

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.19769 of 2019
in W.M.P.No.19288 of 2019

S.Jayaprakash

... Petitioner

-Vs-

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

2.The Sub Inspector of Police,
Kallakurichi Police Station,
Villupuram District.
(CSR No.359 of 2019).

3.V.Arjunan

4.Pandia Veeram

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus directing the respondents 1 and 2 to take stringent action against the respondents 3 and 4 and also to provide police protection to the petitioner so as to demolish the dilapidated structures in the subject matter property measuring 2200 sq.ft, in Natham S.No.541/38, bearing Door No.23-D-11, Rajaji Nagar, Kallkurichi, Villupuram District by considering his representations dated 17.06.2019 and 19.06.2019.

For Petitioners : M/s.N.Manokaran

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
for R1 and R2

ORDER

This writ petition has been filed seeking for police protection.

2. It is seen from records that the 4th respondent was originally the owner of the property and he owed certain sums of money to one Chakravarthy. The said Chakravarthy filed a suit in O.S.No.359 of 2004 for recovery of money and in the said suit, an application came to be filed for attachment of the property before judgment. The 4th respondent gave an undertaking that he will not create any encumbrance to the property, and on the basis of the same, the petition was also closed. Ultimately, the suit came to be decreed by a judgment and decree dated 14.09.2004. However, the 4th respondent proceeded to execute a sale deed in favour of his brother, who is the 3rd respondent.

3. The decree holder viz., Chakravarthy filed E.P.No.90 of 2006 and the property belonging to the 3rd and 4th respondents was attached by an order dated 03.08.2006 and this was also communicated to the concerned Sub Registrar Office. The property was brought for sale and it was purchased by one S.Kalaiarasi in the Court auction sale on 30.07.2008. The sale certificate was also issued in favour of the said Kalaiarasi and the possession of the property was also handed over to her.

4. The petitioner entered into an agreement of sale with that said Kalaiarasi. Since Kalaiarasi executed a sale deed in favour of the petitioner, the petitioner filed a suit in O.S.No.91 of 2011, seeking for the relief of specific performance. The suit was decreed in favour of the petitioner by judgment and decree dated 16.08.2011. The sale deed was also executed in favour of the petitioner through the Court in E.P.No.1 of 2012 on 02.04.2012. The petitioner also filed E.P.No.42 of 2012, seeking for delivery of possession and the possession was also ordered in favour of the petitioner on 20.01.2016.

5. In the meantime, the Kalaiarasi, filed a petition to set aside the ex-parte decree and the same was dismissed and this became a subject matter of challenge before this Court in CRP.No.2532 of 2018 and this Court dismissed the revision petition by an order dated 28.02.2019. This order was also confirmed by the Hon'ble Supreme Court by an order dated 05.04.2019. The petitioner has sought for police protection to break open and hand over the property in favour of the petitioner and the Court Amin along with the police aid went to the property on 04.06.2019 and the 4th respondent sought for some time to vacate the property. The delivery was effected on 15.06.2019 and the petitioner took possession of the property. However, it is the grievance of the petitioner that the 3rd and 4th respondents again committed criminal trespass into the property and this was informed to the Execution Court and Execution Court did not act upon the same and therefore the

petitioner gave a complaint before the respondent police and the same was taken on file in CSR.No.359 of 2019. Subsequently, since no action was taken by the respondent police, the present writ petition has been filed before this Court, seeking for police protection against the 3rd and 4th respondent and to enable the petitioner to enjoy the property.

6. Mr.N.Manoharan, learned counsel appearing on behalf of the petitioner submitted that the 3rd and 4th respondents cannot be permitted to take law into their own hands and the 3rd and 4th respondents have lost before the Civil forum and if at all they have any right over the property, the same can be agitated only before the Competent Civil Court and they cannot be permitted to trespass into the property in spite of the possession being handed over to the petitioner through the Court Amin by the Execution Court. The learned counsel submitted that the police cannot be a mere spectator for the illegal action on the part of the 3rd and 4th respondents and therefore, necessary directions will have to be given by this Court to ensure that the 3rd and 4th respondents do not exert any threat over the petitioner and they do not interfere with the possession and enjoyment of the property.

7. Heard, the learned Additional Public Prosecutor appearing on behalf of the respondent police.

8. Taking into consideration the facts and circumstances of the case, the second respondent is directed to immediately summon the parties for enquiry and instruct the 3rd and 4th respondents not to go anywhere near the property or in any way exert threat against the petitioner. They shall be directed to workout their remedy only before the Competent Civil Court. If in spite of the same, the 3rd and 4th respondents attempt to exert any threat or interfere in the enjoyment of the property, immediately action shall be taken against them and if necessary police protection can be granted in favour of the petitioner.

9. This Writ Petition is disposed of with the above direction. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Sub Inspector of Police,
Kallakurichi Police Station,
Villupuram District.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.N.Manokaran, Advocate, S.R.No.57742

W.P.No.19769 of 2019

RJI (CO)
SSM(30/07/2019).



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