

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.15409 of 2016
and CrI.M.P.No.7616 of 2016

Ari Krishnan

... Petitioner/Accused

Vs.

State represented by
Sub-Inspector of Police,
Bahour Police Station,
Puducherry.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in STC No.53/2016 on the file of Judicial Magistrate IV, Puducherry and Quash the same.

For Petitioner : Mr.K.Chandrasekaran

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor (Pondy)

ORDER

This petition has been filed to call for the records in STC No.53/2016 on the file of Judicial Magistrate IV, Puducherry and quash the same.

2. The learned counsel for the petitioner would submit that the petitioner is a cultivating tenant for the properties belonging to the Moolanathar Temple comprised in S.No.94/1 measuring an extent of 02-32-50 hectare situated in Bahour Village from the year 1975. Further he submitted that the land in respect of S.Nos.95/195/2, 95/3, 95/4, 95/5, 95/6, 95/7, 95/8 measuring totally to an extent of 5-13-00 hectares were acquired under Land Acquisition Act by the Education Department, Government of Puducherry for the purpose of constructing mini stadium. Further submitted that the petitioner also filed writ petition challenging the proceedings in W.P.No.21208 of 2013 and this Court by an order dated 01.08.2013 restrained the respondents 1 and 2 for carrying out any kind of development in

the said land. He also submitted that the temple filed petition under Section 3 (4) (2) of Pondicherry Cultivating Tenants Protection Act against the petitioner for eviction before the Sub Divisional Magistrate(Revenue Court), Pondicherry in PCTPA No.6 of 2003, wherein the petitioner filed counter and it is still pending. He further submitted that as such petitioner is in possession and enjoyment of the property. Therefore, there is no question of trespassing and removing the sports post and sand from the said land. He further submitted that the petitioner is aged about more than 65 years as such he prayed for quashment of the said proceedings.

3. The learned Additional Public Prosecutor would submit that the petitioner is the sole accused and he has been charged for the offence under Section 447, 427 I.P.C. for the occurrence on 20.08.2013 that he trespassed into the property comprised in S.No.94 / 1 situated at Bahour Village, Pondicherry and also removed the sports post and sand. Therefore he was charged for the offence and there are averments and materials to connect the petitioner with the charge. Further he submitted that as per the statement of Deputy Director (Sports & Youth Services), Directorate of School Education, Puducherry given on 20.08.2013, he lodged a complaint alleging that the land measuring 2.32.50 hectares in S.No.94/1 Bahour Village was acquired by the Education Department, Pondicherry after due process of law. The said land was taken possession by the Department on 13.12.2012. While being so, the petitioner is showing the order passed in W.P.No.21208 of 2013 by an order dated 01.08.2016 as if the respondents are restrained from the peaceful possession and enjoyment and also removing of the Sports post and sand. Further he submitted that the independent witnesses also reiterated the same and as such there are incriminating evidences as against the petitioner to proceed with the trial. Therefore, he sought for the dismissal of this quash petition.

4. Heard, the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

5. The petitioner is the sole accused and he has been charged for the offence under Section 447, 427 I.P.C. It is seen that as against the petitioner, the Arulmighu Sri Moolanathar Temple filed proceedings in PCTPA.No.6/2003 before the Sub Divisional Magistrate(Revenue Court), Pondicherry under the Pondicherry Cultivating Tenants Protection Act for eviction of the petitioner herein from the property comprised in Survey No.94/1 measuring to an extent of 4 ½ khani and it is also pending. Pending the said petition, the petitioner filed writ petition in W.P.No.21208 of 2013 in which this Court passed an order dated 01.08.2013 and thereby restrained the first and second respondents namely, the Land Acquisition Officer and the

Revenue Secretary from carrying of any kind of development in the said land. Therefore, no injunction was granted in favour of the petitioner from restraining the revenue officials from interfering with the peaceful possession and enjoyment of the petitioner.

6. It is seen that on showing the said judgment, the petitioner entered into the disputed property comprised in S.No.94/1 on 20.08.2013 and also damaged the Sports post. It is also seen from the statement of Deputy Director (Sports & Youth Services), Directorate of School Education, Puducherry and also independent witnesses. Therefore there is a clear incriminating evidence as against the petitioner to sustain the charge. Therefore, this Court is not inclined to grant the prayer sought for by the petitioner. However, the petitioner is at liberty to raise all the points before the learned Judicial Magistrate IV, Puducherry in STC.No.53 of 2016. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

7. Considering the case is of the year 2016, the trial Court is directed to complete the trial within a period of six months from the date of receipt of this order.

8. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

pds/lok

To

1.Sub-Inspector of Police,
Bahour Police Station,
Puducherry.

WEB COPY

2. The Judicial Magistrate IV,
Puducherry

3. The Additional Public Prosecutor (Pondy)

+1cc to The Public Prosecutor, Puducherry sr.22424

+1cc to Mr.K.Chandrasekaran, Advocate sr.22424

CrI.O.P.No.15409 of 2016
and CrI.M.P.No.7616 of 2016

rsi(co)
nr 12/06/2019



WEB COPY