

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.02.2019
CORAM
THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.29482 of 2018 and
W.M.P.No.34448 of 2018

A.Gunasekaran

...Petitioner

Vs

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai - 600 004.
2. The Superintendent of Police,
Namakkal,
Namakkal District.
3. Bharathi Mohan
Inspector of Police,
Tiruchengode Town Police Station,
Namakkal District.

4. S.N.Pandian

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 and 2 to take action against the third respondent for misusing his police power in the civil dispute to help the fourth respondent to take forcible possession of the petitioner's six shop and for fencing the property measuring 2104 Sq.ft. bearing T.S.No.57/1 (Old S.No.91/2), Tiruchengode Town, Namakkal District by restoring this right to property on the basis of his representation dated 22.08.2018, 10.09.2018 and 05.10.2018.

For Petitioner : Mr.N.Manokaran

For Respondents

For R1 & R2 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
For R3 : No appearance
For R4 : Mr.ARL.Sunderasan

Senior Counsel for Mr.J.Titus Enock

ORDER

This writ petition has been filed for direction to direct the first and second respondents to take action against the third respondent for misusing his police power in the civil dispute, in order to help the fourth respondent

to take forcible possession to six shops and for fencing the property ad measuring 2104 Sq.ft. situated at New No.T.S.57/1, old Survey No.91/2, Tiruchengode Town, Namakkal District, and also to restore the petitioner's right to the property on the basis of representation his representation dated 22.08.2018, 10.09.2018 and 05.10.2018.

2. The learned counsel appearing for the petitioner would submit that the petitioner and his wife purchased the property comprised in Survey No.57/1, situated at Tiruchengode Town, Namakkal District, by way of five sale deeds ad measuring 4843½ Sq.ft. Thereafter one Muthumanickam purchased a property to the extent of 2394 Sq.ft. by the sale deed dated 06.04.2018 and attempted to interfere with the right and possession of the property owned by the petitioner ad measuring 4843½ Sq.ft. He further submitted that the petitioner also purchased three lands in Survey Nos. TS.Nos.54,55 and 56 by a sale deed dated 03.02.2012. At the same time, the said Muthumanickam and the fourth respondent had allegedly purchased an extent of 4336 Sq.ft under the sale deed dated 20.02.2012, inclusive of the petitioner's land purchased by the sale deed dated 30.02.2012. Therefore, the petitioner filed a suit in O.S.No. 106 of 2017 on the file of the learned District Munsif Court, Tiruchengode as against the said Muthumanickam and fourth respondent herein for the relief of permanent injunction and also to declare that the sale deed dated 20.02.2012, purchased by the said Muthumanickam as null and void.

2.1. The petitioner also filed a suit in O.S.No.31 of 2018 on the file of the District Munsif Court, Tiruchengode as against the fourth respondent herein for permanent injunction and also for declaration that the sale deed dated 20.02.2012 as null and void. The petitioner also filed an another suit in O.S.No.103 of 2017 on the file of the Principal District Court, Namakkal as against the said Muthumanickam and four others for the 7018 Sq.ft. and also to declare that the sale deed dated 06.04.2011 stood in the name of Muthumanickam as null and void.

2.2. The learned counsel appearing for the petitioner further submitted that in the land measuring 2104 Sq.ft comprised in T.S.No.57/1 situated on the east of north south bus stand road, the petitioner constructed six shops and leased out to the tenants. He further submitted that the fourth respondent started disturbing his tenants in the shop constructed in TS.No.57/1 on 11.05.2017. Immediately the petitioner lodged a complaint and the same was acknowledged by the third respondent police and issued C.S.R.No.120 of 2017 dated 13.05.2017. Thereafter, the respondents 3 and 4 have colluded together and the third respondent issued summon to the petitioner to appear for enquiry. In the

enquiry, they compelled the petitioner to hand over the possession of the said six shops to the fourth respondent. The third respondent also compelled and also threatened the petitioner that he will convert the civil case into criminal case, if the petitioner not handed over the possession of the said shops. Thereafter, the fourth respondent along with the said Muthumanickam trespassed into the petitioner's shops and forcibly took possession and erected wire fencing in front of the six shops owned by the petitioner. Immediately, the petitioner lodged a complaint before the third respondent, but he refused to receive the same. He further submitted that the mob headed by the third and fourth respondents forcibly vacated the tenants and locked the shops and illegally taken the entire possession of the said shops.

