



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Cr1.O.P. (MD) .No.5533 of 2011

and

M.P (MD) .No.1 of 2011

H.Ghyaz Ahmed

...Petitioner/Defacto-
Complainant

Vs.

1. The Secretary
Home Department
Fort St.George
Chennai 600 009
Omandur Estate, Mount Road,
Chennai 600 002

2. The Commission of Police
Mannarpuram
Trichy - 20

3. The Assistant Commissioner of Police
Fort Police Station, Trichy -8

4. The Inspector of Police
Gandhi Market Police Station(Palakkarai)
Trichy -8

....Respondents 1 to 4/Complainant

5.H.Hakkim @ K.M.S Hakkim

6.T.M.Shamshudeen

7.Tajuddin

8.A.K.Khaja Kamaladdeen

...Respondents 5 to 8/Accused

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to restrain the 5th to 8th respondents/accused and others so as not to commit any illegal acts, not to commit any Criminal trespass at the petitioners place, crimes, offence and to protect the life and property of the petitioner and direct the Commissioner of Police, Mannarpuram, Trichy 20. The Assistant Commissioner of Police, Fort Police Station, Trichy 2 and the Inspector of Police, Gandhi Market Police Station (Palakkarai), Trichy - 8 as per police complaint, dated 04.03.2011, to register the case and investigate and take action against the 5th to 8th respondents /accused according to law.



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For Petitioner : Mr.H.Ghyaz Ahmed
Advocate-Party in person

For R1 to R4 : Mr.A.Robinson
Government Advocate
(Crl.Side)

For R5 : Mr.K.Hemakarthiskeyan

For R6 : Mr.P.Arun Jeyaram

For R7 : No appearance

R8 : Died

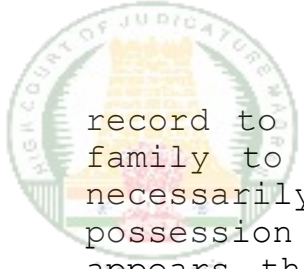
ORDER

This petition has been filed to restrain the 5th to 8th respondents/accused and others so as not to commit any illegal acts, not to commit any Criminal trespass at the petitioners place, crimes, offence and to protect the life and property of the petitioner and direct the Commissioner of Police, Mannarpuram, Trichy 20. The Assistant Commissioner of Police, Fort Police Station, Trichy 2 and the Inspector of Police, Gandhi Market Police Station (Palakkarai), Trichy - 8 as per police complaint dated 04.03.2011 to register the case and investigate and take action against the 5th to 8th respondents /accused according to law.

2.Heard the learned counsel appearing on either side.

3.The petitioner's father late.Thiru.R.W.Abdul Hafeez had entered into a lease agreement on 15.05.1965 with Kaja Main Private Wakf Estate. It is the case of the petitioner herein that the land alone belongs to the said private wakf and that the building in question was put up by his father after getting approval from the concerned authority. However, this is denied by the counsel for some of the private respondents, who points out in the schedule to the lease deed, dated 15.05.1965, the property is described as a hotel building.

4.Be that as it may, it appears that the property in question was in the possession and management of petitioner's father late Thiru.Abdul Hafeez till 1975, when he passed away. Thereafter, the petitioner's mother Mumtaj Begum was managing the said hotel. It also appears that there are litigations in respect of the said property. While so, on 14.10.2004, the petitioner's mother Mrs.Mumtaj Begum entered into an agreement for management of business with one Mr.S.Hakkim, who is shown as fifth respondent herein. The petitioner's mother Mumtaj Begum passed away in the year 2008. Thereafter, whatever rights which the petitioner's parents had devolved on the petitioner and his brother. There is nothing on

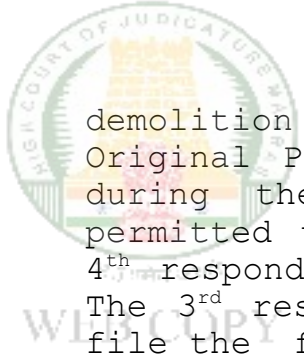


record to show that possession was surrendered by the petitioner's family to the lessor private wakf. Therefore, this Court has to necessarily come to the prima facie conclusion that the legal possession is vested only with the petitioner's family. While so, it appears that S.Hakkim @ K.M.S.Hakkim, the fifth respondent herein had chosen to surrender possession of the property to the 8th respondent, A.K.Khaja Kamaladdeen. The 8th respondent is said to have later passed away.

5.It is further seen that the 8th respondent had sold the property to the wife and son of the 6th respondent T.M.Shamshudeen. Thereafter, the property appears to have been sold to Mr.P.T.Rajan and Mr.Periyathambi in the year 2016. The position that obtains as on date is that the entire building has been demolished. This Court posed a specific question as to whether prior permission from the Corporation was taken before carrying out such demolition. The answer is in the negative. The hotel building, which was in the possession of the petitioner's family for more than 40 years appears to have been demolished.

6.In these circumstances, as early as on 04.03.2011, the petitioner herein has given a complaint to the Commissioner of Police, Trichy. The same was forwarded to the Inspector of Police, Gandhi Market Police Station, Palakkarai, Trichy. C.S.R dated 04.03.2011 was also assigned. But, then after obtaining opinion from the learned Government Counsel, the case was closed as if it was civil in nature. This Court has to necessarily express its shock and surprise as to how the case could have been closed as something civil in nature. The petitioners family was admittedly in possession of the hotel building. The petitioner's specific claim is that though the lease deed describes the leased property as a hotel building, it was the petitioner's father, who put up the building after getting approval from the concerned authority. The petitioner also placed the materials to show that his family was running the hotel.

7.The 5th respondent admittedly derived his right to manage the hotel business only in terms of document dated 14.10.2004 executed by the petitioner's mother, Mrs.Mumtaj Begum. Therefore, it is not known as to how the 5th respondent bypassed the petitioner's mother and handed over the possession to the 8th respondent herein. Of course, this Court cannot pronounce any final opinion in the matter at this stage. Suffice to say that the allegation made by the petitioner constitute cognizable offences. Admittedly, the management rights alone were conferred on the the 5th respondent. The petitioner submits that the articles and other furniture in the hotel are not presently available. If all the articles belonging to the petitioner have been removed or moved without his consent, the said offence would attract the offence of theft. Admittedly, the building was demolished without any prior permission. This would attract the offence of mischief. He would also make allegations regarding breach of trust and mis-appropriation. Since the



demolition of the building had taken place after this Criminal Original Petition was filed and since alienation had taken place during the pendency of these proceedings, the petitioner is permitted to file a fresh complaint before the 4th respondent. The 4th respondent is directed to register the petitioner's complaint. The 3rd respondent is directed to take over the investigation and file the final report within a period of three months thereafter.

8. With these directions, this Criminal Original Petition is allowed, accordingly. Consequently, the connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Secretary to Government of Tamilnadu,
Home Department, Fort St. George,
Chennai 600 009, Omandur Estate, Mount Road,
Chennai 600 002.
2. The Commission of Police,
Mannarpuram, Trichy - 20.
3. The Assistant Commissioner of Police.
Fort Police Station, Trichy -8.
4. The Inspector of Police.
Gandhi Market Police Station (Palakkarai). Trichy -8.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr. K. Hemakarthiskeyan, Advocate, SR.No. 74790
+1CC to Mr. H. Ghayaz Ahmed, Advocate, SR.No. 74651

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(1/4)

MSA

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