

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.02.2021

PRONOUNCING ORDERS ON : 08.02.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.1965 of 2021

and

WMP No.2226 of 2021

T.Karunakaran

...Petitioner

.Vs.

1.The Inspector of Police,
T-4, Maduravoyal Police Station,
P.H.Road, Koyambedu,
Maduravoyal,
Chennai 600 095.

2.A.Sasikumar

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to provide adequate police protection to the petitioner and petitioner's property situated at Old No.74, New No.209, Arcot Road, Karambakkam, Porur, Chennai 600 116.

For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
for Mrs.AL.Ganthimathi

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
for R 1
R.Ganesh Kumar for R 2

ORDER

This Writ Petition has been filed seeking for police protection to the Petitioner and his property based on the complaint given by the Petitioner on 27.01.2021.

2. The case of the Petitioner is that he is the absolute owner of the subject property. The Petitioner claims that the 2nd Respondent is a tenant in the property. There was some dispute between the parties which ultimately ended with an award passed by the Lok Adalat. The Petitioner states that a fresh tenancy agreement was entered into between the parties fixing the monthly rent. According to the Petitioner, the 2nd Respondent defaulted in the payment of rent from March 2020 to June 2020 and as a result of the same, the tenancy was terminated though notice dt. 27.07.2020.

3. The further case of the Petitioner is that an execution petition was filed before the Principal District Munsif Court at Poonamallee for delivery of the property to the Petitioner and it was allowed by the execution court by an order dt. 08.01.2021. The Petitioner claims that the bata was paid on 11.01.2021 and the bailiff effected the delivery of possession in the presence of the village administrative officer and the possession was handed over to the Petitioner.

4. The grievance of the Petitioner is that in spite of effecting the delivery and handing over possession of the property to the Petitioner, the 2nd Respondent is causing threat to the Petitioner and was making attempts to trespass into the property with the help of rowdy elements. When a complaint was given to the Respondent police in this regard, the same was not acted upon and left with no other option the present Writ Petition has been filed before this Court.

5. Mr. A.R.L. Sundaresan, learned senior counsel appearing on behalf of the Petitioner brought to the notice of this Court the report of the bailiff that has been filed before the Court below after effecting the delivery. The learned senior counsel submitted that as per this report, the possession was handed over to the Petitioner on 25.01.2021. This report must be taken on its face value since it is an official act performed by the court officer. The learned senior counsel therefore submitted that the 2nd respondent cannot take law into his own hand and cause threat to the Petitioner and interfere with the possession and enjoyment of the Petitioner.

6. The learned Additional Public Prosecutor based on the instructions received by him from the respondent police submitted that the 2nd Respondent is still in possession of the property and if the police intervene at this stage, it will lead to a law and order problem.

7. The 2nd Respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

"13. I submit that I was regularly remitting the rent as agreed upon till the month of March 2020 and due to nationwide lockdown, the party hall was closed for few months and there were no bookings, in the meantime there were exchange of notices between the petitioner and myself. I submit that in such circumstances, on 25.01.2021 amidst programmes in the party halls at about 10.55. am the landlord along with few persons came to the hall with video camera. I submit that initially the staffs in the hall were of the impression that they were videographers of the party function, later they recognized them as outsiders and questioned, one person had informed them that he is a bailiff of the court and the other person (the petitioner herein) had introduced him as a landlord of the premises, took few minutes of video and left the place, immediately I was informed about this through my counsel. I tried to get details from the persons. However, no details were provided.

14. I submit that thereafter through my counsel I came to understand that the petitioner herein has managed to file execution petition in EP No. 68 of 2021 in OS No. 299 of 2018. I am given to understand that the petitioner (defendant in the suit) had claimed himself as a decree holder in the suit filed by Ms. Kattumaram Restaurants Pvt. Ltd against the petitioner and filed the present execution petition against me in my individual capacity, in fact I am not a party to the said proceedings in my individual capacity.

15. I further submit that infact even after the bailiff had left the premises, the programmes continued and till yesterday regularly programmes are conducted in the party halls as booked by parties as I am retaining actual/physical possession till now. I submit that immediately on coming to know about the execution petition, I had on 27.01.2021 (since 26.01.2021 happened to be a holiday) initially filed a petition under Order XXI Rule 106 CPC for setting aside the ex parte order of delivery ordered by the execution court, infact in the said petition

I had apart from substantiating the reasons for setting aside the exparte order of delivery, I had also raised the question of maintainability of the execution petition against me on the grounds that I was not a party to the main suit in my individual capacity and suit is filed by M/s. Kattumaram Restaurants Private Limited, further more during the course of compromise, the petitioner entered into a tenancy agreement with me and in the event of default the petitioner can only approach the concerned court for rent control proceedings, in the event of default the petitioner can only approach the concerned court for rent control proceedings, in the even of default the petitioner herein can have a cause of action for initiating proceedings and certainly not a ground for eviction that too by dispensing with service of notice under Order XXI Rule 22 CPC.

