



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P(MD).No.16002 of 2019

and

W.M.P(MD).No.12697, 12700 and 12701 of 2019

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T.K.Paramasivam

.. Petitioner

Vs.

- 1.The District Collector,
Thanjavur,Thanjavur District.
- 2.The Revenue Divisional Officer,
Thanjavur,Thanjavur District.
- 3.The Inspector of Police,
Medical College Police Station,
Thanjavur, Thanjavur District.
- 4.T.Gyana Prakasam
Vice President,
Diocese of Tanjore Society,
Bishop's House, V.O.C.Nagar,
Thanjavur, Thanjavur District.
- 5.The Deputy Director,
Town and Country Planning,
Thanjavur.
- 6.The Block Development Officer,
Thanjavur.

.. Respondents

(R5 & R6 are suo motu impleaded vide Court order dated 18.07.2019 in W.P(MD).No.16002 of 2019)

Prayer : This petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceeding pending on the file of second respondent in Na.Ka.No.3569/2019/A3 dated 24.06.2019 and quash the same thereby direct the second and third respondents to give protection to the petitioner and members of "Nirmala Nagar Kudiyirupor Sangam, Thanjavur" from using the property earmarked as 'B' and 'C' of Nirmala Nagar, Thanjavur in accordance with the decree dated 28.06.2002 in O.S.No.85 of 2000 on the file of the District Munsif Court, Thanjavur, which is ultimately confirmed by the Supreme Court of India in S.L.P.No.22210/2008 dated 10.11.2008.



For Petitioner : Mr.B.Rajesh Saravanan
For R1 To R3 : Mr.R.Anandharaj
Additional Public Prosecutor
For R4 : Mr.C.Arul Vadivel @ Sekar (R4)

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ORDER

This petition has been filed to quash the proceedings in Na.Ka.No.3569/2019/A3 dated 24.06.2019 passed by the second respondent thereby direct the second and third respondents to give protection to the petitioner and members of "Nirmala Nagar Kudiyirupor Sangam, Thanjavur" from using the property earmarked as 'B' and 'C' of Nirmala Nagar, Thanjavur in accordance with the decree dated 28.06.2002 in O.S.No.85 of 2000 on the file of the District Munsif Court, Thanjavur, which is ultimately confirmed by the Supreme Court of India in S.L.P.No.22210/2008 dated 10.11.2008.

2. The learned counsel for the petitioner would submit that the petitioner is the president of Nirmala Nagar Kudiyirupore Sangam, Thanjavur. The petitioner purchased a plot to an extent of 19 acres and 15 cents comprised in Re Survey No.40 situated at Pattukkottai Road, Thanjavur. The above said property was originally belongs to Diocese of Tanjore Society, which had developed into plots in the name and style of 'Nirmala Nagar'. At the time of developing the above property into plots, the Diocese of Tanjore Society had earmarked to an extent of 26,400 sq.ft marked as 'B' in the layout and reserved another 30,710 Sq.Ft marked as 'C' in the layout and also reserved another 88.057 Sq.Ft marked as 'A' in the layout for the common purpose.

3. He further submitted that the Diocese of Tanjore Society had occupied the property reserved and earmarked for common purpose as 'A' property in the layout and constructed a Church in the common place. Further, the Diocese of Tanjore Society tried to put up fence and tried to encroach 'B' and 'C' properties of layout and tried to sell the same to private parties. Hence, the petitioner sangam had filed a suit in O.S.No.85 of 2000 before the learned District Munsif Court, Thanjavur, as against the Diocese of the Thanjavur Society for permanent injunction in respect of 'B' and 'C' property of Nirmala Nagar. The said suit was decreed in favour of the petitioner sangam by the judgment and decree dated 28.06.2002. As against which, the fourth respondent filed a suit in A.S.No.94 of 2002 before the learned Principal District Court, Thanjavur, and the same was also dismissed by the judgment and decree dated 10.01.2003. In fact, they also filed S.A.No.645 of 2003 and the same was also dismissed on 27.02.2008. Against which, they also preferred Special Leave Petition before the Supreme Court in SLP.No.22210 of 2008 and the same was also dismissed on 10.11.2008. In fact, they also filed review petition in Rev.P.No.82 of 2009 before this Court and the

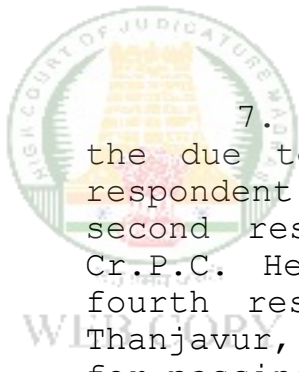


same was also dismissed on 06.09.2009.

