

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.9721 of 2018 and
W.M.P.No.11641 of 2018

Thirunagari Sri Kalyana Renganathaswamy
Devasthana Family Private Trust,
rep by its trustee V.Hari Narayanan,
No.49, Seetharam Nagar, Cuddalore ... Petitioner

Vs.

- 1.The Inspector of Police,
District Crime Branch,
In charge of Officer of the
Anti-Land Grabbing Special Cell,
Nagapattinam
- 2.The Revenue Divisional Officer,
Kuttalam,
Nagapattinam District
- 3.S.R.V.Narayanan
- 4.R.Srinivasan ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in relation to the order dated 03.04.2018 and quash the same as illegal and invalid and consequently restrain respondents from interfering with the petitioner's peaceful possession and enjoyment of the properties at S.Nos.258/2, 260, 262/2, 263/1, 269 situated at Thirumanacherry Village, Kuttalam Taluk, Kuttalam Sub-Registry, Myiladuthurai Registration except by due process of law.

For Petitioner : Mr.T.S.Baskaran
For Respondents
For R1 and R2 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For R3 and R4 : Mr.R.Srinivas

ORDER

By consent of both parties, the main writ petition is taken up for final disposal.

2. This writ petition has been filed challenging the order passed by the first respondent dated 03.04.2018 thereby directing the petitioner as well as respondents 3 and 4 to maintain status-quo in respect of the property admeasuring 5.09.5 acres comprised in S.No.258/2, 260, 262/2, 263/1, 269 situated at Thirumanacherry Village, Kuttalam Taluk, Myiladuthurai.

3. The learned counsel for the petitioner submitted that the petitioner is a trust represented by one of its trustees. The respondents 3 and 4 filed a suit in O.S.No.77 of 2015 on the file of the learned Principal Subordinate Judge, Myladudurai for declaration and recovery of possession in respect of the above said property as against the petitioner. Though the petitioner filed written statement, the petitioner was set ex parte and ex parte decree was passed on 21.10.2016. In pursuant to the ex parte decree, the respondents 3 and 4 filed execution petition for recovery of possession in E.P.No.88 of 2017 and on receipt of notice from the execution proceedings, the petitioner came to know about the ex parte decree. Thereafter he filed a petition to set aside the ex parte decree along with a condone delay petition, in which delay was condoned and the petition to set aside the ex parte decree is still pending for consideration. While being so, the third and fourth respondents were trying to take possession of the said property from the petitioner trust and as such the petitioner approached the first respondent and lodged a complaint. The first respondent conducted enquiry and in fact the third respondent was also present during the enquiry. Thereafter, the impugned order was passed without any power and jurisdiction by the first respondent herein.

4. He further submitted that the impugned order referred the proceedings of the second respondent and recorded that the third and fourth respondents are in possession and enjoyment of the said property and if any dispute arises over the said property both the parties are directed to approach the concerned civil court for appropriate relief, and in the meanwhile both the parties are directed to maintain status quo. He further pointed out that the first respondent inspected the disputed property and found that the third and fourth respondents are in possession and enjoyment of the said property and directed to maintain status quo. In fact it is seen from the suit filed by the third and fourth respondents herein for declaration and recovery of possession, that in pursuant to the ex parte decree, they filed execution petition for recovery of possession of the

said property. Further he submitted that the execution petition itself clearly says that the third and fourth respondents are not in possession and enjoyment of the property. Moreover the first respondent has absolutely no power to inspect the property when admittedly there is a civil suit still pending between the parties. Therefore, he prayed for quashment of the impugned order.

5. Per contra, the learned counsel for respondents 3 and 4 filed counter and submitted that their grandfather one, Mr.Narayanasamy Reddiar executed a deed of settlement in respect of the said property to the private family charities called Thirunagari Sri Kalyana Renganathaswamy Devasthanam. He had two sons and they had male descendants, who will administer and manage the trust and its properties. He further submitted that there is a specific clause that the elder son will administer the trust for the first three years and thereafter his younger brother will administer the trust and for the next three years by the only male descendant of the respective branches. After death of the elders, now the petitioner and the third and fourth respondents are the male descendants of their respective branches. While being so, there is a dispute and as such the third and fourth respondents filed the suit in O.S.No.77 of 2015 for declaration and recovery of possession. The suit was allowed and ex parte decree was passed and now execution petition is pending.

