IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.11986 OF 2015
AND
M.P.NO.1 OF 2015

E.Sridharan
... Petitioner

Vs.

1. The State
Rep.by its Inspector of Police,
Land grabbing Wing-Team II,
Central Crime Branch,
Vepery,
Chennai.

2. A.Stephen Prabhakar
[Impleaded as per the order
dated 30.01.2017 in
Crl.M.P.No.1297/2017]
... Respondents

Criminal Original Petition is filed under Section 482 Cr.P.C.,to quash the impugned closure report dated 15.11.2014 of the 1st respondent and to consequently direct the 1st respondent to re-open the complaints dated 23.11.2012, 30.01.2013 and 06.05.2013 of the petitioner and register FIR and to file final report in the same.

For Petitioner : Mr.T.Mohan for
Mrs.Manimegalai

For Respondents : Mr.E.Rajthilak for R1
Government Advocate [Crl.Side]

Mr.Govardhan for
Mrs.Row & Reddy for R2

O R D E R

The petitioner prayed for quashing the impugned closure report dated 15.11.2014 and to consequently reopen the complaints dated 23.11.2012, 30.01.2013 and 06.05.2013 and register the FIR and file a final report on the same.

2. The case of the petitioner is that the petitioner's mother, viz., Devaki purchased a property measuring 678.25 sq.ft., at Door No.32/2B, East Kalmandapam Road, Royapuram, Chennai from one Mrs.Geetha vide sale deed registered in Document No.3252 of 1997 on the file of SRO, Royapuram on 26.12.1997. After purchasing the above said property, the petitioner's mother was absolutely in possession and enjoyment of the same, as its lawful owner by paying all statutory charges. In fact, all the revenue records with regard to the above said property also stood mutated into the name of the petitioner's mother. While so, the petitioner's mother died intestate on 09.02.2009. After demise of the petitioner's mother, the property was inherited by the petitioner, as the sister of the petitioner, viz., E.Sumathy released her share in favour of the petitioner and the petitioner alone is in possession and enjoyment of the above said property by paying all statutory charges till date. Originally before the petitioner's mother purchased the above said property, which is the part of the larger extent owned by her vendor, the remaining extent were sold to two different persons. While so, in the month of August 2010, one Syed Ahmed threatened the petitioner to sell the property to him. In this connection, he had sent a sale agreement through his henchmen, but the petitioner refused to oblige the demands of the said Syed Ahmed. While so, on 11.11.2012, one Sathyamurthy contacted the petitioner and

informed that a general power of attorney with regard to the above said property has been executed by one Arputhanandan, Indira Arulnesan, A.R.Shanthakumar, S.Prabhakaran in favour of one R.A.Aslam, who in turn sold the property to one Mohamed Ali Jinnah and thereby, threatened the petitioner to sell the above said property without creating any hindrance, otherwise to pay huge sum to cancel the above said sale deed. Therefore, the petitioner had preferred a complaint dated 23.11.2012 before the Joint Commissioner of Police, Chennai and the same was transferred to the 1st respondent for further investigation. But, the respondent did not take any steps to conduct enquiry / investigation in the above said complaint. While so, the above said persons, influenced one Mr.Gnanasekaran, the local politician and came to the petitioner's property with 20 rowdy anti social elements and threatened the workers, who are working in the restaurant in the above said property and tried to disposes the valuables in the restaurant and finally left with warning quotes stating “if the petitioner and his tenants do not vacate the premises immediately, they would be put to face dire consequences”. Therefore, again the petitioner preferred a complaint dated 30.01.2013 with the Commissioner of Police, which was transferred to the Jurisdictional Police Station, viz., Royapuram police station, in the said complaint also no prudent steps was taken by the police authorities.

