

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.12.2018	Delivered on 19.12.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP.Nos. 6227 & 661 of 2017

and

Crl.M.P.Nos.474, 4624 & 4625 of 2017

1.S.Paneerselvam,
S/o.Krishnan,
Executive Officer,
Sri Dharbarayasamy Devasthanam,
Thirunallar,
Karaikkal District, Puducherry.

2.Mr.Rajagopalan,
Thasildar, Taluk Office,
Thirunallar,
Karaikkal District,
Puducherry.

3.Muthu Srinivasan,
S/o.Ramanathan,
Junior Engineer,
Sri Dharbarayasamy Devasthanam,
Thirunallar,
Karaikkal District, Puducherry.

4.Marie Christian @ Paul
Inspector of Police,
Thirunallar Police Station,
Thirunallar,
Karaikkal District,
Puducherry.

..Petitioners

in Crl.O.P.No.6227 of 2017
&

..Respondents

in Crl.O.P.No.661 of 2017

.Vs.

Srinivasan

..Respondent

in Crl.O.P.No.6227 of 2017

..Petitioner

in Crl.O.P.No.661 of 2017

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PRAYER in Crl.O.P.No.661 of 2017: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to withdraw C.C.No.13 of 2016, on the file of the Additional District Munsif Cum Judicial Magistrate Court, Karaikkal, and transfer the same to the Judicial Magistrate at Myladuthurai, Nagapattinam District.

PRAYER in Crl.O.P.No.6227 of 2017: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and to quash the proceedings in C.C.NO.13/2016, on the file of the learned Judicial Magistrate-II, Karaikkal.

For Petitioners : Mr.V.G.Suresh Kumar
(Crl.O.P.No.6227/2017)
& for Respondents in Crl.OP.661/17

For Respondent : Mr.S.Senthilnathan
(Crl.O.P.No.6227/2017) for Mr.R.Murugabharathi
& For Petitioner in Crl.Op.661/17)

COMMON ORDER

The accused in C.C.No.13 of 2016, has filed Crl.O.P.No.6227 of 2017, seeking to quash the proceedings in C.C.No.13 of 2016, pending on the file of the learned Judicial Magistrate-II, Karaikkal. The complainant in the same proceedings has filed Crl.O.P.No.661 of 2017, seeking to transfer the proceedings from the file of the Court below to the Judicial Magistrate Court, Myiladuthurai.

2.The parties shall be referred as per the description made in Crl.O.P.No.661 of 2017.

3.The petitioner has filed a criminal complaint against the respondents for an alleged offence under Section 448,427, 341 and 323 of IPC. The allegations made in the criminal complaint is that the respondents using their official status have illegally evicted the petitioner from the property, in spite of a Staus quo order passed in favour of the petitioner in I.A.No.680 of 2013 in O.S.No.542 of 2013. The further allegation that has been made in the complaint is that the eviction was made without any prior notice to the petitioner, either under the HR & CE Act, or under the Land Encroachment Act, and therefore, the entire eviction is illegal. The complaint has been taken cognizance by the Court below and process has been issued to the respondents, and the same has been put to challenge before this Court in the present criminal original petition.

4.The learned counsel for the respondents, made the following submissions:

- The entire complaint has been made with a malafide intention and only with a view to harass the respondents who are government servants, who have performed their statutory duty.
- The property was illegally occupied by the father of the petitioner and he was an encroacher of the lands owned by Sri Dharbaranyeswaraswami Devasthanam, Thirunallar, comprised in R.S.No.164/2, and action to evict the father of the petitioner was taken after following the due process of law and after issuing notice calling upon him to vacate the encroached lands, failing which, he will be evicted from the property.
- There were several other encroachers in the said survey number, and therefore it was decided to provide all the encroachers with an alternative site in R.S.No.116/11C, which land was situated about 200 mtrs away from the subject lands. Apart from that mandatory compensation was provided to all the encroachers in order to construct houses. The petitioner's father was allotted a larger extent of land to an extent of 3600 sq.feet, and the petitioner's father also took possession of the property and constructed a house and he was in possession and occupation of the same.
- The petitioner misused the Status quo order of the Civil Court and actually encroached upon the lands and in order to get over the same, filed a false complaint against the respondents.
- The act of the respondents in discharge of their official duty, can never become a subject matter of a criminal complaint, and therefore the proceedings will have to be quashed.

5. The learned counsel for the petitioner submitted that even though the respondents are Government Officials, they cannot take law into their own hands and illegally evict the petitioner without issuing notice either under HR & CE Act, or under Land Encroachment Act. The learned counsel would further submit that in spite of there being a Status quo order, issued by the Competent Court, the respondents proceeded to vacate the petitioner, and therefore the respondents have committed a criminal offence of house trespass, mischief, wrongful restraint and hurt, which are all punishable under the Indian Penal Code. The learned counsel would submit that the other issues raised by

the learned counsel for respondents are matters for trial and the same cannot be considered by this Court while exercising its jurisdiction under Section 482 of Cr.P.C. The learned counsel would further submit that the proceedings have to be transferred to the file of the Judicial Magistrate, Myladuthurai.

