

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.20438 of 2015
and
Crl.M.P.No.1 of 2015

1.Manimala
Inspector,
Hindu Religious Charitable
Endowment Department,
Sangari Town and Taluk,
Salem District.

2.T.Thangavel
3.Eswaran
4.Anna Durai
5.Raju
6.Mani
7.Ravichandran
8.Ramesh
9.Sambu

...Petitioners

Vs

C.Kandasamy

.. Respondent

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in pursuant to case in S.T.C.No.786 of 2015 on the file of Judicial Magistrate No.1, Sangari and quash the same.

For Petitioner : Mr.S.Sathiyaseelan

For Respondent : Mr.J.Prakasam

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O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.786 of 2015 pending on the file of the learned Judicial Magistrate No.1, Sangari.

2.The petitioners were arrayed as accused in a private complaint filed by the respondent in S.T.C.No.786 of 2015 having been taken cognizance for the offence under Sections 147, 148, 294(b), 341, 506(ii) IPC.

3.It is seen that the 2nd and 4th petitioners took part in a tender conducted by the 1st petitioner on 25.04.2013, in order to take the land for lease in Survey No.205/1 to an extent of 2.80 acres and in Survey No.2.5/3 to an extent of 0.59.5 hectares, which belongs to the Koneripatti Arulmighu Bathrakalli Amman Temple. Previously, the said property was leased out to the respondent herein. After lapse of three years, fresh lease was conducted by the first respondent i.e., Hindu Religious Charitable Endowment Department, Sangari Town, Salem District and the petitioners 2 and 4 were the successful bidders and the above said property was leased out to them and they have also paid the requisite lease amount to the Hindu Religious Charitable Endowment Department. Even after getting the lease agreement, the respondent, who is the previous lease holder continued to enjoy possession of the said land. Therefore, the petitioners 2 & 4 approached H.R.&C.E. Department seeking an order to vacate the respondent from the land and handover the possession to the petitioners 2 and 4. Since no positive direction has come, the petitioners 2 and 4 filed W.P.No.29584 of 2014 seeking direction to the HR&CE Department to handover the possession of the said property to them. In that Writ Petition, this Court by an order dated 07.01.2015, directed the Assistant Commissioner, Hindu Religious Charitable Endowment Department and the 1st petitioner herein to take further steps to implement the order dated 19.05.2014 followed by communication dated 23.05.2014 and 27.06.2014 by initiating appropriate action in accordance with law as expeditiously as possible. In compliance to the order, the first petitioner along with police personnel have taken possession of the said property from the respondent herein and the same was witnessed by the Village Administrative Officer and the Assistant Commissioner, Hindu Religious Charitable Endowment Department, on 30.04.2014. Thereafter, on 17.03.2015, the impugned complaint was filed by the respondent alleging that the petitioners have trespassed into the property and had illegally taken possession from the respondent and handed over the possession to the petitioners 2 and 4 herein.

3.Heard Mr.S.Sathiyaseelan, learned counsel for the petitioners 2 to 9 and Mr.J.Prakasam, learned counsel for the respondent.

4.The learned counsel for the petitioner rightly pointed out that there was a bar under Section 85 of HR&CE Act, which reads as follows:

85. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in faith, done or intended to be done in pursuance of the provisions of this chapter

or any order made in pursuance of any of those provisions.

(2) No suit or other legal proceeding shall lie against the Tribunal, Commissioner, Deputy Commissioner or Assistant Commissioner for any damage caused or likely to be caused by anything, in good faith, done or intended to be done in pursuance of the provisions of this chapter or any order made in pursuance of any of those provisions.

He further submitted that there is a clear bar to initiate any proceedings as against any officials. Therefore, the complaint is vitiated.

4. On perusal of the documents, it shows that the petitioners 2 and 4 were successful bidders and they were awarded lease of the property for a period of three years, pursuant to which possession was taken by the authorities. Therefore, the possession was not taken illegally by the petitioners and it was taken only by the officials based on the order passed by this Court in W.P.No.29584 of 2014 dated 07.01.2015. Therefore, the complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

5. Accordingly, this Criminal Original Petition is allowed. Connected miscellaneous petition is also closed.
rm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.1,
Sengari.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sathiyaseelan, Advocate, SR.No.37383
+1cc to Mr.J.Prakasam, Advocate, SR.No.37382

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Kak(21/06/2019)