

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.17465 of 2011
and M.P.Nos.1 and 2 of 2012

M/s.Gas Links
A partnership firm,
Represented by its partner,
Mrs.Afroz Sheriff,
240/3, P.H. Road,
Aminjikarai, Chennai - 29.

...Petitioner

Vs

1.The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai - 107.

2.Mr.K.Shanmugavel
Superintendent of Police / Deputy Commissioner,
No.4, IInd Floor, Deputy Commissioner Quarters,
Kilpauk, Chennai - 10.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the Summons issued by the 1st respondent dated 21.07.2011 (no reg. No.) and quash the same, and forebear the respondents, their subordinates and men from in any manner interfering with the possession of the petitioner's land and godown at S.No.205/2A, Koyambedu Village (plot No.9 and 10, Door No.23/3, Ist Main Road, Kumaran Nagar), Chinmaya Nagar, Chennai - 107.

For Petitioner : Mr.G.Rajagopalan, Sr.Adv
for M/s.G.R.Associates

For Respondents : Ms.K.Bhuvaneswari for R1
Additional Government Pleader

Mr.K.V.Shanmuganathan for R2

ORDER

This writ petition has been filed challenging the summons dated 21.07.2011 issued by the first respondent calling upon the petitioner to come for an enquiry with regard to the complaint given by the second respondent against the petitioner in respect of the petitioner's land and godown at S.No.205/2A, Koyambedu Village (plot No.9 and 10, Door No.23/3, Ist Main Road, Kumaran Nagar), Chinmaya Nagar, Chennai - 107.

2.The allegations of the second respondent is that the petitioner has encroached upon his property and in such circumstances, he has lodged a complaint with the first respondent Police. Based on the complaint, the summons dated 21.07.2011 has been issued to the petitioner. According to the petitioner, the summons issued by the first respondent is a clear abuse of process of law. According to the petitioner, he is the absolute owner of 827 sq.mts. in S.No.205/2A at Koyambedu Village (plot No.9 and 10, Door No.23/3, Ist Main Road, Kumaran Nagar), Chinmaya Nagar, Chennai - 107. According to him, he has not encroached upon the second respondent's property. In such circumstances, he has filed this writ petition challenging the summons dated 21.07.2011 issued by the first respondent on the ground that the said summons is an abuse of process of law.

3.Heard Mr.G.Rajagopalan, learned Senior Counsel for the petitioner, Ms.K.Bhuvaneswari, learned Additional Government Pleader for the first respondent and Mr.K.V.Shanmuganathan, learned counsel for the second respondent.

4.The learned Senior Counsel for the petitioner drew the attention of this Court to a Division Bench judgment of this Court dated 16.11.2009, passed in W.A.No.908 of 2006. In the said writ appeal, the petitioner was the Appellant. He drew the attention of this Court to paragraph No.16 of the said judgment and submitted that the Division Bench has given a clear finding that the petitioner is occupying less land than what was allotted by the Government to him and that he is presently occupying only 600 sq.mts. in S.No.205/2A at Koyambedu Village though he was allotted 827 sq.mts. He further submitted that the Division Bench has also observed that 200 square meters of land was left by the petitioner beyond the compound gate towards the utility land and is not in his possession now.

5.According to the learned Senior Counsel, without any Authority under law, the first respondent issued the impugned summons dated 21.07.2011 acting upon the false complaint given by the second respondent that the petitioner has encroached upon 750 square feet. According to him, when there is a clear

finding given by the Division Bench of this Court order dated 16.11.2009 in W.A.No.908 of 2016 that the petitioner is in occupation of 600 sq. mts., the complaint given by the second respondent to the first respondent alleging encroachment by the petitioner is false. According to him, if at all, there is any dispute, it is only a civil dispute between the petitioner and the second respondent and no criminal complaint is maintainable.

Discussion:

6.Admittedly, there is an allotment in favour of the petitioner in respect of S.No.205/2A at Koyambedu Village by the Government in respect of land measuring 827 sq.mts. The Division Bench of this Court in the aforesaid judgment has also given a categorical finding that the petitioner is in possession of 600 sq.mts. However, it is the case of the second respondent that the petitioner has encroached upon 750 square feet of land as seen from his complaint lodged with the first respondent. When there is a categorical finding given by the Division Bench of this Court that the petitioner is in occupation of 600 sq.mts and the petitioner disputes the claim of the second respondent, the only remedy available to the second respondent is to approach the Civil Court for adjudication, as disputed questions of fact are involved which can be adjudicated only by letting in oral and documentary evidence.

7.For the foregoing reasons, when there are disputed questions of fact and further when the Division Bench of this Court has given a categorical finding in its judgment dated 16.11.2009 passed in W.A.No.908 of 2006 that the petitioner is in possession of 600 sq.mts., the first respondent Police does not have any authority under law to issue the impugned summons which may amount to overriding the judgment of the Division Bench of this Court which has given a clear finding that the petitioner is in possession of 600 sq.mts. in S.No.205/2A.

8.In the result, the impugned summons has been by issued by the first respondent without jurisdiction and authority under law and hence the same is quashed and the writ petition is allowed. However, liberty is granted to second respondent to approach a Civil Court to redress his grievances against the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai - 107.

+1cc to M/s.G.R.Associates, Advocate Sr.6921
+1cc to the Government Pleader Sr.7643

W.P.No.17465 of 2011

gmr[col]
srg 03/03/2020