



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 01.03.2018

Order Pronounced on : 28.03.2018

WEB COPY

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD) No.1430 of 2018
and
W.M.P. (MD) .No.1489 of 2018

R.Thangavelu

... Petitioner

-Vs-

- 1.The Revenue Divisional Officer,
Collectorate, Madurai.
- 2.The Commissioner of Police,
Madurai City.
- 3.The Tahsildar,
Madurai South Taluk,
Madurai.
- 4.The Inspector of Police
S.S. Colony Police Station,
Madurai.
- 5.Jones Cheriyan
- 6.N.Kastro

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus directing the 1st and 3rd respondents to survey the petitioner's properties in Town Survey No.63, with an extent of 0.0540 sq.meter and in Town Survey No.65, with an extent of 0.1830.0 sq.meter and in Town Survey No.89, with an extent of 0.0084.0 sq.meter and in Town Survey No.90, with an extent of 0.0717.0 sq.meter situated at Ponmeni, Bye Pass Road, Madurai and consequently direct the 2nd and 4th respondents to provide adequate police protection for the same based on the petitioner's representation dated 11.07.2017 within the period that may be stipulated by this Court.

For Petitioner
For Respondents

: Mr.K.Manikandan
: Mr.N.Shanmuga Selvam
Addl. Govt. Pleader
for RR-1 to 4
Mr.V.P.Rajan for R-5
No appearance for R-6

O R D E R

This writ petition has been filed to direct the respondents 1 and 3 to survey the petitioner's properties in Town Survey No.63, with an extent of 0.0540 sq.meter; in Town Survey No.65, with an extent of 0.1830.0 sq.meter; in Town Survey No.89, with an extent of 0.0084.0 sq.meter and in Town Survey No.90, with an extent of 0.0717.0 sq.meter situated at Ponmeni, Bye Pass Road, Madurai and consequently direct the 2nd and 4th respondents to provide adequate police protection for the same based on the petitioner's representation dated 11.07.2017.

2.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent. There is no representation on behalf of the sixth respondent.

3.The learned counsel for the petitioner has submitted that the property comprising in Sy.No.66/5, measuring about 2.22 acres originally belonged to the petitioner's grandmother, Theivanaiyammal. She purchased the said property on 10.07.1931. Subsequently, 0.74 acre was acquired for the purpose of laying By-pass road. The said Theivanaiyammal died on 16.08.1974. Thereafter, the legal heirs of the said Theivanaiyammal executed a sale deed to the third parties. In the meanwhile, patta for the extent of 25 cents was wrongly transferred to some other persons. He further submitted that the first respondent in his order, dated 31.12.2015, directed the third respondent to issue a joint patta in favour of the said Theivanaiyammal for the properties situated in Town Survey No.63, measuring 0.0540 sq.meter; in Town Survey No.65, with an extent of 0.1830.0 sq.meter; in Town Survey No.89, with an extent of 0.0084.0 sq.meter and in Town Survey No.90, with an extent of 0.0717.0 sq.meter. Thereafter, the name of the said Theivanaiyammal was included in the joint patta for the aforesaid survey numbers for the extent of 25 cents. He further submitted that the petitioner is not able to measure the aforesaid properties because of the threat of the respondents 5 and 6 and hence, the petitioner has made an application for survey of his lands on 07.04.2017. But the third respondent informed the petitioner to obtain necessary police protection. He further submitted that the petitioner has submitted an application before the second respondent on 11.07.2017, seeking police protection, but, so far, no order has been passed and hence, he requests to direct the 2nd and 4th respondents to provide necessary police protection for measuring the petitioner's land and also direct the respondents 1 & 3 to survey the petitioner's land.

4.The learned Additional Government Pleader appearing for the respondents 1 to 4 has submitted that already, the petitioner herein has lodged a complaint before the fourth respondent stating that the respondents 5 and 6 and others have created certain false



documents, with a view to grab his land and based on the said complaint, a case was registered in Cr.No.21/2009 under Section 420, 434, 466, 467, 468, 471 and 474 I.P.C. He further submitted that after investigation, on 30.12.2017, the matter was referred as 'further action dropped'. He further submitted that since there is a civil dispute between the petitioner and the respondents 5 and 6 with regard to the aforesaid properties, respondents 1 to 4 are not able to take any action on the representation submitted by the petitioner herein.