2.3. In the mean while, the third respondent also registered a false case in Crime No.512 of 2018 for the offences under Sections 427, 448, 468, 471 and 506(ii) of IPC on the false allegations that as if the petitioner trespassed into the fourth respondent's property and try to grab the property comprised in Survey number TS.No.57/1. Though the petitioner lodged so many complaints before the second respondent, but all are ended in vain. Therefore, the petitioner filed a suit in O.S.No.148 of 2018, before the District Munsif Court, Tiruchengode as against the respondents 2 to 4 and others for permanent injunction restraining them from registering false case as against the petitioner or putting up construction and the same is pending. In the said suit an Advocate Commissioner was appointed in I.A.No.495 of 2018 to note down the existing physical features of the subject property. The learned Advocate Commissioner filed report stating that the fencing iron gate and iron sheet newly put up in the front of the shop and also the shops were locked. The stone pillars were also laid newly and the said stone pillar were not painted. He submitted that therefore, after taking illegal possession and custody of the said shops, the fourth respondent with the help of the third respondent put up fencing in front of the shops and locked the shops.

2.4. Further the learned counsel appearing for the petitioner relied upon the judgment reported in 2007 (3) LW 68 in the case of R.Mala Vs. The Secretary, Alanthur PAC Bank and others, in which, Madurai Bench of this Court held as follows :-

"7.14. The rule of law is not one way traffic. In Niranjana Singh v. Prabhakar (AIR 1980 SC 785) the Supreme Court of India observed that in our country intimidation by policemen is not an uncommon phenomenon and the judicial

process will carry credibility with the community only if it views impartially and with common sense.

7.15 I do not want to demoralise the Police Department as it would badly impair on the efficiency of the force. But, we cannot ignore the misdeeds of few thereby bringing bad name to all. Hence the Director General of Police and the Chief Secretary of the State must issue suitable instruction to the State Police not to interfere in any civil disputes.

7.16 I have no hesitation to conclude that the second respondent has unnecessarily interfered in a civil dispute and the second respondent has no authority to interfere in a civil dispute."

2.5. The learned counsel appearing for the petitioner further submitted that the police officials are not supposed to interfere in the civil matter in support of one party notwithstanding the property dispute pending before the Civil Court. The third respondent as mentioned above, impleaded in the personal capacity. Even though, he did not choose to appear before this Court by engaging separate counsel to appear on behalf of him and not filed any counter before this Court by denying the averments made in the affidavit filed in support of the main writ petition. Therefore, he sought for allowing the writ petition.

3. The learned Additional Public Prosecutor filed counter for the second respondent and submitted that the crime has been registered as against the petitioner and three others in Crime No.521 of 2018 for the offence under Sections 468, 471, 427, 448 r/w 506(ii) of IPC. On investigation it was found that the petitioner with an intention to grab the disputed property prior to the lodging of complaints, in the year 2017 and 2018, he also filed four civil suites for the said property. As against the fourth respondent and one Muthumanickam and others, three civil suits are filed before the civil Courts and as against the respondents 2 to 4 herein, a suit in O.S.No.148 of 2018 has been filed and the same are pending. The petitioner with an ill intention to grab the property, fabricated documents by way of registering his the property comprised in TSLR No.57, 59, 60, 61 which is located on the wester side old bus stand road in favour of his wife name by changing TSLR.No. as 54, 55 & 56, which was located in the eastern side of the old bus stand road, Tiruchengode.

3.1. Further the learned Additional Public Prosecutor contended that reports which were collected from the Commissioner, Tiruchegode Municipality reveals that the town survey numbers have not been changed and no property tax assessment exists for the said six shops on the eastern side of the old bus stand, Tiruchengode. Further TSLR.No.57, 59, 60 are belongs to Municipal Road, Tiruchengode. The petitioner herein with an ill intention to grab the fourth respondent property, he fabricated document and also filed civil suits. He further submitted that now crime has been registered as against the petitioner and the investigation is on progress. Therefore, he sought for dismissal of this writ petition.

4. The learned Senior Counsel appearing for the fourth respondent filed counter and also submitted that the fourth respondent along with one Muthumanickam purchased property comprised in Survey number T.S.No.54,55,56, and 57/1 A from the legal heirs of Mahabood Bi Ammal vide two separate sale deeds registered as Doc. No. 1141/2012 to an extent of 2697 Sq.ft., and vide Doc.No.2851 of 2013 to an extent of 1639 Sq.ft. and in total 4336 Sq.ft., and the fourth respondent is in possession and enjoyment of the same. In the said land, there are three terraced buildings, tiled and Ac building which was converted into six shops, which is the subject matter of the present writ petition and the same was in occupation of the tenants.

