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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.5526 of 2018

and

Crl.M.P.Nos.2705 & 2706 of 2018

Dhanraj N. Kocher

.. Petitioner

Vs.

1. The Sub Inspector of Police,
Central Crime Branch,
Land Forgery XVIII Team,
Thousand Lights,
Chennai-6.
(X.Cr.No.570/2006)

2. A.J.Samuel

.. Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records in CC.No.8080 of 2006 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, quash the same.

For Petitioners :Mr.S.Ramasamy
Senior Advocate
For Mr.C.Balasubramanian

For Respondent :Mr.C.E.Pratap
Public Prosecutor for R1
Mr.R.C.Paul Kanagaraj for R2

O R D E R

The petitioner has filed this petition seeking to call for the entire records in CC.No.8080 of 2006 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, quash the same.

2. The facts of the case are as follows:

The subject property was initially owned by one American Baptist Foreign Mission Society (ABFMS). Subsequently, the said property sought to be transferred in favour of the Property



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Association of Baptist Church Private Limited (PABC) under a scheme of amalgamation. The company petition was also filed in such regard before this Court. The scheme of amalgamation was permitted and accordingly, the property belonging to the ABFMS was transferred to the PABC. The petitioner had entered into a sale agreement with the PABC in respect of such property on 20.08.1996. The PABC has executed a lease deed dated 20.02.2003 in favour of the petitioner for a period of 30 years in respect of the property. The said lease deed dated 20.02.2003 registered as document No.37/2003 in the office of the Sub Registrar, Periamet. As per the terms of the lease deed, the petitioner was permitted to demolish the existing building and put up a new construction.

3. While the matter stood thus, a civil suit came to be filed before this Court praying for a scheme to be prepared for administering PABC Limited and the suit is still pending. In the said suit, several interim orders relating to alienation of properties were passed and in one such Contempt Petition namely C.P.No.441 of 2003, the petitioner filed Sub Application No.181/2006 in Cont. Pet. No.250 of 2006 praying for modification of the earlier order dated 02.08.2006 which alienation of the properties. By order dated 15.09.2006, this Court modified the earlier order is as follows:-

'4.3. Accordingly, the order dated 02.08.2006 is clarified as follows:

The orders dated 17.06.2006 and 02.08.2006 will not be applicable in the case of sale executed prior to 25.07.2000 and the mortgage, lease etc., executed prior to 27.06.2003.

The orders dated 17.06.2006 and 02.08.2006 stands modified to the above effect. The above Sub-Application is ordered accordingly.'

4. While the matter stood thus, the defacto complainant claiming to be a representative of ABFMS, filed a private complaint against the petitioner, which was registered in Crime No.570 of 2006. The respondent police, after due investigation, filed a final report, which was taken on file by the learned Additional Chief Metropolitan Magistrate on 21.12.2006. In the final report, the petitioner was shown as second accused and offences alleged against him are Sections 420, 468, 47 read with 120 B of IPC. Seeking to quash the said proceedings, the petitioner has filed the present original petition.

5. Heard the learned counsel on both sides and perused the materials available on record.



6. Before delving into the merits of the case, this Court records that the present complaint is an abuse of process of law where a property that was properly conveyed from one religious institution to another and which was taken possession after accepting the relevant deeds as per the law was sought to be unsettled on the basis of a frivolous and vexatious complaint.

7. The manner in which the property was taken possession of by the petitioner is crystal clear. The property was initially held by the ABFMS. By making proper application before this Court for amalgamation, the property was transferred in favour of the PABC. Thereafter, the petitioner entered into a sale agreement with the PABC in respect of the subject property way back on 20.08.1996 and had paid an advance of Rs.1.72 Crores. Thereafter, the PABC had executed a lease deed dated 20.02.2003 which was purely registered before the Sub Registrar Office, Periamet, permitting the petitioner to occupy the property for a period of 30 years. The petitioner was also granted liberty to pull down the existing old building and put up a new construction. Though a suit was filed praying for a scheme to be prepared for administering the PABC and slew interim orders were passed, resulting in Contempt Petition be filed, the rights of the petitioner was permitted by this court by way of the order passed on 15.09.2006 as mentioned above. Therefore, the petitioner was in a legal possession of the property. Though a suit was filed by ABFMS on the file of the learned VI Additional Chief Metropolitan Magistrate, Chennai in O.S.No.9553 of 2010 in respect of the said property, the suit came to be dismissed on 13.08.2015. Therefore, a writ petition was filed before this Court in W.P.No.18148 of 2016 to cancel the building plan approval granted to the petitioner. The Hon'ble First Bench of this Court dismissed a writ petition observing that the writ proceedings cannot be utilise to nullify the dismissal of the civil suit. Further, it is to be pointed out that A-3 had filed a quash petition in CrI.OP.No.13186/2007 before this Court and a learned Single Judge of this Court, after exhaustively dealing with the facts of the case threadbare, had quashed the case as against A-3, the petitioner herein. Since A-1 and A-2 had not come before the Court seeking quashment, the Court had directed the trial to proceed against them.

8. Further, as pointed out by this Court supra, the petitioner in the present case, who is arrayed as A-2 also stands on the same footing as that of A-3 and, therefore, the benefit of the judgment in CrI.OP.No.13186 of 2007 should also enure to the benefit of the petitioner herein.

9. After exhausting all ways and means to disturb the possession of the petitioner, the present complaint has been



filed. As narrated above, the petitioner is in possession of the property only by due process of law. The present complaint, in the view of this Court, is vexatious and the same cannot be permitted to be sustained. The trial, if allow to continue, will be an abuse of process of law and mere waste of precious judicial time. The petitioner cannot also be permitted to undergo the rigor of trial.

10. Therefore, this Criminal Original petition is allowed and the proceedings pending in CC.No.8080 of 2006 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai is quashed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Inspector of Police,
Central Crime Branch,
Land Forgery XVIII Team,
Thousand Lights,
Chennai-6.
 2. Additional Chief Metropolitan Magistrate, Egmore,
 3. The Public Prosecutor,
High Court of Madras, Chennai 600 104.
- +1cc to Mr.C.Balasubramanian, Advocate, S.R.No.55661

CrI.O.P.No.5526 of 2018 and
CrI.M.P.Nos.2705 & 2706 of 2018

SMI (CO)
CT 01/12/2021