstances, this Court is of an opinion that the building is not fit for dwelling or fit to continue the business in the said premises in the interest of all the parties. Even for the petitioner, it is not preferable to continue his business in the said building, which is not fit for dwelling purposes.

25.Under these circumstances, the 1st respondent is directed to evict the writ petitioner from the premises and hand over the same to the 2nd respondent within 48 hours from the date and time of the receipt of the copy of this order, either through the official website of the High Court or through the Government Advocate.

26.With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.Inspector of Police,
G-1 Police Station,
Vepery,
Chennai-600 007.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.M.Bakthavatchalam, Advocate Sr.60208
+1cc to Mr.S.Partheeban, Advocate Sr.60267
+1cc to the Government Pleader Sr.60576

W.P.No.6969 of 2018

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