



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on :27.02.2018

Order Pronounced on :16.03.2018

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD) No.14726 of 2015

and

M.P(MD).No.1 of 2015

and

Cr1.O.P.(MD).No.24304 of 2015

W.P.(MD).No.14726 of 2015:

C.Palanisami

... Petitioner

-Vs-

1.The Inspector General of Police,
South Zone,
Natham Main Road,
Madurai.

2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

3.Dinkaran
Inspector of Police,
North Police Station,
Rajapalayam,
Virudhunagar District.

4.Rajapalayam Krishnama
Rajapalayam Nadar Uravinmurai
Secretary K.Manivannan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus directing the third respondent not to prevent the petitioner from entering and enjoying the property bearing door No.65A, 3rd street, Kamaraj Nagar, Rajapalayam Town, Virudhunagar District and measuring East West 68 feet and North South 72 feet and to provide protection from the respondents 1 & 2 for the petitioner's life and limb in such enjoyment of the petitioner as a tenant of 4th respondent till eviction under due process of law.

For Petitioner

: Mr.G.Prabhu Rajadurai

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents 1 & 2

:Mr.V.Anand

G.A.(Cr1.Side)



For respondent No.4 :Mr.J.Suresh Kumar
For respondent No.3 :Ms.S.Srimathi

Crl.O.P. (MD).No.24304 of 2015:

C.Palanisami

... Petitioner

-Vs-

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1.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

2.The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.

3.Krishnamma Rajapalayam
Nadar Uravinmurai
rep. by its Secretary,
Rajapalayam,
Virudhunagar District.

... Respondents

Prayer:Criminal Original petition filed under Section 482 of Code of Criminal Procedure praying to direct the respondents to give police protection to the petitioner's life and for his business conducting in door No.65A, Kamaraj Nagar, Rajapalayam, Virudhunagar District, based on the representation, dated 10.10.15.

For Petitioner : Mr.P.T.Ramesh Raja
For Respondents 1 & 2 : Mr.V.Anand
G.A.(Crl.Side)
For respondent No.3 :Mr.S.Jawahar

C O M M O N O R D E R

W.P. (MD).No.14726 of 2015 has been filed to issue a writ of mandamus or any other writ or order or direction in the nature of a writ, directing the third respondent not to prevent the petitioner from entering and enjoying the property bearing door No.65A, 3rd street, Kamaraj Nagar, Rajapalayam Town, Virudhunagar District and to provide police protection for the petitioner's life and limb, until he is evicted from the aforesaid property under due process of law.

Crl.O.P. (MD).No.24304 of 2015 has been filed by the same petitioner to direct the respondents to give police protection to the petitioner's life and for his business conducting in door No.65A, Kamaraj Nagar, Rajapalayam, Virudhunagar District, based on the representation, dated 10.10.2015.

2.For the sake of convenience, the parties are referred to as described in W.P. (MD).No.14726 of 2015.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Heard the learned counsel appearing for the petitioner,



the learned Government Advocate appearing for the respondents 1 and 2, the learned counsel appearing for the 3rd respondent and the learned counsel appearing for the 4th respondent.

4. The learned counsel for the petitioner has submitted that the petitioner is the tenant under the 4th respondent in respect of the property bearing door No.65A, 3rd street, Kamaraj Nagar, Rajapalayam Town, Virudhunagar District. He further submitted that since the fourth respondent tried to evict the petitioner from the aforesaid premises in forcible manner, the petitioner herein has filed a suit in O.S.No.36 of 2014 on the file of the District Munsif Court, Srivilliputhur for the relief of injunction and the same is still pending. The petitioner has filed another suit in O.S.No.223 of 2014 before the same Court, seeking permission to deposit the rent in the court and the said suit is also pending. He further submitted that the fourth respondent herein has filed a written statement in O.S.No.36 of 2014, setting up counter claim and prayed for recovery of possession and as such, he has admitted the petitioner's possession as a tenant. He further submitted that the fourth respondent has heaped sand, stone and jalli inside the premises and also at the entrance and thereby completely blocked the access. The third respondent has also colluded with the fourth respondent and directed the petitioner to vacate the premises immediately and hence, he requests to direct the third respondent not to prevent the petitioner from entering and enjoying the aforesaid property and also to provide police protection.

5. The learned Government Advocate (Crl.Side) and also the counsel for the 3rd respondent have submitted that the third respondent is denying the allegation that he is preventing the petitioner from enjoying the aforesaid property. They further submitted that the real dispute is between the petitioner and the fourth respondent, in which, the respondents 1 to 3 have been unnecessarily dragged.

6. The learned counsel for the fourth respondent has submitted that the petitioner is not in possession of the aforesaid property. The property was only a vacant site housing within it a small tin shed and it was not under lock and key. He further submitted that it is lying idle and hence, the question of preventing him from enjoying the aforesaid property does not arise.

7. It is seen from the typed set filed by the petitioner that the petitioner herein has filed a suit in O.S.No.36 of 2014 on the file of the Additional District Munsif Court, Srivilliputhur stating that he is in possession of the aforesaid property as a tenant under the 4th respondent herein and hence, he should not be evicted except under due process of law. In the said suit, the fourth respondent herein was arrayed as first defendant and he has filed a written statement, in which, the fourth respondent herein has admitted that the petitioner is in possession of the suit property and also set up counter claim for delivery of possession.



So, it is clear that the fourth respondent has clearly admitted that the petitioner is in possession of the suit property and the fourth respondent has chosen to take possession through court of law and that being so, it is not open to the fourth respondent to disturb the petitioner's possession by taking the law on his hands.

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8. In State of Uttar Pradesh and Others Vs Maharaja Dharmander Prasad Singh and Others, 1989 (2) SCC 505, the Hon'ble Supreme Court has observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after expiry or earlier termination of lease by forfeiture, or otherwise. As such the petitioner can be evicted only under due process of law. Therefore, the fourth respondent is not entitled to heap any building materials inside the premises and also in front of the premises with a view to prevent the petitioner from enjoying the premises, when the possession of the premises is admittedly with the petitioner.

9. For the aforesaid reasons, the third respondent is directed not to prevent the petitioner from entering and enjoying the property bearing Door No. 65A, 3rd street, Kamaraj Nagar, Rajapalayam Town, Virudhunagar District until he is evicted from the aforesaid premises under due process of Law. Further, he is directed to consider the petitioner's representation and if necessary, he may provide police protection to the petitioner.

10. With the aforesaid directions, both the petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector General of Police, South Zone,
Natham Main Road, Madurai.
2. The Superintendent of Police, Virudhunagar District, Virudhunagar.
3. The Inspector of Police, Virudhunagar North Police Station,
Rajapalayam, Virudhunagar District.

+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No. 55766

+1CC to Mr.J.Suresh Kumar, Advocate, SR.No. 56839

+1CC to the Special Government Pleader SR.No.56269

common order made in

W.P(MD) No.14726 of 2015

and CrI.O.P.(MD).No.24304 of 2015

16.03.2018