3. It is also the case of the petitioner that even after the above said two complaints, since there was no action taken against the above said persons, they kept on threatening the petitioner and on 05.05.2013, some antisocial elements calling themselves as Advocates came to the above property and forcibly dispossessed the tenants therein and assaulted the employees in the restaurant who refused to oblige their demand and orders. After chasing out all the tenants and employees in the restaurant, the said persons started to demolish the super structure, therefore, again, the petitioner lodged a complaint dated 06.05.2013. All the complaints of the petitioner were transferred to the respondent. Eventhough serious allegations and prima facie case was made out, no action was taken in the same. Therefore, the petitioner filed Crl.O.P.Nos.25985 to 25987 of 2014 before this Court directing the respondent to register an FIR and to investigate the matters. In the said petitions, the respondent-police submitted that the petition enquiry was conducted on two complaints out of three, all of

which are in respect to the same cause of action and the petitioner was summoned for enquiry and his statement was recorded, after due enquiry, dropped further action on the ground that the dispute are more in civil in nature. On 22.09.2014, this Court disposed of the said petitions recording the submissions made by the respondent with a direction to the respondent to issue a copy of the closure report to the petitioner within one week and granted liberty to the petitioner on receipt of the closure report to agitate the same before the appropriate forum. Immediately, on receipt of the above said order, the petitioner approached the respondent police for a copy of the closure report in compliance to the above said order, however the respondent said that the same will be sent through registered post. On 16.11.2014, as informed by the respondent, the petitioner received the registered post, in which, the closure report which is dated 15.11.2014 was sent.

4. The petitioner surprised to note that in the impugned closure report, the respondent made submission that they have already conducted enquiry and closed two complaints out of three preferred by the petitioner before this Court on 22.09.2014 in the direction petition filed by the petitioner, but the closure report was prepared on 15.11.2014, which is just to cope up / overcome the submissions made this Court. The closure report does not disclose that any enquiry or investigation on the above complaints preferred by the petitioner was conducted and the complaints of the petitioner were closed only on the basis of the documents submitted by the petitioner, eventhough prima facie criminal case was made out in the said complaints preferred by the petitioner. The petitioner stated in the grounds that when prima facie criminal aspects are bluntly made out, closing the complaints of the petitioner on the ground that it only constitutes civil dispute, cannot be sustained.

5. According to the petitioner, the respondent police ought to have registered the FIR on the basis of the complaints preferred by the petitioner and should have conducted enquiry with all the persons with regard to the illegal acts suffered by the petitioner and then, should have come to the conclusion that the case is of more civil in nature, but in the present case, no enquiry was conducted and simply to over come the submissions made by the respondent before this Court, the impugned closure report was prepared subsequent to the order of this Court

without conducting investigation. The petitioner was in occupation of the premises, as its owner and the premises was illegally demolished by rowdy elements. On the issue of possession there is no dispute, the same was also admitted by the above mentioned persons and who had given the power of attorney to R.A.Aslam. Also, the closing of complaint as a civil dispute, when the building was in the physical possession of the petitioner was unauthorizedly demolished by rowdy elements is incorrect. Therefore, prayed to quash the impugned closure report dated 15.11.2014 of the respondent and to consequently direct the 1st respondent to reopen the complaints dated 23.11.2012, 30.01.2013 and 06.05.2013 of the petitioner and register FIR and to file final report in the same.

6. The learned Government Advocate [Crl.Side] appearing for the 1st respondent submitted that there is no whisper about the details of the old complaints filed by the petitioner. Since the civil suit is pending, the parties are at liberty to agitate their grievances before the appropriate forum. By relying upon the Judgment of Hon'ble Division Bench of this Court, in Crl.O.P.No.13681 of 2017 etc., batch, the learned Government Advocate [Crl.Side] has also submitted that circulars have been issued in tune with the Lalita Kumari's case, wherein in the said case, it is observed that the power under Section 482 Cr.P.C., has to be sparingly used and it cannot be used to circumvent a specific provision. The power exercised by the police officer is executive and administrative in nature and the same cannot be done or directed to be done by this Court. Further, in the case of Lalita Kumari, the Hon'ble Supreme Court has directed that after conducting preliminary enquiry, if the police come to the conclusion that no FIR need be registered, a duty is cast upon the police to furnish a copy of the closure report to the complainant. After getting the closure report, it is open to the complainant to file a petition under section 156(3) Cr.P.C., or private complaint under Section 190 read with Secton 200 Cr.P.C, disclosing the facts and persuading the Magistrate to take cognizance of the offence. Further, Section 482 of the Criminal Code of Procedure, 1973 is extracted hereunder:-

> “482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the

process of any Court or otherwise to secure the ends of Justice."

