



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.16734 of 2018

and

W.M.P (MD) .No.14786 of 2018

Naina Mohamed

... Petitioner

Vs.

1.The Superintendent of Police,
Ramanathapuram District.

2.The Deputy Superintendent of Police,
Paramakudi, Ramanathapuram District.

3.The Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.

4.The District Collector,
Ramanathapuram District.

5.The Tahsildar,
Paramakudi, Ramanathapuram District.

6.The Paramakudi Municipality
Through its Commissioner,
Paramakudi,
Ramanathapuram District.

7.The Executive Engineer,
The Public Works Department,
Water Resource Organisation,
Parthipanoor Dam Sector,
Ramanathapuram District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to direct the respondents 1 to 3 to consider the representation of the petitioner dated 28.06.2018 and to give police protection to the life and limb of the petitioner and to enable him to put up compound wall enclosing and encircling the subject property in Survey No.14, Town Survey No.26, Block No.9, Ward G in Kattuparamakudi, Paramakudi Town, Ramanathapuram District.



For Petitioner : Mr.J.Barathan

For Respondents : Mr.M.Karuppasamy
Government Advocate

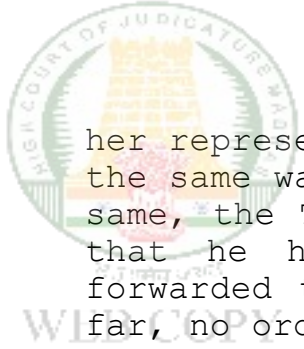
WEB COPY

ORDER

Mr.M.Karuppasamy, learned Government Advocate takes notice on behalf of the respondents.

2.By consent of the both parties this writ petition is taken up for final disposal at the stage of admission itself.

3.According to the petitioner, the petitioner and his mother and brother have filed a suit in O.S.No.64 of 1984 on the file of the Subordinate Court, Ramanathapuram at Madurai against the Government of Tamil Nadu through the District Collector, Ramanathapuram, the Tahsildar, Paramakudi Taluk, Paramakudi, the Commissioner of Paramakudi Municipality and few private parties praying for a decree of declaration of title. The said suit was decreed on 26.08.1987. The Commissioner of Paramakudi Municipality filed an appeal in A.S.No.1005 of 1989 before the Principal Seat of this Court challenging the aforesaid judgment and decree passed by the Subordinate Court, Ramanathapuram, dated 26.08.1987. Further, the District Collector, Ramanathapuram and the Tahsildar, Paramakudi Taluk, Paramakudi, have also filed an appeal in A.S.No.1044 of 1989 on the file of the Principal Seat of this Court against the aforesaid judgment and decree. Both appeals were allowed by the Principal Seat of this Court on 29.03.2001 and thereafter, the petitioner, his mother and his brother have preferred L.P.A.No.129 of 2001 before this Court and this Court set aside the judgment and decree passed by the Principal Seat of this Court in A.S.Nos.1005 and 1044 of 1989, dated 29.03.2001 and remanded the matter back to the trial Court with a direction to frame additional issues and granted liberty to let in further evidence. Thereafter, the aforesaid suit in O.S.No.64 of 1984 was transferred to the District Munsif Court, Paramakudi, due to change of pecuniary jurisdiction and territorial jurisdiction and the same was renumbered as O.S.No.101 of 2005. The learned District Munsif, Paramakudi, passed judgment and decree, on 29.11.2005 in favour of the plaintiffs and granted a decree of declaration and consequential decree of permanent injunction in respect of the subject matter. In the aforesaid suit, both the District Collector, Ramanathapuram, the Tahsildar, Paramakudi Taluk and the Commissioner of Paramakudi Municipality are the parties. The subject matter property is now comprised in Survey No.14, Town Survey No.36, Block No.9, Ward G in Kattuparamakudi, Paramakudi Town, Ramanathapuram District. The petitioner's mother also submitted an application before the Tahsildar, Paramakudi for granting patta for the subject property. Subsequently, she filed a petition in W.P(MD).No.20313 of 2014 before this Court, directing the Tahsildar, Paramakudi to consider



her representation and to issue patta for the aforesaid property and the same was disposed of by order dated 12.12.2014. Pursuant to the same, the Tahsildar, Parakudi, has sent reply on 21.01.2016 stating that he has no jurisdiction to issue patta and the same was forwarded to the District Revenue Officer, Ramanathapuram. But so far, no order has been passed.

