



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P. (MD)No.4536 of 2020

S.Nagendran

: Petitioner

Vs.

1.The Superintendent of Police,
Madurai District,
Madurai.

2.The Deputy Superintendent of Police,
Y.Othakkadai Circle,
Y.Othakkadai,
Madurai.

3.The Inspector of Police,
Y.Othakkadai Police Station,
Y.Othakkadai,
Madurai District.

4.V.Pandiarajan

5.K.Paramasivam : Respondents
(R5 is impleaded vide order dated 24.11.2020, in Crl.M.P. (MD)No.6167 of 2020)

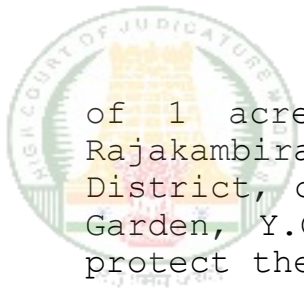
Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to pass an order more in the nature of to provide adequate Police protection for fencing the property in Nanja survey and UDR survey No.81/1A1 to an extent of 1 acre and survey No.90/3B to an extent of 75 cents in Rajakambiram Village, Madurai North Taluk(now East Taluk), Madurai District, converted into a housing plots in the name and style Hajis Garden, Y.Othakkadai, comprising of plot Nos. 58,59 and 60 and to protect the life and limb of the petitioner.

For Petitioner : Mr.V.Meenakshisundaram
For R1 to R3 : Mr.V.Neelakandan,
Additional Public Prosecutor.

For R4 : Ms.Chamundi Bose.
For R5 : Ms.M.Susmitha

O R D E R

This Criminal Original Petition has been filed to direct the respondent police, to provide adequate Police protection for fencing the property in Nanja survey and UDR survey No.81/1A1 to an extent



of 1 acre and survey No.90/3B to an extent of 75 cents in Rajakambiram Village, Madurai North Taluk(now East Taluk), Madurai District, converted into a housing plots in the name and style Hajis Garden, Y.Othakkadai, comprising of plot Nos. 58,59 and 60 and to protect the life and limb of the petitioner.

WEB COPY

2. It is the case of the petitioner that he had purchased the plot Nos.58,59 and 60 located in Survey No.81/1A1 to an extent of 1 acre and survey No.90/3B to an extent of 75 cents in Rajakambiram Village, Madurai North Taluk (now East Taluk), Madurai District from the fourth respondent herein through a sale deed dated 27.06.2006. Thereafter the petitioner mortgaged the above said property to one K.Paramasivam through a registered mortgaged deed dated 08.02.2016 and the same is not redeemed till date. Subsequently, in the year 2018, the petitioner noticed that 23 feet public pathway was blocked by fencing and came to know through the neighbor plot owner one Sukila that the fourth respondent herein had encroached and fenced the property. The said Sukila had filed a Writ Petition in W.P.(MD) No.12725 of 2016 before this Court and the same was disposed of by this Court, with a direction to the authority to pass orders within eight weeks. In obedience to the order of this Court, the Block Developmnet Officer, Madurai East Panchayat issued an eviction notice dated 08.06.2018 to the fourth respondent herein. The said notice was challenged by him in W.P.(MD) No.13053 of 2018. Even though the petitioner herein is not a party to the said Writ Petition, he himself impleaded as a party and contested the same. After elaborate hearing, the said Writ Petition was dismissed by this Court with a cost of Rs.15,000/-, against which, the fourth respondent preferred SLP No.4346 of 2019 before the Apex Court and filed an Original Suit in O.S.No.226 of 2018 before V Additional District Court, Madurai. This Court has granted interim stay for C.R.P.(MD) No.2268 of 2018 filed by the petitioner herein, on the ground that the suit is filed within an illusory cause of action. In the meanwhile, SLP filed by the fourth respondent before the Apex Court was dismissed as withdrawn on 01.04.2019. It is the further case of the petitioner that the Block Developmnet Officer, Madurai East Panchayat issued a second eviction notice dated 25.04.2019 for removal of encroachment made by the fourth respondent herein. Again, the same was challenged by the fourth respondent in W.P.(MD) No. 11862 Of 2019. By order dated 08.05.2019, this Court has dismissed the said Writ Petition on the ground of maintainability. Thereafter, the fourth eviction notice dated 17.08.2019 issued by the Block Development Officer was challenged by the 4th respondent in W.P.(MD) No.18016 of 2019 and the same was also dismissed by this Court on 20.08.2019 with a heavy cost of Rs.1,00,000/-. Supression of material facts by the fourth respondent and the cost imposed on him in earlier occasion have been spoken in the said order in detail. Few lines are extracted hereunder for better appreciation:-