7. Heard the learned counsel for the 2nd respondent on the submissions of the learned counsel for the petitioner and the learned Government advocate [Crl.Side] on behalf of the 1st respondent.

8. As a matter of fact, the petitioner has filed a very big typed set of documents, which runs upto 260 pages. From the typed set of documents, it is seen that one Barnes Paramanandam had executed a sale deed on 20.12.1995 to one Geetha, daughter of O.D.Rajagopal and wife of T.Ravi aged 28 years thereby, she has become absolute owner of the house, ground and premises, bearing old door no.24/25, Kalmandapam Road, and presently in new door no.32, East kalmandapam Road, Royapuram, Madras – 600 013 measuring to an extent of 1770 sq.ft., The said Geetha, on 21.03.1997, had sold the part of the property, viz., 600 square feet to one Vasanthi. One Suganthi Arputhanadan, daughter of Paramanandam had filed a suit in O.S.No.14055 of 1996 to declare the sale deed dated 20.12.1997 executed by Barnes Paramanandam in favour of R.Geetha as null and void. By Judgment and decree dated 29.08.1997, the suit was decreed in favour of plaintiff, viz., Suganthi. Thereafter, the said Geetha had executed an absolute sale deed in favour of E.Devaki, who is the petitioner's mother on 26.12.1997 to an extent of 678.25 sq.ft. Thereafter, the said Geetha and her husband through a General Power of Attorney, viz., Ansar Asharaf, on 25.11.1998 had executed a sale deed in favour of J.Vandhana to an extent measuring 540 square feet. Thereafter, the said Geetha, executed a deed of rectification in favour of Vandhana, to rectify the Door No. as 32/2, whereas earlier it was mentioned as 32. The said Vasanthi executed a sale deed on 24.02.1999 in favour of Vandhana.

9. That apart, the petitioner had obtained a fire service license bearing no.343/99 dated 12.05.1999 to manufacture meals and tiffins in the name of "Muniyandi vilas" at door no. 32/2, East Kalmandabam Road, Royapuram. The petitioner was also paying kists, property tax and a receipt was received from the Revenue Officer, Corporation of Chennai regarding the same. An order has been received from the Tamilnadu Electricity Board for the purpose of name transfer of electricity board service

connection. In the meanwhile, on 15.05.2008, an irrevocable power of attorney was executed by one Arputhanathan, Indira Arulnesan and Santhakumar and A.S.Prabhakaran in favour of Aslam and the said Geetha also executed power of attorney in favour of Aslam. According to the petitioner, all these power of attorneys are forged documents. The said Vandhana Jayaraman had sold the property in favour of Abbas, Abid and Mustafa by way of a sale deed on 15.05.2008 to an total extent of 1140 square feet comprised in R.S.No.3164/2, as per patta dated 25.01.1997. The property tax has been paid by the petitioner and on 09.02.2010, the petitioner's mother, Devaki died, as per legal heirship certificate, Sridharan is entitled for the property.