4. In the meantime, the Public Works Department, Water Resource Organization, Parthipanoor Dam Sector through its Junior Engineer has issued order, dated 29.11.2013 to dispossess the petitioner's mother from the subject property. Therefore, she filed a petition in W.P(MD).No.16098 of 2014 before this Court to challenge the aforesaid order, dated 29.11.2013. The said writ petition was allowed by order dated 10.08.2017 and the same was remitted back to the authority concerned to pass a fresh order, but so far, no order has been passed. At this stage, notice has been issued under Section 111 Cr.P.C observing that the petitioner and his brother were trying to encroach the said property and hence, proceedings were initiated under Section 107 of Cr.P.C against them. Later, the petitioner filed a petition in CrI.O.P(MD).No.16031 of 2017 before this Court challenging the aforesaid proceedings and the same was admitted and granted an order of interim stay. The respondents 2 and 5 herein are the parties in the quash petition.

5. He further submitted that the Government has not acquired the subject property and the petitioner attempted to fence the suit property, but the revenue authorities are obstructing his peaceful possession and enjoyment and obstructing the fencing work. Therefore, the action amounts to contempt of the judgment and decree, dated 29.11.2005 passed in O.S.No.101 of 2005 on the file of the District Munsif Court, Paramakudi. The petitioner has also filed execution petition in E.PNo.2 of 2017 before the District Munsif Court, Paramakudi for disobedience of the decree. The petitioner made a representation to the first respondent on 28.06.2018 for granting of police protection to fence the subject property, but there is no response so far. Hence, the present petition is filed before this Court.

6. Heard the learned counsel appearing for the petitioner and learned Government Advocate for the respondents.

7. Considering the aforesaid fact, the petitioner's mother has filed a writ petition for issuance of a Writ of Certiorarified Mandamus to quash the order dated 29.11.2013 and consequently to forbear him to dispossess her from the subject property. This Court, by order dated 10.08.2017, allowed the writ petition and remitted back before the authority concerned.

8. This Court seeks for clarification in para 7 of the affidavit the order passed by this Court in W.P(MD).No.16098 of 2014, dated 10.08.2017, but the order copy has not been furnished in the typed set of papers. Secondly, the petitioner already filed the



execution petition in E.P.No.2 of 2017 before the trial Court for disobedience of decree and the same is also pending. Thirdly, the petitioner has also filed CrI.O.P(MD).No.16031of 2017 to quash the proceedings initiated against him under Section 107 Cr.P.C. Now, the present petition is filed to consider his representation dated 28.06.2018 and to give police protection for constructing a compound wall cannot be sustained.

9.From the aforesaid facts and reasons, the prayer sought for in the present writ petition cannot be entertained, mainly on the ground that the petitioner has not furnished the subsequent order passed by the Public Works Department, Water Resource Organization, Parthipanoor Dam Sector through its Junior Engineer and secondly, the said order was quashed by this Court and liberty is granted, so far, no order has been passed by the department. Except the statement made in the affidavit, but no order copy has placed before this Court, for the above said proceedings. Therefore, subject matter in this writ petition is now pending before the Civil Court, in E.P.No.2 of 2017 in O.S.No.101 of 2005 on the file of the District Munsif Court, Paramakudi. *prima facie*, no case is made out to entertain the writ petition and consequently, the same is liable to be dismissed.

10.Accordingly, the Writ Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD I)

/True Copy/

Sub Assistant Registrar(CS I)

rmk

To

- 1.The Superintendent of Police,
Ramanathapuram District.
- 2.The Deputy Superintendent of Police,
Paramakudi,
Ramanathapuram District.
- 3.The Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.
- 4.The District Collector,
Ramanathapuram District.
- 5.The Tahsildar,
Paramakudi,
Ramanathapuram District.



6.The Paramakudi Municipality
Through its Commissioner,
Paramakudi,
Ramanathapuram District.

7.The Executive Engineer,
The Public Works Department,
Water Resource Organisation,
Parthipanoor Dam Sector,
Ramanathapuram District.

1CC TO MR. T.R. JEYAPALAM, ADVOCATE SR 76113

1CC TO THE SPL GOVT PLEADER SR 76215

ES PM SAR 1

26 10 2018

5P 10C

W.P. (MD) No.16734 of 2018

and

W.M.P (MD) .No.14786 of 2018

31.07.2018