4.1. Further he submitted that the petitioner filed two suits as against the fourth respondent in O.S.No.106 of 2017 and O.S.No.31 of 2018 before the learned District Munsif, Tiruchengode, in respect of the very same property and the same were pending. Further contended that in the another suit in O.S.No.103 of 2017 filed by the petitioner as against one Muthumanickam and three others and not against the fourth respondent herein. The said suit was filed for restraining the defendants from alienating or encumbering the suit property and not for interim injunction with regard to the possession of the property comprised in TS.No.57/1.

4.2. The fourth respondent lodged a complaint as against the petitioner on 14.08.2018, and the summon was issued to the petitioner to appear for enquiry. But the petitioner was granted anticipatory bail from this Court and the enquiry is still pending. The petitioner fabricated the documents, as if the legal heirs of Mahabood Bi Ammal made an oral gift to one Mahaboob Sherrif, who in turn sold the property to the petitioner herein. On the complaint lodged by the said Muthumanickam, the Inspector of Police, Karungalpalayam Police Station, filed final report in C.C.56

of 2017 before the learned Judicial Magistrate No.1, Erode and the same is pending for trial.

4.3. Further the learned Senior Counsel appearing for the fourth respondent submitted that on 24.03.1997, all the legal heirs of Mahaboob Bi Ammal executed a registered gift settlement deed in favour of the Commissioner of Tiruchengode Municipality, gifting away land for an extent of 13,320 Sq.ft. to form 80 feet road and the possession was also handed over to the Tiruchengode Municipality. The Municipality also formed the Thar road for the extent of 40 feet and the remaining portion was occupied by the petitioner by forging the documents by putting T.S. numbers of the road in all the said documents. He further submitted that already a case has been registered as against the petitioner in Crime No.512 of 2018 on the complaint given by the fourth respondent and the entire issue is civil in nature. Therefore, he sought for dismissal of this writ petition.

5. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents 1 & 2 and Mr.ARL.Sunderasan, learned Senior Counsel appearing for the fourth respondent.

6. The petitioner filed this writ petition for direction to direct the respondents 1 and 2 to take action against the third respondent for misusing his police power in the civil matter in order to help the fourth respondent to take forcible possession of his six shops and for fencing the property measuring 2104 Sq.ft. in T.S.No.57/1 situated at Tiruchengode town, Namakkal district by restoring his right to property. It is seen that in respect of the subject property, the petitioner filed a suit in O.S.No.106 of 2017 as against the fourth respondent and one Muthumanickam for permanent injunction and for declaration to declare that the sale deed dated 20.02.2012 as null and void. In another suit in O.S.No.31 of 2018 on the file of the District Munsif Court, Tiruchengode as against the fourth respondent herein for the relief of permanent injunction and to declare the sale deed dated 20.02.2012 as null and void. It is also seen that the petitioner also filed yet another suit in O.S.No.103 of 2017 on the file of the Principal District Court, Namakkal as against the said Muthumanickam and four others for partition of the properties and also to declare the sale deed dated 06.04.2011 stood in the name of Muthumanickam as null and void. As such, there is no quarrel that the civil suits are pending before the civil Courts in respect of the subject property between the petitioner and the fourth respondent.

7. It is also seen that on the complaint lodged by the fourth respondent a case has been registered in Crime No.512 of 2018 for the offences under Sections 427, 448, 468, 471 and 506(ii) of IPC, in which the petitioner was obtained anticipatory bail from this Court in CrI.O.P.No.20556 of 2018 by an order dated 05.09.2018. Thereafter, the petitioner filed a suit in O.S.No.148 of 2018 on file of the District Munsif Court, Tiruchengode as against the respondents 2 to 4 for the relief of permanent injunction restraining them from registering a false FIR or putting up construction in the subject property and the same is pending. In the said suit an Advocate Commissioner was appointed and he also filed a report stating that in front of the disputed six shops, there are new fencing found with new stone pillars and also the shops are locked.

8. There is absolutely no quarrel that the civil suits are pending between the petitioner and the fourth respondent in respect of the shops situated in the property at measuring 2104 Sq.ft. comprised in T.S.No.57/1 (old S.No.91/2) Tiruchengode Town, Namakkal District. The entire dispute between the petitioner and the fourth respondent is civil in nature and both are claimed their right of ownership and possession for the said property.