.....The petitioner is not an illiterate. He is running a matriculation school. He is repeatdedly filing Writ



cause of action. He has conveniently and deliberately suppressed the material facts of filing earlier two writ petitions and its dismissal.....

....Already the petitioner had suffered with an order from the Division Bench of this Court in the earlier Writ Petition imposing cost of Rs.15,000/-. It seems, even thereafter the petitioner has not realised that he should come to this Court with clean hands without suppressing material facts. On the other hand, he has chosen to file the present Writ Petition to challenge the present impugned notice, as if, nothing had happened before. The above conduct of the petitioner in playing with Court proceedings should be dealt with seriously. Therefore, we are inclined to dismiss this Writ Petition by imposing heavy cost to the writ petitioner."

2.1.In the meanwhile, the adjacent land owner Sukila filed a contempt petition in Cont.P(MD) No.1007 of 2019 against the deliberate disobedience of the authorities for not implementing the order passed by this Court in W.P(MD) No.12725 of 2016. Thereafter, the encroachments were removed by the authorities on 23.08.2019. Even after removal of the encroachment by the authorities, immediately on the very next day, the fourth respondent once again fenced the property. In the meantime, he filed Review Application in Rev.APLN(MD) No.95 of 2019 and the same was also dismissed.

2.2.In the month of February 2020, when the petitioner had visited the property for fencing, the fourth respondent and some unidentified persons were threatened the petitioner. Hence, the petitioner has sent a representation dated 25.02.2020 to the official respondents. Since no action has been taken by them, the petitioner has come up before this Court with this Criminal Original Petition.

3.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the official respondents and the learned counsel for the fourth respondent.

4.The learned counsel appearing for the petitioner would submit that when the petitioner wanted to fence the property, the fourth respondent has threatened the petitioner and therefore, the petitioner had given a representation to the respondent for police protection to fence his property. The respondents 1 to 3 shall keep in mind that it is an admitted fact that the above property has been mortgaged to one Paramasivam through registered mortgaged deed.

5.The learned counsel for the petitioner would states that it would suffice, if a direction is given to the second respondent police to give police protection to the petitioner to fence his



property by considering his representation dated 25.02.2020.

6.The learned Additional Public Prosecutor appearing for the official respondents would submit that they will enquire into the matter and give police protection.

7. I have carefully gone through the materials available on record. It is apparent that the fourth respondent had approached this Court by filing petition for challenging the eviction notice, which was issued for encroachment in the public pathway and subsequently, it has also been removed by the authorities. Hence, the petitioner seeks police protection to fence the property, which was purchased by the petitioner through the sale deed dated 27.06.2006, which is annexed in the typed set of papers and the petitioner wanted to fence the property purchased through the above sale deed.

8.All the averments stated in the petition and borne by records. As this Court has not given a positive direction, but only to consider the representation of the petitioner, No notice is necessary to the private respondents. The official respondents shall consider the representation of the petitioner and If necessary, the respondent police are directed to give police protection to the petitioner in the light of the order passed by this Court in W.P. (MD)No.12725 of 2016.

9.With the above direction, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das/vrn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

- 1.The Superintendent of Police,
Madurai District,
Madurai.
- 2.The Deputy Superintendent of Police,
Y.Othakkadai Circle, Y.Othakkadai,
Madurai.
- 3.The Inspector of Police,
Y.Othakkadai Police Station,
Y.Othakkadai, Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-22737[F] dated 24/11/2020

Crl.O.P. (MD)No.4536 of 2020
24.11.2020

ac (CO)

KK(16.12.2020) 5P 6C