



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

**THE HONOURABLE DR. JUSTICE VINEET KOTHARI,
ACTING CHIEF JUSTICE**

AND

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.A. [MD].No.117 of 2019

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Naina Mohamed

: Appellant/Petitioner

Vs.

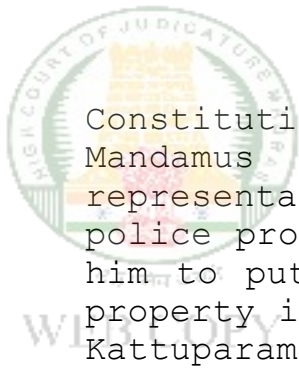
- 1.The Superintendent of Police,
Ramanathapuram District.
- 2.The Deputy Superintendent of Police,
Paramakudi
Ramanathapuram District.
- 3.The Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.
- 4.The District Collector,
Ramanathapuram District.
- 5.The Tahsildar,
Paramakudi
Ramanathapuram District.
- 6.The Paramakudi Municipality
Through its Commissioner,
Paramakudi,
Ramanathapuram District.
- 7.The Executive Engineer,
The Public Works Department
Water Resource Organisation,
Pathipanoor Dam Sector,
Ramanathapuram District.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act against the order of this Court dated 31.07.2018 in W.P.(MD) No.16734 of 2018.

Prayer in WP(MD). 16734/ 2018 :

<https://hcservices.ecourts.gov.in/hcservices/> Petition is filed under Article 226 of the



Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents 1 to 3 to consider the representation of the petitioner dated 28.06.2018 and to give police protection to life and limb of the petitioner and to enable him to put up compound wall enclosing and encircling the subject property in Survey No.14, Town Survey No.36, Block No.9, Ward G in Kattuparamakudi, Paramakudi Town, Ramanathapuram District

For Appellant : Mr.J.Barathan
For Respondents : Mr.A.K.Baskarapandian
RR1 to 5 and 7 : Special Government Pleader
R6 : Mr.M.Kannan

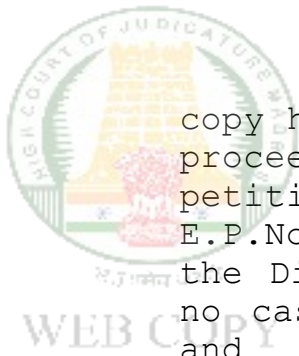
JUDGMENT

[Judgment of the Court was delivered by
Dr.Vineet Kothari, Acting Chief Justice]

The present writ appeal has been filed by the petitioner, Naina Mohamed, against the order made in W.P.(MD) No.16734 of 2018 by the learned single Judge dismissing the writ petition as filed by the petitioner seeking police protection in the course of execution of the decree of the civil Court passed in his favour in O.S.No.64/1984, which was subsequently renumbered as 101/2005, by the Munsif Court, Paramakudi.

2. Admittedly, the Execution Petition E.P.No.2 of 2017 is pending in the trial Court and the petitioner also seems to have filed Crl.O.P.(MD) No.16031 of 2017 to quash the proceedings initiated against him under Section 107 of the Code of Criminal Procedure. The present writ petition seems to have been filed in this Court seeking police protection for protection of life and liberty of the petitioner, while he claims his right over the subject property in Survey No.14, Town Survey No.36, Block No.9, Ward G, in Kattuparamakudi, Paramakudi Town, Ramanathapuram District. The learned single Judge, however, turned down the prayer of the petitioner with the following observations:

"From the aforesaid facts and reasons, the prayer sought for in the present writ petition cannot be entertained, mainly on the ground that the petitioner has not furnished the subsequent order passed by the Public Works Department, Water Resource Organization, Parthipanoor Dam Sector through its Junior Engineer and secondly, the said order was quashed by this Court and liberty is granted, so far, no order has been passed by the department. Except the statement made in the affidavit, but no order



copy has placed before this Court, for the above said proceedings. Therefore, subject matter in this writ petition is now pending before the Civil Court, in E.P.No.2 of 2017 in O.S.No.101 of 2005 on the file of the District Munsif Court, Paramakudi. Prima facie, no case is made out to entertain the writ petition and consequently, the same is liable to be dismissed."

3. The learned counsel for the petitioner, Mr.J.Barathan, urged before us that Order XXI Rule 32 CPC only stipulates that in case of disobedience of the decree and judgment, the Court can put a person in prison, but that would not serve any purpose for the petitioner in any way to get the decree executed and get the relief in the execution proceedings.

4. On the other hand, the learned Special Government Pleader appearing on behalf of the State supported the impugned order.