16. I further submit that in fact after the expiry of the original tenancy agreement the tenancy was thereafter renewed on fresh terms as per the Tenancy Agreement dated 01.12.2019 (which does not form part of the Compromise Decree) and as on the date of filing of the execution petition, the parties are governed by the fresh tenancy agreement. Further a clause in the tenancy agreement says in case of default the parties shall approach the concerned jurisdiction court.

17. I further submit that I had specifically pleaded in the setting aside ex-parte order of delivery petition that no delivery was effected on 25.01.2021, in fact I am at the verge of lodging complaints against the persons who had attested the alleged delivery proceedings for their illegality before the concerned authorities. I submit that on the other hand the petitioner herein since having failed in taking actual physical possession on the strength of the visit of the bailiff on 25.01.2021 had attempted to take forceful possession of the tenanted premises on 27.01.2021 and on the following days. On 27.01.2021 the petitioner had come with henchmen, assaulted my manager, cooking

persons in the party hall and had gone to an extent of damaging the entire front side sign/name boards and the CCTV cameras. In fact immediately on 27.01.2021 since the local police had refused to acknowledge my complaint, I had lodged a complaint through online vide MAS 21012711. I submit that in their continuous attempts through henchmen the petitioner is attempting to snatch the possession. I submit that though complaints were lodged to Deputy Commissioner of Police, no action was taken till date. I further submit that the writ petitioner herein had also lodged a caveat before the Hon'ble Tiruvallur District Court in Caveat No. 322 of 2020 against me and the same was served at the tenanted premises on 28.01.2021 and the same was received by my manager Mr. Harish Kumar, therefore there is no contra proof required to prove that I am in possession of the tenanted property.

18. I submit that apprehending his continuous illegal actions, causing damage to the properties, threatening the persons to avoid technicalities I had by way of abundant caution filed Execution Application Sr. No. 415/2021, 489/2021 and 491/2021. The said applications are pending adjudication before the execution court. I am advised to submit that before recording of the delivery, the execution court is about to take up the execution applications filed by me.

19. Further submit that the execution applications filed by me for advancing the hearing of EP No. 68 of 2020, came to be numbered in EA No. 13 of 2021 and posted for hearing. I further submit that the advance hearing application was taken up on 04.02.21 and posted to 05.02.21 at request of the petitioner herein. I am advised to submit that there are disputed question of facts and this is also not the first time the petitioner is approaching this Hon'ble court with the similar prayer, it would be appropriate for the petitioner to agitate his rights before the execution court, where I can also lead evidence before the execution court to prove my contention that no delivery was effected. I submit that the

petitioner herein having failed in his attempt to forcefully snatch the possession from me on 27.01.2021 has come up with this petition. I submit that in so far as the pleadings in paragraph No. 5 of the affidavit are concerned, I respectfully submit that the no physical possession was taken on/delivery was not effected.

20. I still continue to be in continuous and uninterrupted physical possession. I further submit that in so far as the pleadings in paragraph No. 6 of the affidavit are concerned I hereby deny the same and the petitioner is put to strict proof of the same, it was a blatant lie and a clear false affidavit filed by the petitioner. I submit that it is totally false to claim that he was segregating the movables and cleaning the premises on 27.01.2021, further I along with two others have disturbed his possession and used unparliamentary words are total false versions.

8. The learned counsel appearing on behalf of the 2nd Respondent submitted that the possession still continues to be with the 2nd Respondent. In fact functions were conducted even on 27.01.2021. If really the possession had been handed over to the Petitioner, there was no way that the 2nd Respondent could have granted permission to conduct the function in the subject property. The learned counsel further submitted that an application has already been filed before the court below to set aside the exparte order of delivery and the 2nd Respondent is contesting the stand taken by the Petitioner to the effect that possession was handed over by the bailiff and the same will be established before the execution court. The learned counsel submitted that when there are disputed facts, this Court will not exercise jurisdiction under Article 226 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution") and the entire issue must be left open to be decided by the execution court.

