

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 28.09.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1887 of 2018

D.Vijayalakshmi .. Appellant/Petitioner

versus

1. State represented by,
The Commissioner of Police,
Coimbatore District,
Coimbatore-641 018.
2. The Deputy Commissioner of Police,
(Law and Order),
O/o The Commissioner of Police,
Coimbatore District,
Coimbatore-641 018.
3. A.Murugasamy,
Additional Deputy Commissioner of Police,
Prohibition Enforcement Wing,
O/o The Commissioner of Police,
Coimbatore District,
Coimbatore-641 018. ... Respondents

Writ Appeal filed against the order of this Court made in W.P.No.15090 of 2018 on 3/7/2018 and set aside the same.

The Writ petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the first respondent to take necessary action on the petitioner's complaint dated 16.03.2018 and dispose of the same in accordance with law.

For Appellant : Ms.D.Vijayalakshmi, Party in Person

JUDGMENT

SUBRAMONIUM PRASAD.J.

This writ appeal is directed against the order dated 03.07.2018 passed by the learned Single Judge of this Court in W.P.No.15090 of 2018.

2) The facts in brief as stated by the writ petitioner are as under:-

a) The petitioner states that she was in possession of the premises bearing old No.31/105, New Door No.288/291, Nanjappa Gounder Street, Marakkara Town, Coimbatore District, along with other tenants. According to her, the total extent of the property measures 5 cents and 205 square feet.

b) The property belonged to one Ms.Lingammal who executed a registered Will in favour of her son Mr.T.Gopalasamy, who is the brother of the petitioner. It is stated by her that during her life time Ms.Lingammal, filed RCOP Nos.58,60,94 and 96 of 1983 on the file of District Munsif Court, Coimbatore, against the tenants. It is stated by her that, out of the four rent control original petitions, RCOP Nos.58,60 and 94 of 1983 were ordered and tenants were evicted. It is her case that as far as RCOP Nos.96 of 1983 is concerned, it was filed against one Mr.Dhramalingam. After death of the Lingammal, her brother Mr.Gopalasamy came in possession of the property in accordance with the Will.

c) It is stated that after the death of Mrs.Lingammal Gopalasamy pursued RCOP No.96 of 1983 which was also decreed. It is stated by the petitioner that Mr.Gopalasamy executed a Will dated 23.11.2000 in respect of a portion of the property in her favour. It is stated that another Will dated 04.06.2013 was also executed whereby the remaining property was bequeathed in favour of her son Nithyanandam. It is therefore the contention of the petitioner that the entire property had devolved upon the petitioner and her son. It is stated by her, that they got impleaded themselves in the execution petition No.16/2004 filed in RCOP No.96 of 1983 which was originally filed by other legal heirs of Mr.Gopalasamy.

d) According to the petitioners, the other legal heirs of the said Mr.Gopalasamy made independent rival claims over the property. The executing Court in E.P.No.16/2004 appointed an Advocate Commissioner handed over the possession of the premises to the legal heirs of Gopalasamy. It is the allegation of the petitioner that the Advocate Commissioner was won over by the legal representatives of Mr. Gopalasamy and the Advocate Commissioner who handed over the possession of the property to other legal heirs of Mr.Gopalasamy instead of the petitioner.

e) It is stated that the tenants and the legal heirs of the said Mr.Gopalasamy illegally evicted the petitioner from the property. It is stated by the petitioner that, she has filed a civil suits in O.S.Nos.269 and 455 of 2010 on the file of the Sub Court, Coimbatore. The property according to the petitioners has been sold to third parties who have been impleaded in the said suits.