5. Having heard the respective parties, we find that in view of the pendency of the execution proceeding in the competent Court, the petitioner could not have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India. The Executing Court itself has all the adequate powers to ensure the execution of the decree in question including dealing with the objections, if any, raised by the judgment debtor or even third parties under Order XXI of the Code. Therefore, while such execution proceedings are pending, unless they are taken to its logical end, apparently, there is no reason for the decree holder/petitioner to invoke the writ jurisdiction of this Court in indirectly seeking the police protection to supersede the possible objections of the judgment debtor or even the third parties in the matter. Therefore, in our opinion, the learned single Judge was justified in refusing such police protection to the petitioner. We do not find any specific threat perception to the life and liberty of the petitioner, established before the learned single Judge in this regard. Therefore, the refusal to provide police protection by the learned single Judge, does not call for any interference of this Court in the intra Court appeal.

6. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of ***P.R.Muralidharan v. Swami Dharmananda Theertha Padar [(2006) 4 SCC 501]***.

7. The said case arose where the respondent Swami Dharmananda Theertha Padar claiming himself to be a Sanyasi in the tradition of "Sree Chattambi Swamy Thiruvadikal" and Madathipathi and Sahasrabhawan of Parama Bhattara Gurukula Seva Sangham,



popularly known as "Vadayampadi Asharamam" and in that, with regard to a Decree of declaration in O.S.No.71 of 2000, some police protection was claimed. Two Hon'ble Judges of the Supreme Court wrote different, but concurrent opinion in the said judgment.

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8. While in Paragraph No.12 of the judgment, of Hon'ble Justice S.B.Sinha (as His Lordship then was), the Court held as under:

"12. It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. Respondent 1 who sought to claim a status was required to establish the same in a Court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stare on his face. He, therefore, could not have filed a writ petition for getting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ Court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the documents alone, but it required adduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinabove, has raised a contention that he alone was ordained to hold the said office as per the bye-laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by



the High Court in a writ proceeding."

9. The other Hon'ble Judge, (Hon'ble Justice P.K.Balasubramanyan) (as His Lordship then was), held in paragraph Nos.18 and 19 as under:

"18. In the case on hand, various disputed questions arose based on a deed of trust and the facts pleaded by the writ petitioner and controverted by the other side. The High Court should have normally directed the writ petitioner to have his rights adjudicated upon, in an appropriate suit in a civil Court. The fact that a writ petitioner may be barred from approaching the civil Court, in view of Order 9 Rule 9 of the Code of Civil Procedure, or some other provisions, is no ground for the High Court to take upon itself, under Article 226 of the Constitution, the duty to adjudicate on the civil rights of parties for the purpose of deciding whether a writ of mandamus could be issued to the police authorities for the protection of the alleged rights of the writ petitioner. A writ of mandamus directing the police authorities to give protection to the person of a writ petitioner can be issued, when the Court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves disclose that disputed questions are involved. My learned Brother had rightly pointed out that the High Court was in error in proceeding to adjudicate on the rights and obligations arising out of the trust deed merely based on the affidavits and the deed itself. I fully agree with my learned Brother that the High Court should not have undertaken such an exercise on the basis that the right of the writ petitioner under Article 21 of the Constitution is sought to be affected by the actions of the contesting respondents and their supporters and that can be prevented by the issue of the writ of mandamus prayed for.

19. A writ for "police protection" so-called, has only a limited scope, as, when the Court is approached for protection of rights declared by a decree or by an order passed by a civil Court. It cannot be extended to cases where rights have not been determined either finally by the civil Court or, at least at an interlocutory stage in an unambiguous



manner, and then too in furtherance of the decree or order."

10. From the above, it is very clear that while police protection could be claimed in certain cases, where there is a threat of life and liberty, however, the Hon'ble Supreme Court made a caveat/remark that such writs cannot be sought for directing protection in respect of property, status or right, which remains to be adjudicated upon, when such adjudication can only be got done in a properly instituted civil suit and in such cases, the mandamus to provide police protection would be an abuse of process of law.

11. While in the present case, the Decree is said to have become final, but the execution of the said Decree is still pending. The execution of the Decree is nothing but, an extension of the civil process to give the fruits of the Decree to the decree holder. Chapter XXI of the Code of Civil Procedure is a self-contained Code in itself, which lays down the complete process for the execution of the Decree. Admittedly, those proceedings are pending in the present case.

12. Therefore, we are rather fortified for the view, which we have taken above, by the aforesaid Supreme Court judgment, which the learned counsels for the petitioner relied and therefore, we are not inclined to interfere with the order passed by the learned single Judge dismissing the prayer of the petitioner for police protection in the facts of the case.

13. Accordingly, the Writ Appeal is dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

RR

To

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Paramakudi,
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7.The Executive Engineer,
The Public Works Department
Water Resource Organisation,
Pathipanoor Dam Sector,
Ramanathapuram District.

+1 CC to M/s.SPL GP (SR-96685[F] dated 07/11/2019)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-96693[F] dated
07/11/2019)

+1 CC to M/s.M.KANNAN, Advocate (SR-96757[F] dated 07/11/2019)

**W.A. [MD] .No.117 of 2019
06.11.2019**

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