4. He further submitted that In the mean time, they also filed a suit in O.S.No.35 of 2007 before the Additional Sub Court, Thanjavur, for declaration of very same property. While being so, the petitioner Sangam filed an application in I.A.No.212 of 2011 under Order 14 Rule (2) of CPC, which was allowed by the Additional Sub Court, Thanjavur on 13.02.2012. As against which, the fourth respondent filed an appeal suit in A.S.No.99 of 2016 and it is still pending before this Court.

5. He further submitted that while being so, the fourth respondent without having any right over the property earmarked 'B' and 'C' property of Nirmala Nagar, tried to encroach the same. Further, the said Society tried to sell the said property to the third parties. Therefore, there is a dispute between the petitioner sangam and the fourth respondent and as such, the third respondent reported before the second respondent to initiate the proceedings under Section 144 of Cr.P.C. While this Court already decided the entire issue, the fourth respondent went to the Hon'ble Supreme Court and it is also decreed in favour of the petitioner Sangam. The second respondent ought not have initiated any proceedings under Section 144 Cr.P.C., The second respondent has no authority having jurisdiction to decide the title or any other issues in respect of civil in nature. Therefore, he prayed for quashment of summon issued by the second respondent.

6. Per contra, the learned counsel for the fourth respondent would submit that the petitioner is not a president of Nirmala Nagar, Thanjavur, and he has no locus to file a petition since, he is belongs to Hindu Munnani Group. Further, they tried to build temple in the land belongs to the fourth respondent herein. The entire case of the petitioner is that the property comprised in R.S.No.40 situated at Pudukottai Road, Thanjavur, not at all earmarked and the same was layout into plots and the very same plots are belongs to the fourth respondent. Further, he contended that the petitioner is not a party to the said suit properties in O.S.No.35 of 2007 for declaration and the same was dismissed. As against which, the appeal suit is pending before this Court in A.S.No.99 of 2016. Though, there is a injunction as against the fourth respondent, now the Hindu Munnany Group is tried to build a temple in the land belongs to the fourth respondent herein. Therefore, admittedly, there is a dispute between two groups and as such, the third respondent, rightly referred the matter before the second respondent under Section 144 of Cr.P.C., In fact, the petitioner also appeared before the second respondent/Revenue Divisional Officer, Thanjavur, and filed their statements. Therefore, he sought for dismissal of the petition.



7. The learned Additional Public Prosecutor would submit that the due to the possibility of law and order problem, the third respondent registered a complaint and the same was referred to the second respondent to initiate proceedings under Section 144 of Cr.P.C. He further submitted that the petitioner as well as the fourth respondent appear before the Revenue Divisional Officer, Thanjavur, and filed their respective statements and it is pending for passing orders.

8. Heard the learned Senior Counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the respondents 1 to 3 and learned counsel appearing for the fourth respondent.

9. This Writ Petition has been filed to challenge the impugned notice issued by the second respondent to initiate proceedings under Section 144 of Cr.P.C., on the complaint lodged by the third respondent registered in Crime No.138 of 2018 dated 14.06.2019. On perusal of the records, the residents of Nirmala Nagar Kudiyirupore Sangam filed a suit in O.S.No.85 of 2000 and the same was decreed in their favour. As against which, the fourth respondent filed a suit in A.S.No.94 of 2002 before the Principal District Court, Thanjavur, and the same was dismissed on 10.01.2013. Again which, they preferred S.A.No.645 of 2003 and the same was also dismissed on 27.02.2008 by this Court is held as follows:-

"15. The appellant being a responsible society managed by the Diocese, while preparing the lay out for the purpose of sale to the general public, thought it fit to earmark certain portion for community use which appears to have prompted the purchasers, like the respondents to take assignment of the individual plots. As per the report and sketch filed by the Advocate Commissioner in Exs.C1 and C2, the property was found to be used as a play ground by the children and the Commissioner also reported that the suit property has been used for various social purposes.

17.The learned Senior Counsel for the appellant also contended that the appellant did not hand over the reserved area to the local body and as such, the respondents are not entitled the claim the reserved area as a matter of right. But in the present case, the suit is not for declaration, but only for injunction restraining the appellant from interfering with the common possession and common enjoyment of the property by the plot owners. The respondents are not claiming ownership right, title or adverse possession in respect of the property. They are only claiming use of the property for community purpose and it is their case that by the course of conduct and the long and continuous



usage of the property for community purposes and it is their case that by the course of conduct and the long and continuous usage of the property for their common purpose coupled with the fact that the property is marked in the lay out as reserved, they have got a right to use the property for their community purpose. By the course of conduct, it is evident that the reserved area was intended only for the benefit of the plot owners. In fact, construction of church, temple, Mosque etc., are all for the use of the community as a whole. The construction of the Church in one of the reserved areas is also a pointer to show that the reserved plots were meant only for community purpose.

