

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

CRL.O.P.No.6524 of 2013

Church of South India-Madras Diocese,
R.K. Pet Pastorate, Rep by its
Presbyter-in-charge,
Rev.N.M.David Selvakumar M/42,
Vasantha Illam, R.K.Pet-631 303,
Tiruvallur District.

....Petitioner

Vs.

1. The State Rep. by Inspector of Police,
D-4, R.K.Pet Police Station,
R.K.Pet, Pallipattu Taluk,
Tiruvallur District.
2. The Deputy Superintendent of Police,
Tiruthani, Tiruvallur District.
3. The Collector.
Tiruvallur.

(Third respondent impleaded as per the
order of this Court dt.15.04.2013 in
Crl.O.P.No.6524 of 2013)

... Respondents

PRAYER:Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the respondents to provide police protection to the petitioner and R.K.Pet Village, Pallipattu Taluk, Tiruvallur District, to an extent of 17 cents of land in S.No.27 of 10, Old.S.No.27 of 4, while constructing the church.

For Petitioner : Mr.S.Arokiamaniraj

For Respondents : Mr.T.Shunmugarajeswaran,
Government Advocate
(Criminal Side)

O R D E R

This petition has been filed to direct the respondents to give police protection to the petitioner for constructing a Church in S.No.27/10 (old S.No.27/4), R.K.Pet Village,, Pallipattu Taluk, Tiruvallur District.

2. Heard Mr.S.Arokiamaniraj the learned counsel for the petitioner and Mr.T.Shunmugarajeswaran, Government Advocate (Criminal Side) for the respondents.

3. The learned counsel for the petitioner has submitted that the petitioner is the owner of the land measuring about 17 cents situated in S.No.27/10 (Old.S.No.27/4) of R.K.Pet Village, Pallipattu Taluk, Tiruvallur District. He further submitted that one Ponnamman Devasthanam has filed a suit against the petitioner herein in O.S.No.61 of 2001 on the file of the District Munsif Court, Pallipattu, claiming right over the suit property and the same was dismissed on 29.07.2005. Aggrieved by the same, the said Ponnamman Devasthanam has filed an appeal in A.S.No.22 of 2011 on the file of the Subordinate Court, Tiruthani and the said appeal was also dismissed, against which, no second appeal has been filed. He further submitted that the petitioner herein has already filed W.P.No.11843 of 2006 to direct the Revenue Divisional Officer, Thiruthani to pass orders with regard to the petition submitted by the petitioner to issue Patta and this Court has also passed an order on 26.04.2006 directing the Revenue Divisional Officer to pass order within a period of four weeks. In pursuance of the said order, patta was issued on 11.09.2008 in favour of the petitioner. He further submitted that the Collector for the Kancheepuram District has granted a permission by the order dated 28.02.1994 for constructing a new Church. He further submitted that even after dismissal of the suit, and appeal, which were filed by the said Ponnamman Devasthanam, they are not allowing the petitioner for constructing a Church in the aforesaid land and hence, the petitioner has submitted a representation before the respondent Nos.1 and 2 on 02.02.2013, but they have not provided police protection. Hence, again on 05.02.2013, the petitioner has sent another representation to the respondents by post, but no action has been taken and hence he requested to direct the respondents to provide police protection to the petitioner for constructing a Church.

4. The learned Government Advocate (Crl.Side) has submitted that the petitioner has not produced any title deed to show that it is the owner of the above said land except Patta and Chitta. He further submitted that even in the letter dated 02.02.2013,

petitioner itself has stated that so far the Panchayat President has not granted permission for constructing a Church and under the said circumstances, police protection cannot be given for constructing a Church by the petitioner.

5. It is seen from the typed set filed by the petitioner that one Sri Ponniyamman Koil Devasthanam has filed a suit against the petitioner herein and the third respondent in O.S.No.61 of 2001 on the file of the District Munsif Court, Pallipattu, for the relief of permanent injunction in respect of the land situated in S.No.27/4 measuring about 2.57 acres. The petitioner herein claimed that it is the owner of the said property. However, the learned District Munsif has found that neither the plaintiff nor the defendant (petitioner herein) is the owner of the said property. He found that the said property belongs to the Government. He further found that the suit for bare injunction without prayer for declaration of title is not maintainable. Accordingly, he dismissed the suit. As against the same, the plaintiff has filed an appeal in A.S.No.22 of 2011 on the file of the Sub-Judge, Thiruthani. The said appeal was dismissed confirming the judgment and decree of the trial Court.

6. Now, the petitioner has filed the present petition seeking police protection for constructing a Church. According to the petitioner, since the suit and appeal filed by the said Sri Ponniyamman Koil Devasthanam have been dismissed and no second appeal has been filed, the petitioner is entitled to construct a Church in the said property. As already pointed out that the learned District Munsif has dismissed the suit on the ground that the suit for bare injunction is not maintainable without seeking declaration of title and the same was confirmed by the appellate Court. So merely because, the plaintiff's suit was dismissed on technical ground, it cannot be said that a decree has been granted in favour of the defendant. If the defendant wants any relief, he has to file a suit to declare his title and for injunction. If any such decree or order is obtained in his favour from the Civil Court, then he can ask for police protection.