5.The learned counsel for the fifth respondent had submitted that the father of the fifth respondent namely N.E.Chériyan has purchased a property in Sy.No.66/5, admeasuring an extent of 45 cents from the petitioner's grandmother Theivanaiyammal vide three sale deeds dated 27.10.1965, 28.06.1966 and 12.06.1967. He further submitted that the father of the fifth respondent had executed an unregistered trust deed in favour of "Steward Association", a Christian Religious Institution and declared himself as a trustee of Madurai and constructed a building namely Bible Bhavan. To make access to the said building, an exchange deed was executed between the father of the fifth respondent and one Singaram Chettiar on 19.06.1962 and as per the said exchange deed, 6 cents were executed in favour of Singaram Chettiar and in turn the said Singaram Chettiar executed 18 cents in favour of fifth respondent's father in S.No.66/4. He further submitted that the fifth respondent's father passed away on 02.10.1993 and thereafter, the fifth respondent is looking after the aforesaid properties and Bible Bhavan, situated in Sy.No.66/5A and 65/4. He further submitted that after demise of the said Theivanaiyammal, her daughter Govindammal and brother Ramalingam had filed a suit in O.S.No.469/2001 on the file of the Principal District Munsif Court, Madurai, seeking the relief of permanent injunction against the fifth respondent and the said suit was dismissed for default on 13.03.2008. He further submitted that the petitioner herein and his brother preferred an application before the third respondent to measure the property situated in 66/5A 1B and 66/5A3. The third respondent, after enquiry, rejected the petitioner's request by the order dated 24.06.2011, stating that the fifth respondent herein and others were in long possession and enjoyment of the said property. As against the said order, the petitioner herein filed an appeal before the first respondent. The first respondent directed the fifth respondent to establish his right over 35 cents by approaching the Civil Court. He further submitted that since there is a dispute with regard to the possession between the petitioner and the fifth respondent herein, the relief sought for police protection under Article 226 of the Constitution of India is not maintainable.

6.In support of the said contentions, he relied upon the decision in Moran Mar Baselios Marthoma Mathews II Vs State of Kerala (2007) 6 MLJ 1088 (SC), wherein, the Honourable Supreme Court in paragraph Nos.9 and 11 has observed as follows:



"9. The question as regards grant of a relief for providing police protection in a somewhat similar case, came up for consideration before this Court in P.R. Murlidharan and Others V. Swami Dharamananda Theertha Padar and Others (2006) 4 SCC 501; 2006 (2) KIT 119 (SC), wherein, one of us was a party. It was held therein:

"Furthermore, the jurisdiction of the Civil Court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit."

BALASUBRAMANIAN.J., in his concurring opinion observed:

"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."

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11. Such might have been the contentions of the appellants before the High Court or before us in the Special Leave Petitions, but we have no doubt in our mind that such disputed questions in regard to title of the properties or the right of one group against the other in respect of the management of such a large number of Churches could not have been the subject



matter for determination by a Writ Court under Article 226 of the Constitution of India in the garb of grant of police protection to one or the other appellants."

7. In this case, admittedly, the dispute is with regard to the title and possession of the properties. So, in view of the aforesaid decision of the Honourable Supreme Court of India, this Court, by exercising jurisdiction under Article 226 of the Constitution of India, cannot direct the Police to provide police protection for measuring the properties. The petitioner ought to have filed a suit before the Civil Court and establish his right over the aforesaid properties and only thereafter, if necessary, he can ask for police protection. Therefore, this writ petition is not maintainable and the same is liable to be dismissed.

8. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Revenue Divisional Officer,
Collectorate, Madurai.
2. The Commissioner of Police,
Madurai City.
3. The Tahsildar,
Madurai South Taluk,
Madurai.
4. The Inspector of Police
S.S. Colony Police Station,
Madurai.

+1cc to Mr.K.Manikandan, Advocate, SR.No.59397

+1cc to Mr.V.P.Rajan, Advocate, SR.No.59482

vs

RL/7C/5P/SV/MMS/SAR1/17/4/2018

W.P(MD) No.1430 of 2018