9. In the light of the above background, whether the relief sought for in this writ petition is maintainable or not?

10. The petitioner sought for the relief that directing the respondents 1 and 2 to take action against the third respondent for misusing his power in the civil dispute to help the fourth respondent to take forcible possession of six shops and also for fencing the property ad measuring 2104 Sq.ft., by restoring his right to property. The question raised in this writ petition is that who is the owner of the suit property and who is in possession and enjoyment of the said property? These material questions, which arises for consideration in this writ petition. These are all the questions of fact and it cannot be decided in this writ petition filed under Article 226 of Constitution of India.

11. Admittedly, there are civil suits pending between the petitioner and the fourth respondent in respect of the subject property. The appropriate remedies for the parties are lying with civil Court that too between the private parties. The remedies filed under Article 226 of Constitution of India shall not be available except of some violation of statutory authority as alleged.

12. The learned counsel appearing for the petitioner cited the judgment passed by the Madurai Bench of this Court reported in 2007 (3) LW 68 in the case of R.Mala Vs. The Secretary, Alanthur PAC Bank and others, in respect of the interference by the police officials in the civil matters. Here in the case on hand, a case has been registered as against the petitioner in Crime No.512 of 2018 for the offences under Sections 427, 448, 468, 471 and 506(ii) of IPC, on so many allegations. Therefore, the said judgment is not applicable to the present case.

13. In this regard, the learned Additional Public Prosecutor relied upon the judgment dated 03.12.2018 passed by the Hon'ble Supreme Court of India in Civil Appeal No.11759 of 2018 in the matter of Roshina.T Vs.Abdul Azeez K.T. & others, which reads as follows :-

"15. It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (See Mohan Pande vs. Usha Rani, 1992 (4) SCC 61 and Dwarka Prasad Agrawal vs BD Agrawal, (2003) 6 SCC 230).

16. In our view, the writ petition to claim such relief was not, therefore, legally permissible. It, therefore, deserved dismissal in limine on the ground of availability of an alternative remedy of filing a civil suit by respondent No. 1 (writ petitioner) in the Civil Court.

17. We cannot, therefore, concur with the reasoning and the conclusion arrived at by the High Court when it unnecessarily went into all the questions of fact arising in the case on the basis of factual pleadings in detail (43 pages) and recorded a factual finding that it was the respondent No. 1 (writ petitioner) who was in possession of the flat and, therefore, he be restored with his possession of the flat by the appellant.

18. In our opinion, the High Court, therefore, while so directing exceeded its extraordinary jurisdiction conferred under Article 226 of the Constitution. Indeed, the High Court in granting such relief, had virtually converted the writ petition into a civil suit and itself to a Civil Court. In our view, it was not permissible.

19. Learned counsel for respondent No. 1, however, strenuously urged that the impugned order does not call for any interference because the High Court has proceeded to decide the writ petition on admitted facts.

20. We do not agree with the submissions of learned counsel for respondent No.1 for the reasons that first there did exist a dispute between the appellant and respondent No. 1 as to who was in possession of the flat in question at the relevant time; Second, a dispute regarding possession of the said flat between the two private individuals could be decided only by the Civil Court in civil suit or by the Criminal Court in Section 145 Cr.P.C proceedings but not in the writ petition under Article 226 of the Constitution.

This judgment passed by the Hon'ble Supreme Court of India is squarely applicable to the present case and the relief sought for in this writ petition is nothing but recovery of possession of the property, which likely taken by the fourth respondent with the help of third respondent. As such the prayer sought for in this writ petition cannot be considered by this Court.

14. It is also seen that a case has been registered in Crime No.512 of 2018 as against the petitioner for the offences under Sections 427, 448, 468, 471 and 506(ii) of

IPC by the Tiruchengode Town Police Station. After registering the case, the petitioner filed an another suit in O.S.No.148 of 2018 on the file of the District Munsif Court, Tiruchengode, as against the respondents 2 to 4 herein and others for the relief of permanent injunction restraining them from registering a false FIR or putting up construction in the property and the same is pending. The prayer sought for in the writ petition shows that only to escape from the clutches of law, the petitioner filed this writ petition. That apart, the dispute in respect of the possession of the said shops between the petitioner and the fourth respondent could be decided only by the civil Court in civil proceedings. It could not be decided in this writ petition filed under Article 226 of Constitution of India.

15. In view of the above discussions, this writ petition stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai - 600 004.
2. The Superintendent of Police,
Namakkal,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. N.Manokaran, Advocate SR.No. 13161

+1cc to Mr.J.Titus Enock , Advocate SR.No. 13006

W.P.No.29482 of 2018
and W.M.P.No.34448 of 2018

A.SK(15/02/2019)