

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P. No. 33721 of 2019

P.Mylsamy

... Petitioner

Vs.

1. The Special Officer,
(Chief Minister Cell)
Secretariat, Fort St.George,
Chennai - 09.
 2. The Secretary, Home Department,
Secretariat, Fort St.George,
Chennai - 09.
 3. The Director General of Police,
Kamarajar Road, Chennai - 05.
 4. Sri.Surjeeth Kumar IPS.,
The Superintendent of Police,
(Land Grabbing)
District Police Office, Coimbatore - 18.
 5. Sri.Murali,
The Inspector of Police,
Kinathukkadavu Police Station,
Kinathukkadavu, Coimbatore District.
 6. The Thasildar,
Taluk Office, Kinathukkadavu,
Coimbatore.
 7. K.Ponnusamy
 8. P.Muruganandam
 9. Valliammal
- ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 2 to 3 to take disciplinary action against the respondent 4 and 5 and also on those who are responsible for their dereliction of duty and consequently to pay 5 lakhs as compensation for loss incurred by the petitioner due to failure

form taking action on the complaints of petitioner who is deprived of right of possession of his land and neglect to maintain the law and order to protection life and properties of the petitioner by giving effect to civil court decree by resorting his land in S.No. 46/A1 and 4/B1 of mottaiandipurambu Village, Kinathukadavu Taluk, Coimbatore District from the land grabbers/respondents 7 to 9 with the help of Tahsildar kinathukkadavu.

For Petitioner : Mr.R.Kannan

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : Mr.R.Nandha Kumar

ORDER

This Writ Petition has been filed to direct the respondents 2 to 3 to take disciplinary action against the respondent 4 and 5 and also on those who are responsible for their dereliction of duty and consequently to pay 5 lakhs as compensation for loss incurred by the petitioner due to failure from taking action on the complaints of petitioner who is deprived of right of possession of his land and neglect to maintain the law and order to protection life and properties of the petitioner by giving effect to civil court decree by resorting his land in S.No. 46/A1 and 4/B1 of mottaiandipurambu Village, Kinathukadavu Taluk, Coimbatore District from the land grabbers/respondents 7 to 9 with the help of Tahsildar kinathukkadavu.

2. It is nothing but registration of First Information Report.

3. Heard Mr.R.Kannan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the first respondent and Mr.R.Nandha Kumar, learned counsel for the Second Respondent.

4. In view of the Judgment of the Hon'ble Division Bench of this Court in CrI.O.P.(MD)No.13681 of 2018 and batch of cases, dated 20.09.2018, the petition of this nature is not maintainable before this Court. The relevant portion of the said order is extracted herewith:-

"35.Accordingly, we answer the references in the following manner, while giving certain directions:

(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of

inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154 (3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154 (3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.

(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.

(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a

direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one."

However, liberty is granted to the petitioner to work out his remedy in accordance with the guidelines issued by the Hon'ble Division Bench in the decision referred supra.

5. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

arb

To

1. The Special Officer,
(Chief Minister Cell)
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Chennai - 09.
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Kinathukkadavu Police Station,
Kinathukkadavu, Coimbatore District.

6. The Thasildar,
Taluk Office, Kinathukkadavu,
Coimbatore.

7. The Public Prosecutor,
High Court, Madras.

+1CC to Mr.R.Nandhakumar, Advocate (SR.No.20554)

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CP(CO)
BRI(21.05.2020)



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