6.This Court has carefully considered the submissions made on either side. Before considering the submissions made on either side, it will be relevant to rely upon certain documents filed before this Court by the learned counsel for the respondents. This Court is aware of the settled principle of law that the defence materials cannot be relied upon while deciding a petition to quash the proceedings under Section 482 of Cr.P.C. However, the Hon'ble Supreme Court, as a march of law, has now held in a catena of decisions that sterling, incontrovertible public documents can be looked into by the High Court in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code.

7.The learned counsel for the respondents brought to the notice of this Court, the following documents:

[a] The minutes of the meeting held in the chamber of the Chief Minister on 21.06.2010 at 05.00 p.m. to discuss the rehabilitation package to be undertaken by Temple Authorities of Thirunallar. It is clear from this document that the meeting was chaired by the Chief Minister of Puducherry along with all the other Officials and a decision was taken to rehabilitate 36 families, who were occupying the property belonging to the Temple, to allot an alternative land and also to provide them with an amount of Rs.1 lakh for building houses in the alternative site.

[b] The paper publication was made on 17.07.2010, by the Government bringing to the notice of the general public about the allotment of the alternate site. In the list of persons to whom the alternate site is granted, the name of the father of the petitioner is seen at S.No.17, Seetharaman, S/o.Kuppusamy Pillai.

[c] Copy of the Show Cause Notice dated 20.05.2011, issued by the Temple to the petitioner's father to vacate the property in R.S.No.164/2, in view of the alternate site provided by the Government.

[d] The proceedings of the Government of Puducherry dated 30.09.2010, conferring the power and authority to the Commissioner, HR & CE to gift the alternate sites in R.S.No.166/11C, in favour of 36 residents shown in the annexure. In this annexure, the name of the petitioner's father Seetharaman is shown at S.No.17.

[e] The Settlement Register of Lands showing the owner of the property in R.S.No.164/2 as Sri Dharbaranyeswara swami Temple.

[f] The copy of the lease deed dated 08.05.2015, executed by the Temple in favour of the father of the petitioner, giving possession of the alternate site.

[g] The proceedings of the Government of Puducherry dated 15.10.2015, giving no objection for electricity service connection for the house built in the alternate site provided to the petitioner's father.

[h] No Objection Certificate given by the Temple on 10.08.2015, to the Commissioner of Commune Panchayat, to give water connection to the house occupied by the father of the petitioner in the alternate site.

8. All the above said documents are public documents which are sterling in nature and incontrovertible. It is very clear from the above documents that the petitioner's father had already occupied the alternate site, constructed house by getting compensation from the Government, got electricity connection and water connection for the house. Therefore, the petitioner cannot now take a different stand and project in the

complaint as if he was illegally evicted from the property without notice and in spite of the Status quo order of the Civil Court.

9. This Court is of the considered view that the entire complaint is an abuse of process of Court. By using the Status quo order passed by the Civil Court, and by filing the present criminal complaint, the petitioner and his family wants to occupy both the properties in R.S.No.164/2, and the alternate property given by the Temple. By filing this criminal complaint, the petitioner has clearly made an attempt to arm twist the Government Officials and prevent them from taking possession of the property in R.S.No.164/2,

10. The entire criminal complaint is manifestly attended with malafides and the allegations made in the complaint are so absurd and inherently improbable, and the allegations do not constitute any offence against the respondents. The complaint itself has been made as a ruse to continue with the illegal occupation of the property in R.S.No.164/2. This Court therefore has to necessarily interfere with the proceedings in order to meet the ends of justice.

In the result, the proceedings in C.C.No.13/2016, on the file of the learned Judicial Magistrate-II, Karaikkal, is hereby

quashed. Accordingly, Cr1.O.P.No.6227 of 2017 is allowed. In view of allowing the Cr1.O.P.No.6227 of 2017, nothing survives in Cr1.O.P.No.661 of 2017, and the same is closed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Additional District Munsif
cum Judicial Magistrate, Karaikkal.

2.The Judicial Magistrate-II,
Karaikkal.

3. The Executive Officer,
Sri Dharbarayasamy Devastanam,
Thirunallar,
Karaikkal District,
Puducherry.

4.The Thahsildar, Taluk Office,
Thirunnallar,
Karaikkal District,
Puducherry.

5.The Junior Engineer,
Sri Dharbarayasamy Devastanam,
Thirunallar,
Karaikkal District,
Puducherry.

6.The Inspector of Police,
Thirunallar Police Station,
Thirunallar,
Karaikkal District,
Puducherry.

7.The Public Prosecutor (Puducherry)
High Court of Madras,
Madras.

+1cc to Mr.R.Murugabharathi, Advocate sr.no.88235
+1cc to Mr.V.G.Suresh Kumar, Advocate sr.no.88434
+1cc to Mr.V.G.Suresh Kumar, Advocate sr.no.88435 (08/02/2019)

CrI.OP.Nos. 6227 & 661 of 2017

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