7. At this juncture, it would be relevant to refer the decision in P.R.Muralidharan and others Vs. Swami Dharamananda Theertha Padar and others (2006) 4 SCC 501, where in the Hon'ble Supreme Court in paragraph Nos. 17 and 19 has observed as follows:-

"17. A Writ Petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of

such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a Court with jurisdiction. But it is quite, another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate Civil Court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

19. A Writ for 'police protection' so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.'

8. From the aforesaid decision, it is clear that a Writ for police protection can be filed only for protection of rights declared by a decree or by an order passed by a Civil Court.

9. A similar view was taken by this Court in G.Meena Vs. Commissioner of Police (2009) 2 MLJ (Cr1) 1009 wherein a petition has been filed under Section 482 Cr.P.C seeking police protection, but this Court has dismissed the said petition as not maintainable and that the party has to approach the Civil Court. The relevant portion of the said decision is as follows:

'24. In the Division Bench judgment referred to above it has been laid down that, in appropriate cases, where the Court finds that a party who had secured an order of injunction from the Court is not in a position to have its full benefit owing either

to obstruction or non-cooperation of the other side, it is always open to the Court to direct the police authorities to see that its order is obeyed. Therefore, when an effective and alternative remedy is available to the petitioner to approach the Civil Court under Section 151 C.P.C and seek police protection by satisfying the Court that she is not in a position to have the full benefit of the order granted in her favour because of the obstructions or non-cooperation of the defendants, it is not open to the petitioner to approach this Court under Section 482 Cr.P.C. If a petition is filed under Section 151 C.P.C. before the Civil Court, then it will be open to the Civil Court to consider the objections raised by the other side and the Court can also appoint an Advocate Commissioner to find out the physical features of the properties and decide as to whether the police protection should be provided or not. Such a detailed enquiry or adjudication of the disputed questions of fact cannot be gone into by this Court while exercising jurisdiction under Section 482 Cr.P.C., Therefore, this Court is not inclined to direct respondents 1 to 3 to provide police protection to the property of the petitioner."

In view of the aforesaid decision the petitioner has to approach the Civil Court to declare its title and for injunction. If any decree or order is granted in his favour, then it can approach the Civil Court itself by filing petition under Section 151 C.P.C., to provide police protection to have the full benefit of the order granted in its favour.

10. It is also to be pointed out that the petitioner has stated in this petition that the said Sri Ponnamman Koil Devasthanam has not filed any second appeal, but the said Sri Ponnamman Koil Devasthanam has not been impleaded as respondent in this petition. If the said Devasthanam is added as a party it would have stated before this Court as to whether any second appeal has been filed or not. Anyhow, in view of the aforesaid decisions, this petition is not maintainable and the same is liable to be dismissed.

11. In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsa /gsi

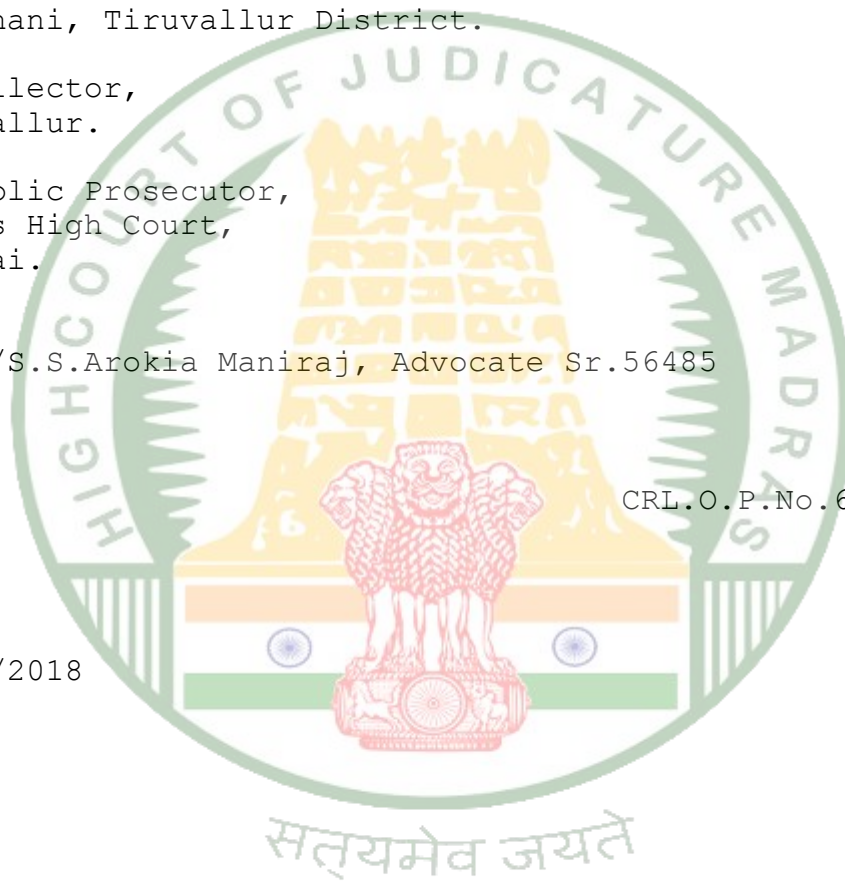
To

1. The Inspector of Police,
D-4, R.K.Pet Police Station,
R.K.Pet, Pallipattu Taluk,
Tiruvallur District.
2. The Deputy Superintendent of Police,
Tiruthani, Tiruvallur District.
3. The Collector,
Tiruvallur.
4. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to M/S.S.Arokia Maniraj, Advocate Sr.56485

CRL.O.P.No.6524 of 2013

sj[col]
srg 26/10/2018



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