10. Moreover, as per the Certificate of Encumbrance on Property, Burnes Paramanantham and Esther Burnes executed sale deed in favour of Geetha. Geetha and her husband, namely, Ravi had executed sale deed in favour of Devaki, petitioner's mother in the year 1997 to an extent of 600 square feet. Geetha and her husband Ravi, again, sold the property to an extent of 659 sq.ft.,and 669 sq.ft., to Ansar Ashraf and Vandana in the year 1999. Further, Vasanthi and Sekar executed sale deed in favour of Vandana Jayaraman to an extent of 674 and 175 sq.ft., in the year 1999. Further, J.D.Arputhanathan, Indira Arulnesan, Santhakumar and Prabhakaran had executed a sale deed on 10.11.2010 to and in favour of one MohamedAliJinah with respect to same door number, namely, old Door no.24/25, present door no.32/2, East Kalmandapam Road, Royapuram, Chennai – 13 to an extent of 630 square feet, which was originally belongs to one Paramanantham. Pursuant thereto, the petitioner, viz., E.Sridharan has given a complaint on 23.11.2012 stating that he is a lawyer by narrating all the instances and criminal conspiracy and enclosed the relevant documents. Further, on 30.01.2013 another complaint narrating the same set of facts was lodged to the Commissioner of Police, Egmore, Chennai – 600 008. On 11.02.2013, the said Mohamed Ali Jinnah executed a sale deed in favour of Ismail and Mustafa each to an extent of 630 square feet.

11. Apart from the above, on 06.05.2013, the petitioner preferred a complaint stating that the police has not taken any action on the earlier complaints and on 05.05.2013, the said persons, viz., Mohammed Ali Jinna, Syed Ahmed and Aslam along with 20 rowdy elements calling themselves as Advocates came to

the said property and forcibly dispossessed the tenants by throwing the valuables in the road, assaulted the employees and chased them out from the property. When the tenants rushed to the Royapuram Police Station requesting to take action, they have refused to receive the complaint and they have started to demolish the superstructure of the property, which was renovated by spending lakhs.

12. From the records, it is also seen that the petitioner by way of Crl.O.P.No.25985 to 25987 of 2014 has approached this Court to transfer his complaint dated 20.01.2013 to the file of Superintendent of Police, Crime Branch Criminal Investigation Department (CBCID), Guindy Industrial Estate, Chennai and this Court by order dated 22.09.2014 had observed that after due enquiry the police had dropped further action on the ground that the dispute is more of civil in nature and hence police was directed to send the closure report to the petitioner within one week from the date of receipt of a copy of that order. But the same was sent only on 15.11.2014 and in the closure report, among other things, it is stated as follows:

> "....மேலும் கீதா கிரையம் பெற்ற பர்னஸ் பரமானந்தத்தின் வாரிசுகள் தாங்கள் தான் மேற்கண்ட சொத்திற்கு உரிமையாளர் என்று உரிமை கொண்டாடி வருவதினாலும், மேற்படி சொத்தின் உரிமையை தாங்கள் உரிய சிவில் நீதிமன்றம் முலம் சென்று நிவாரணம் தேடிக்கொள்ளுமாறு அறிவுறுத்தப்பட்டு தாங்கள் கொடுத்த புகார் மனுக்கள் மீது மேல்நடவடிக்கை முடிக்கப்பட்டது என்பதை சென்னை உயர்நீதிமன்ற உத்தரவுப்படி தங்களின் பார்வைக்கு தெரிவித்துக்கொள்ளப்படுகிறது"

13. From the perusal of the documents, it could be seen that the petitioner herein had filed C.S.No.9 of 2015 for declaration declaring the his title to the suit property and for the consequential relief of permanent injunction restraining the defendants therein from in any manner interfering the petitioner's peaceful possession and enjoyment of the suit property and for relief of declaration declaring the sale deeds dated 10.11.2010 and 11.02.2013 as null and void. Pending suit, O.A.Nos.16 and 17 of 2015 was filed by the petitioner to grant interim injunction restraining the respondents therein, viz., Mohamed Ali Jinnah, Ismail and Mustafa from alienating or otherwise encumbering the suit property.