According to the petitioner, she is paying the property tax of the property. It is stated that she gave a representation on 24.03.2015 and 22.04.2015 to the State Government, but, nothing was done. The local Police did not take any steps to hand over the possession of the property which belongs to her and she has been illegally thrown out from the same. The petitioner filed W.P.No.20132 of 2015 before this Court for a direction to the respondents to take action on her representation dated 24.03.2015 and 22.04.2015.

f) The learned Single Judge of this Court dismissed the writ petition by an order dated 02.06.2016. The learned Single Judge observed as under:-

"6. I heard the Petitioner-in-Person and the learned Additional Government Pleader appearing for the respondents 1 to 10. I had perused the material records placed before this Court. The grievance of the petitioner is that the Advocate Commissioner appointed by the trial Court, in collusion with the local police officials, have illegally dispossessed. This was stoutly denied by the seventh respondent in the counter affidavit. In the counter affidavit, it was stated that Nagammal and Raghunathan, legal heirs of Gopalsamy have filed Execution Application 67 of 2010 in EP No. 16 of 2004 in RCOP No. 96 of 1983 before the learned I Additional District Munsif, Coimbatore to break open the closed Door of the building with Police protection. In the said application, an advocate commissioner was appointed and he was issued with a warrant to handover the possession of the property to the Execution Applicants. Accordingly, the Advocate Commissioner visited the premises and handed over the same to Nagammal and Raghunathan with the help of the local police. The Advocate Commissioner also submitted his report to the Court stating that the possession of the property was handed over on 13.03.2010. In the report, it was also specifically stated that at the time of their visit, there was no occupants in the property. It was also stated in the report that the petitioner herein has left the property in question long back and she was not residing in the property in question. In any event,

Nagammal and Raghunathan alone have filed the Execution Application before the trial Court and they have not come up with any grievance. The petitioner, who was out of possession of the property in question has come up with this writ petition seeking to take action against the offenders in the light of the representation sent by her on 24.03.2015 and 22.04.2015.

7. As far as the representation of the petitioner dated 24.03.2015 and 22.04.2015 are concerned, they relate to alleged unauthorised demolition of the property by the advocate commissioner in collusion with the local police. As mentioned above, in the report filed by the advocate commissioner, it was clearly stated that the vacant possession of the building has been handed over to Nagammal and Raghunathan in as is where is condition. While so, the allegation of the petitioner that the advocate commissioner and the local police have colluded together and demolished the property in question is unfounded. In fact, in the counter affidavit filed on behalf of the respondents 1 and 2, reference was made to closure of similar complaints made by the petitioner in the year 2012 and 2014 after obtaining a report from the learned Principal District Judge, Coimbatore. In the complaints sent by the petitioner during the year 2012 and 2014, she has made wild allegations against the Judicial Officer and the Advocate and eventually those allegations were found to be false and incorrect. These material particulars have been suppressed by the petitioner in this writ petition. While so, in the present writ petition, this Court is not inclined to direct the respondents to conduct an enquiry on the basis of the representations dated 24.03.2015 and 22.04.2015 of the petitioner. If such a direction is issued, it will only compel the respondents to do certain acts which they are not bound to do. In any event, this Court finds that the grievance put forth by the petitioner in the representations dated 24.03.2015 and 22.04.2015 have already been considered by the official respondents and she was also given a reply thereof. While so, once again, at the instance of the petitioner, this Court need not issue any direction to the official respondents."

g) Against the order in E.P.No.16 of 2004, the petitioner filed C.R.P.No.4218 of 2008 in this Court praying that the possession must be handed over to her. The Civil Revision Petition was disposed of by a Single Judge of this Court by an order dated 17.09.2010, and the following order was passed:-

