



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM:

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)No.16446 of 2018

E.Elavarasi

.. Petitioner

-Vs-

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

2.The Inspector of Police,
Tenkasi Police Station,
Tirunelveli District.

3.J.Karthick

.. Respondents

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the respondent police to give adequate protection for both life and limb as well construction of building as per the court decree.

For Petitioner	: Mr.Shemadaniel
For Respondents	: Mr.K.Suyambu Linga Bharathi for R1&2 Government Advocate (Crl. Side)

ORDER

This petition has been filed seeking for police protection.

2.The learned counsel for the petitioner would submit that the property in question became a subject matter in O.S.No.442 of 2003 which was filed seeking for the relief of declaration of title, permanent injunction and mandatory injunction. This suit came to be decreed by judgment and decree, dated 06.07.2004. This became a subject matter of appeal and second appeal before this Court and concurrently both the Courts sustained the judgment and decree of the trial Court in favour of the petitioner and her children. Thereafter, the petitioner has filed E.P.No.201 of 2005 before the Principal District Munsif Court, Tenkasi, to execute the decree. The learned Principal District Munsif, Tenkasi, by an order, dated 20.02.2018, permitted the petitioner to put up the construction on the basis of the decree that was passed in her favour.

3.The learned counsel would submit that subsequent to the order passed by the Executing Court, when the petitioner attempted to put up the construction, the third respondent started to give



trouble and was threatening the petitioner with dire consequences. Therefore, the petitioner gave a representation, dated 25.08.2018, to the respondent police seeking for police protection. Since the respondent did not act on the representation, the present petition has been filed.

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4.The learned Government Advocate (Crl. Side) would submit that since there is a chance of breach of peace in the area, the police have registered an FIR in Crime No.164 of 2018 and referred the same to the Sub Divisional Magistrate (Revenue Divisional Officer), Tenkasi, under Section 107 of Cr.P.C.

5.This Court is not able to appreciate the stand taken by the second respondent. When the petitioner has a valid decree in her favour and has also obtained an order from the Executing Court, no one can prevent the petitioner from proceeding to act in accordance with the order passed by the Executing Court. In this case, it is seen that the petitioner has obtained a judgment in the Civil Court against the Tenkasi Municipality. Therefore, the Municipality is ensuring that the petitioner does not enjoy the fruits of the decree. The second respondent ought not to have referred this case under Section 107 of Cr.P.C to the Executive Magistrate. In this case, curiously the second respondent has gone ahead and filed a final report under Section 107 of Cr.P.C before the Executive Magistrate and the same is illegal and opposed to the provisions of the Code of Criminal Procedure. Therefore, the said final report itself is non-est in the eye of law.

6.The second respondent is directed to consider the representation, dated 25.08.2018 made by the petitioner and provide her with necessary police protection in order to enable her to proceed further to put up the construction in accordance with the order passed by the Executing Court in E.A.No.32 of 2018, dated 20.02.2018.

7.Accordingly, this Criminal Original Petition is disposed of with the above direction.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-II)

To

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



2.The Inspector of Police,
Tenkasi Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC To MR.M.SHEMA DANIEL, Advocate SR. NO. 84818

CRL.O.P. (MD) No.16446 of 2018

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