14. Further, according to the parties, the sale deed dated 20.12.1995 executed by Barnes Paramandam along with his wife, Esther Barnes for valuable sale consideration in respect of the property measuring an extent of 1770 sq.ft., in favour of

one R.Geetha, is a fraudulent and fabricated document. It is also stated that Barnes Paramandam obtained the said property by a sale deed dated 28.08.1974, but factually, the said sale deed was not executed in favour of Barnes Paramanandam and hence, he had no valid and independent right in the said property. By misrepresentation, the said Barnes Paramanandam has conveyed the property in favour of Geetha. The said Suganthi Arputhanathan, daughter of Paramanandam came to know about the fraudulent sale deed executed in favour of Geetha claiming to be exclusive owner of the property and she had chosen to file a suit in O.S.No.14055 of 1996 for the relief of declaration that the said sale deed dated 20.12.1995 is invalid and null and void. The said suit was taken for trial on merits. Though the said Barnes Paramanandam and Geetha, who were beneficiary under the sale deed had entered appearance in the suit through their advocates, they failed to conduct the proceedings and as such, an exparte decree was passed on 29.08.1997 in O.S.No.14055 of 1996. By virtue of the same, the said sale deed was set aside and as such, the sale deed document has no legal sanctity and consequently, Geetha had lost her rights in the property.

15. It is to be noted that after the decree dated 29.08.1997 was passed in O.S.No.14055 of 1996, the said Geetha had filed two applications, viz., I.A.No.21379 of 1997 to set aside the exparte decree dated 29.08.1997 and I.A.No.21380 of 1997 for stay of the operation of the said Judgment and Decree. Both the said applications were dismissed on 26.11.1997 and as such, the decree passed in O.S.No.14055 of 1996 became final and no appeal has been filed. There is no existing right, title or interest in favour of Geetha, but she had fraudulently and without disclosing or otherwise colluding with the plaintiff had sold a portion of the said property to an extent of 678.25 in favour of petitioner's mother, E.Devaki.

16. Also, Geetha loses the title, she clandestinely sells to Vasanthi, Devaki and Vandhana. On 21.03.1997, sale deed was executed by Geetha in favour of Vasanthi, at that time, the suit in O.S.No.14055 of 1996 is pending. By the Judgment and Decree in the said O.S.No, the document executed by Barnes paramanandam to Geetha, 1st defendant therein has become null and void and the 1st respondent shall not sell the property [permanent injunction 1770 square feet. in O.S.No.14055 of 1996, which is dated 29.08.1997] and thereafter, a sale deed, which

was executed by Geetha in favour of E.Devaki, petitioner's mother also become null and void on 26.12.1997. That being the case, Geetha has sold the portion of the property to other persons, in which one of the person is petitioner's mother and she has got no right to prosecute further.

17. In this case, it is seen that Paramanandam, is the original owner of the entire property and he had two children, namely, Barnes Paramanandam and Suganthi Arputhanathan, they both have equal right in the said property. However, sale deed executed by Barnes Paramanandam alone in favour of Geetha has been declared as null and void by the competent court. When it is made clear in the Decree and Judgment that the sale deed declared by Barnes Paramanandam as null and void and the said Geetha was permanently injuncted from executing sale deed to the third parties, and the matter is purely civil in nature , where the title of the property should be decided only before the civil court, the petitioner's contention that the closure report is not as per the formalities and there is no details about the investigation, cannot be agitated at present. Further, from the closure report nothing could be traced and if at all the petitioner is aggrieved, he is at liberty to work out his remedy before the authority concerned in the manner known to law. As per the documents filed in the typed set of papers, it is crystal clear that the initial sale deed, which was executed by Barnes Paramanandam on 20.12.1995 in favour of Geetha itself had become null and void, by Judgment and Decree dated 29.08.1997 in O.S.No.14055 of 1996 and since the Civil Suit in C.S.No.9 of 2015 is pending for adjudication before this Court and whether there is a tress-pass or not, has to be decided only by the appropriate civil Forum and hence, the present Criminal Original Petition is liable to be dismissed.

In the result, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

ssd

To

1. The Inspector of Police
   Land grabbing Wing-Team II,
   Central Crime Branch
   Vepery,Chennai.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to Mrs.G.Manimegalai, Advocate, S.R.No.43460

Crl.O.P.No.11986 of 2015 and
M.P.No.1 of 2015

GPL(CO)
RLP(20/09/2021)