22.The area now earmarked for reserved purpose as plot property has been used by the respective plot owners of the respondent Society for their community purpose which is evident from the documents exhibited as well as oral evidence, as also from the admission of D.W.1

25.The trial Court as well as the first appellate Court, on the basis of the pleadings and evidence, arrived at a categorical conclusion that the reserved plot had been used for the community purpose of the respondents. Considering the large number of plots and the area covered by the lay out, the only possible conclusion with regard to the reserved area is to construe them as reserved for community purposes and not as reserved for the use of appellant and as such, I do not find any reason to disagree with the findings of the Court below.

26.Admittedly, the respondents are not claiming ownership right in respect of the open space and the same continue to vest in the appellant, as there is no dedication of the earmarked portion in favour of the local body. In the absence of open space kept for community use, the respondents and their children would be denied of a healthy living. Right to live with human dignity enshrined in article 21 of the Constitution of India includes protection of health and right to clean environment. The witness examined on the side of the appellant clearly admitted that the open space is also to be used by the general attending circumstances, like the resolution of the Municipality to open a vegetable market in the property, the steps taken by the Municipality to provide drinking water to the inhabitants of the area and all other similar



circumstances would show that the property had all along been considered by the appellant as meant for community use and there is nothing to show that the appellant ever objected the use of the property by the respondents for such social purposes. In fact, the pleading as well as the evidence goes to show that the respondents have been using the reserved area for their social living and the same is proved by various exhibits marked on the side of the respondents. Therefore, considering the matter from any angle, the only possible conclusions that the area earmarked as reserved plot in the lay out plan was earmarked only for the community use and no other inference is possible from the given facts."

10. Accordingly, the suit ended in favour of the residents of Nirmala Nagar Sangam, Thanjavur. Though, the suit was filed for declaration, the observation made by this Court revealed that the earmarked portion as 'A', 'B' and 'C' in the layout used for community purpose of residence of the Nirmala Nagar Sangam. At the same time, there is no evidence to show that the layout is approved one. Therefore, the fourth respondent is claiming title over the property which are earmarked 'A', 'B' and 'C' for common purpose of the residents. However, the fourth respondent filed a suit for declaration in O.S.No.35 of 2007 and as against which, the appeal suit is pending in A.S.No.99 of 2016 before this Court. However, till today, the injunction is in favour of the residence of Nirmala Nagar Sangam, Thanjavur, in respect of the disputed property. While being so, there is a dispute between the fourth respondent group and the petitioner group and as such, the third respondent rightly registered the case in Crime No.138 of 2018 and referred the same to the second respondent to initiate proceedings under Section 144 of Cr.P.C., Now, the parties are appeared before the second respondent and filed their written statement.

11. Considering the above facts and circumstances, the petitioner as well as the fourth respondent are directed to appear before the second respondent and submit their written statement along with proof in respect of the disputed property. On receipt of the same, the second respondent is directed to pass orders on merits after giving opportunity to the parties concerned and also on the strength of the judgment and decree passed in S.A.No.645 of 2003 dated 27.02.2008 within a period of six weeks from the date of receipt of a copy of this order. Till then, the petitioner as well as the fourth respondent are directed to maintain status quo in respect of the disputed property as on today.



12. With the above direction, this petition is disposed of.
No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

- 1.The District Collector,
Thanjavur,
Thanjavur District.
- 2.The Revenue Divisional Officer,
Thanjavur,
Thanjavur District.
- 3.The Inspector of Police,
Medical College Police Station,
Thanjavur, Thanjavur District.
- 4.The Deputy Director,
Town and Country Planning,
Thanjavur.
- 5.The Block Development Officer,
Thanjavur.

+1 CC to M/s.C. ARUL VADIVEL @SEKAR, Advocate (SR-99625[F] dated 20/11/2019)

+1 CC to M/s.B. RAJESH SARAVANAN, Advocate (SR-99798[F] dated 20/11/2019)

W.P(MD) .No.16002 of 2019
and

W.M.P (MD) .No.12697, 12700 and 12701 of 2019
19.11.2019

SMA/13/12/19/7P/8C