"Considering the submissions made by both sides, it has been made clear that the E.P filed for delivery of possession by the respondents 2 and 3 has been terminated. The execution petition was originally filed by the land lord and after his death, his wife and son the respondents 2 and 3 have been impleaded as legal representatives of the deceased land lord. An application in E.A.No.156 of 2006 was filed by the petitioner to implead her as the legatee of the deceased original land lord under a Will and the same was dismissed and against the said order the present revision has been preferred. However, the E.P, has been pursued and the delivery of possession has been effected in their favour despite the pendency of this revision against the order caused by the executing Court. It is to that the petitioner has claimed her right to implead herself in the E.P, on the foot of the Will dated 23.11.2000, executed by the land lord. The Will has to be proved by the oral evidence adduced on the side of the petitioner and the reason putforth by the lower court is that the Rent Controller has no jurisdiction to venture in to the truth and genuineness of the Will, in order to ascertain the legal heirship of the land lord. The said view is entirely incorrect. Therefore, it has become necessary for this Court to set aside the order and to pass suitable directions. In the above said circumstances of the case, the petitioner is accordingly found entitled to agitate her claim as raised in the impleadment application in the suit filed by herself in O.S.No.269 of 2010 for declaration and recovery of possession. The trial Court has to proceed with the case in O.S.No.269 of 2010 without being influenced by the order of lower court in disposing the E.P, in favour of the respondents 2 and 3."

h) The petitioner thereafter filed a fresh complaint on 21.01.2018 to the Assistant Commissioner of Police, Coimbatore stating that she has been illegally and forcibly evicted from the premises and no action has been taken against the legal heirs of Mr.Gopalasamy and Police Officers are responsible for her illegal dispossession. The copy of the complaint was forwarded to the Assistant Deputy Commissioner of Police who conducted an enquiry. In that enquiry it was found that the petitioner herein, is in the habit of making repeated wild allegations against Police Officers and the allegations made by her in her complaint is false and incorrect. The enquiry was closed on 13.03.2018.

i) The petitioner filed yet another complaint on 16.03.2018 against the order of closure dated 13.03.2018. Since no order was passed, the petitioner has now filed the instant writ petition for a writ of Mandamus directing the first respondent, i.e, the Commissioner of Police, Coimbatore District, to take necessary action on the complaint dated 16.03.2018.

j) The learned Single Judge has by the impugned order dismissed the petition stating that it has become a habit of the petitioner to file repeated complaints. Aggrieved by the order passed by the learned Single Judge the instant writ appeal has been filed.

3. Heard the petitioner in person.

4. A perusal of the material on record would show that the petitioner has already given two representations dated 24.03.2015 and 22.04.2015 in which she has made a complaint of being unauthorizedly dispossessed from the property by the Advocate Commissioner and the other legal heirs of Mr.Gopalasamy with the aid of local police. The petitioner had filed W.P.No.20132 of 2018 with the prayer for a direction to the respondents to take appropriate action against the persons mentioned in the representation for having illegally dispossessed the petitioner from her property. The learned Single Judge after going through entire material found that the property was handed over to the other legal representatives of the said Mr.Gopalasamy. It was also found that, there were no occupants in the property and that the petitioner was not residing in the property in question. It was also found that the petitioner had filed similar complaints earlier also in the year 2012 and 2014 and in the said complaints sent by the petitioner in the year 2012 and 2014 also, wild allegations were made against Judicial Officers and Advocates and these complaints had been eventually found to be false and incorrect.

5. The learned Single Judge found fault with the petitioner that she has suppressed the fact that she had filed earlier complaints in the year 2012 and 2014 and that it was not correct on her part to approach the Court again and again. Material on record discloses that suits have been filed in O.S.Nos.269 and 455 of 2010 in the Court of District Munsif Court, Coimbatore. The present writ petition has been filed with similar allegations and the order of the learned Single Judge dismissing the writ petition on the ground that it has now become a habit of the petitioner to repeatedly approach the Court, by making wild allegation against the Police Officers and Advocates does not warrant any interference in this writ appeal.

6. This writ Appeal is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pkn/gsp

To

1. The Commissioner of Police,
Coimbatore District,
Coimbatore-641 018.
2. The Deputy Commissioner of Police,
(Law and Order),
O/o The Commissioner of Police,
Coimbatore District,
Coimbatore-641 018.
3. A.Murugasamy,
Additional Deputy Commissioner of Police,
Prohibition Enforcement Wing,
O/o The Commissioner of Police,
Coimbatore District,
Coimbatore-641 018.

+2ccs to Mr.D.Vijayalakshmi, Advocate Sr.67540

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