

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.9590 of 2010

D.Hemalatha

... Petitioner

vs.

1. The State of Tamilnadu,
Rep. by the Chief Secretary,
Secretariat,
Fort St. George, Kamarajar Salai,
Chennai.

2. The Public Department,
Secretariat,
Fort St. George, Kamarajar Salai,
Chennai.

3. The Superintendent of Police,
O/o. Superintendent of Police,
Thiruvannamalai,
Thiruvannamalai District.

4. Mr.Sundaravadivelu,
Inspector of Police,
Arani Town Police Station,
Arani, Thiruvannamalai District.

5. Mr.Venkatesan,
The Sub-Inspector of Police,
Arani Town Police Station,
Arani, Thiruvannamalai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the 1st and 2nd Respondent to compensate the Petitioner for the loss suffered monetarily for a sum of Rs.4 lakhs and mentally and to take appropriate action against the 3rd, 4th and 5th Respondents.

For Petitioner : Mr.R.Amardeep

For Respondents : Ms.R.J.Radhika, G.A. for R1 to R3

O R D E R

I heard Mr.R.Amardeep, the learned counsel for the Petitioner and Ms.R.J.Radhika, the learned Government Advocate for the Respondents.

2. In this writ petition, the Petitioner seeks a writ of Mandamus to direct the first and second Respondents to compensate the Petitioner for the monetary loss of Rs.4 lakhs and to take appropriate action against Respondents 3 to 5.

3. The case of the Petitioner is that there was a dispute between the Petitioner and her landlord, namely, Mr.R.Valluvan. When the Petitioner's husband was out of town, the landlord entered the house of the Petitioner on 10.06.2009 along with a political functionary and 6 other unidentified persons, and forcibly and illegally evicted the Petitioner, her daughters and grand children from the house. Immediately thereafter, she lodged a complaint with the police but the police assigned CSR No.167 of 2009 instead of registering a FIR. Subsequently, at night, on 23.07.2009, a gang of about 20 persons came in two lorries to the Village where the Petitioner was then residing and dumped the Petitioner's household articles on the road in the presence of the villagers. Upon checking the said household articles, the Petitioner found that gold jewels, cash, sarees, silver articles, etc. were missing. Once again, a complaint was lodged. The Petitioner was also hospitalized at that time because she had consumed poison on account of the mental harassment. Eventually, the police registered a case in Crime No.865 of 2009 against the landlord and others but also registered a counter complaint bearing Cr.No.866 of 2009 against the Petitioner. Subsequently, Cr.No.866 of 2009 was closed on 20.11.2009 on the ground that there was a mistake of facts. The present writ petition is filed after submitting a representation dated 23.04.2010 in the aforesaid facts and circumstances.

4. The learned counsel for the Petitioner submits that the registration of Cr.No.866 of 2009 evidences the wrongful conduct of Respondents 3 to 5, as evident from the fact that it was closed by citing a mistake of fact. Accordingly, he submits that appropriate action should be taken against the said Respondents. As regards the unlawful action of the landlord and those who assisted the land lord, he concedes that a FIR was registered and, subsequent thereto, a charge sheet was filed in the pending criminal proceedings on the file of the Judicial Magistrate, Arani.

5. The learned Government Advocate submits that the complaint lodged by the Petitioner was prosecuted diligently as evidenced by the pending criminal complaint and that the counter complaint was not registered by the police out of malice and, therefore, once it was realized that no case is

made out for investigation, the same was closed as a mistake of fact on 20.11.2009.

6. Upon considering the submissions of the learned counsel for the respective parties and on examining the materials on record, I find that the admitted position is that the complaint lodged by the Petitioner has culminated in the filing of a charge sheet in C.C.No.140 of 2010 which is pending before the Judicial Magistrate, Arani. As such, it cannot be said that no action was taken in respect of the unlawful eviction of the Petitioner and the subsequent act of dumping her household articles on the road in the presence of villagers on 23.07.2009. Needless to say, it is always open to the Petitioner to proceed against the land lord and others who participated in the said acts in order to recover any missing articles.