9. This court has carefully considered the submissions made on either side and the materials available on record.

10. In the present Writ Petition, this Court is only concerned with the issue as to whether police protection must be given to the Petitioner as claimed by him pursuant to the alleged delivery of possession effected by the bailiff on 25.01.2021.

11. The 2nd Respondent is seriously disputing the fact that the delivery was effected and he is bringing to the notice of this Court certain functions that were conducted in the property even after the alleged delivery of possession. The application filed by the 2nd Respondent to set aside the exparte order of delivery has also been taken up for hearing by the execution court. Even though the bailiff has submitted the report before the execution court, the execution court will have to record the delivery of possession. This order will be passed after taking into consideration the objections made by the 2nd Respondent who claims that the physical possession was not given to the Petitioner. That apart, the respondent police has come up with a very specific stand that the 2nd Respondent continues to be in possession of the subject property.

12. From the above, it is clear that there are disputed facts regarding delivery of possession that is said to have been effected by the bailiff on 25.01.2021. This Court cannot enter into such disputed facts in exercise of its jurisdiction under Article 226 of the Constitution. It will be more appropriate to leave the entire issue open to be decided by the execution court. The entire materials are now before the execution court and the execution court will also have the advantage of recording evidence to come to a correct conclusion. Till a conclusion is arrived with regard to the dispute regarding possession, it will not be appropriate to order for police protection. Once the execution court finds an answer for the dispute with regard to possession, the same court will have the power to even order for police protection.

13. In view of the above discussion, this Court is not inclined to grant the relief as sought for by the Petitioner and the entire issue is left open to be decided by the execution court.

14. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KP

To

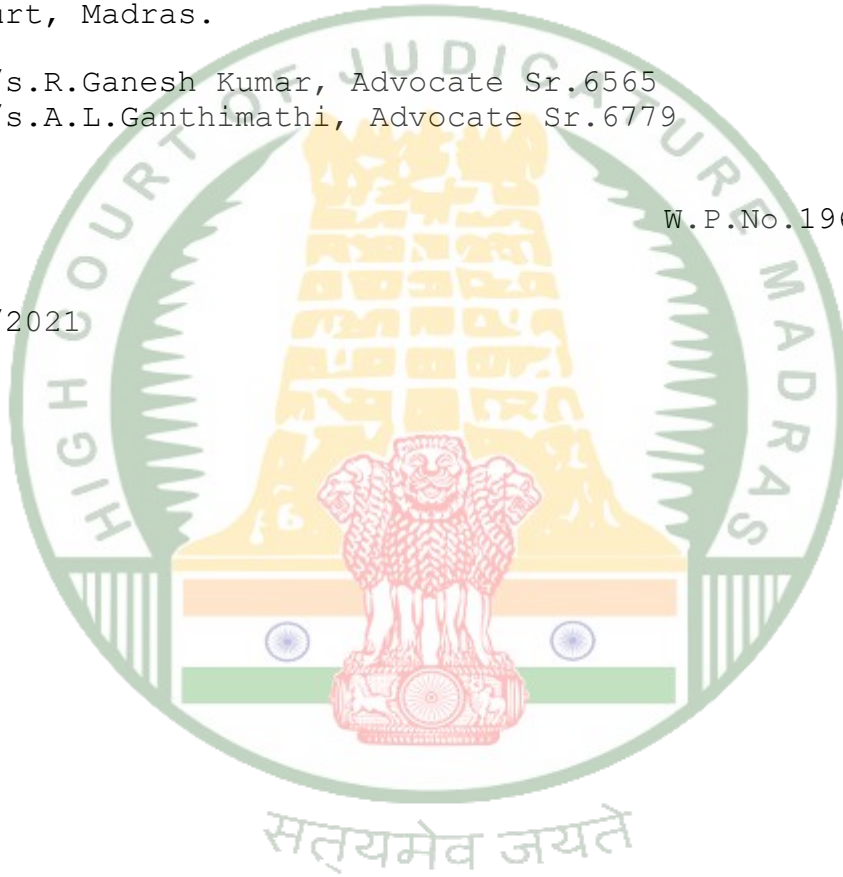
1.The Inspector of Police,
T-4, Maduravoyal Police Station,
P.H.Road, Koyambedu,
Maduravoyal,
Chennai 600 095.

2.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Ganesh Kumar, Advocate Sr.6565
+1cc to M/s.A.L.Ganthimathi, Advocate Sr.6779

W.P.No.1965 of 2021

sra[col]
srg 16/03/2021



WEB COPY