6. He further submitted that the petitioner is a trustee and he filed the writ petition as if he is the sole trustee and he is in possession and enjoyment of the entire property and suppressed the fact that the respondents 3 and 4 are also trustees as per the trust deed. He further submitted that the first respondent passed the order only on the basis of Revenue Divisional Officer report and directed to maintain only status quo. He further submitted that admittedly the suit proceeding is pending as such he prayed for dismissal of this writ petition.

7. The learned Additional Public Prosecutor appearing for respondents 1 and 2 submitted that the petitioner submitted a representation dated 22.02.2018 before the first respondent. The first respondent conducted enquiry and found that as per revenue records, the third and fourth respondents are in possession and enjoyment of the above said property. Hence, the first respondent passed the impugned order dated 03.04.2018 thereby directing the petitioner as well as respondents 3 and 4 to maintain status-quo in the meanwhile in respect of the above said property and to approach the civil court for appropriate relief on finding any dispute over the property. Therefore, this writ petition is liable to be dismissed.

8. Heard the learned counsel for the petitioner, the

learned counsel for respondents 3 and 4 and the learned Additional Public Prosecutor appearing for respondents 1 and 2.

9. The third and fourth respondents filed a suit in O.S.No.77 of 2015 for declaration and recovery of possession in respect of the property comprised in S.No.258/2, 260, 262/2, 263/1, 269 situated at Thirumanacherry Village, Kuttalam Taluk, Myiladuthurai before the learned Principal Subordinate Court, Myladudurai. The petitioner was set ex parte and ex parte decree was passed on 21.10.2016. Thereafter the petitioner filed set aside petition along with condone delay petition and after allowing the condone delay petition, the set aside petition is still pending in IA.No.221 of 2017 on the file of the learned Principal Subordinate Court, Myladudurai.

10. It is also seen that there is a trust called Thirunagari Sri Kalyana Renganathaswami Devasthanam and it was created by one, Narayanasamy Reddiar. The said trust would be administered in terms of three years by male descendants of the respective legal heirs. There are two branches Rengasamy Reddiyar and Srinivasa Reddiyar. Through the said descendants the petitioner and respondents 3 and 4 are representing two branches respectively. In this regard, there was a dispute and finally patta was issued in favour of the trust, the petitioner and respondents 3 and 4 by the Revenue Department in patta No.4. While being so, on the complaint from the third and fourth respondents, the first respondent conducted enquiry and inspected the property and passed the impugned order thereby directing the petitioner and respondents 3 and 4 to maintain status quo and if any dispute they are directed to approach the civil court for appropriate relief.

11. Admittedly there is a suit proceeding pending for the very same property and the first respondent without even conducting any enquiry mechanically passed this order. Moreover the first respondent has no power or jurisdiction to inspect the property to find out the possession when the civil suit is pending. That apart there is no other allegations as against the petitioner or against the third and fourth respondents and when it being so the first respondent ought not to have deputed police personnel to inspect the suit property, that too to find out the possession and enjoyment of the property. Admittedly the entire property belongs to the trust and in turn of three years, the petitioner and respondents 3 and 4 are entitled to administer the trust and in this regard there is a dispute, and a suit is also pending. Therefore, the impugned order has no legs to stand further and it is liable to be quashed.

12. Accordingly, the writ petition is allowed and the impugned order 03.04.2018 passed by the first respondent is

quashed. Further the first respondent is directed not to interfere with the civil disputes between the petitioner and respondents 3 and 4 herein. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(Ins.cell)

//True copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
District Crime Branch,
In charge of Officer of the
Anti-Land Grabbing Special Cell,
Nagapattinam

2.The Revenue Divisional Officer,
Kuttalam,
Nagapattinam District

3.The Public Prosecutor,
Madras High Court, Chennai

+1cc to Mr.T.S.Baskaran , Advocate SR.No.36709

+1cc to Mr.R.Srinivas, Advocate SR.No.37538

W.P.No.9721 of 2018

RSV (CO)
GMY (27/06/2019)

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