7. As regards the action against Respondents 3 to 5, the learned counsel for the Petitioner relied heavily on the fact that the police themselves concluded that Crime No.866 of 2009 was registered on a mistake of fact. On this basis, he submitted that the prosecution was clearly malicious and that the Petitioner is entitled to avail a public law remedy. Upon perusal of the documents on record herein, I find that it is not possible on that basis to adjudicate as to whether the prosecution at the instance of Respondents 3 to 5 was malicious in this writ petition. Nonetheless, the Petitioner has submitted a representation dated 23.04.2010 to the first Respondent. Therefore, I am of the view that the ends of justice would be satisfied if the first Respondent duly considers the said representation and disposes of the same on merits by a speaking order within a period of two months from the date of receipt of a copy of this order.

8. This writ petition is disposed of on the above terms. No costs.

Sd/-

Asst. Registrar

//True Copy//

Sub Asst. Registrar

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To

1. The State of Tamilnadu,
Rep. by the Chief Secretary,
Secretariat,
Fort St. George, Kamarajar Salai,
Chennai.

2. The Public Department,
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3. The Superintendent of Police,
O/o. Superintendent of Police,
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Thiruvannamalai District.

4 The Inspector of Police,
Arani Town Police Station,
Arani, Thiruvannamalai District.

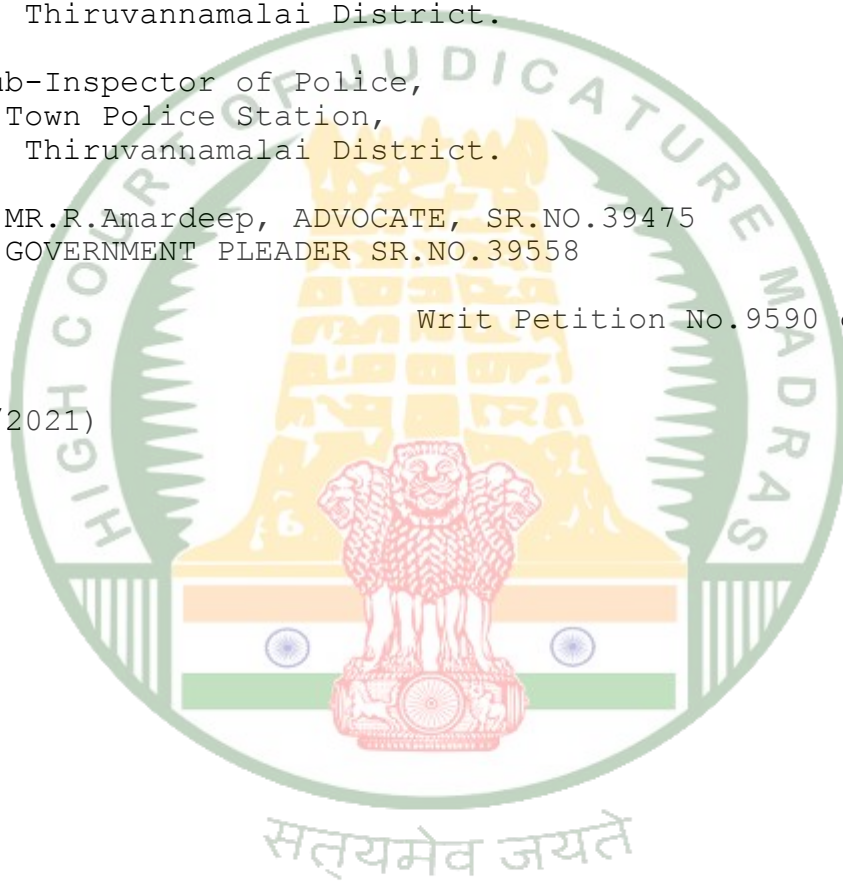
5. The Sub-Inspector of Police,
Arani Town Police Station,
Arani, Thiruvannamalai District.

+1 C.C.to MR.R.Amardeep, ADVOCATE, SR.NO.39475

+1 C.C.to GOVERNMENT PLEADER SR.NO.39558

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NR(CO)
VC (19/01/2021)



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