



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.9282 of 2021
and
W.M.P.No.9847 of 2021

K.Shankar,
S/o, K.Kannan

... Petitioner

Versus

1. The Inspector of Police (L&O),
R-5, Virugambakkam Police Station,
Viruambakkam,
Chennai - 600 092.

2. The Deputy Commissioner of Police,
T.Nagar,
Chennai - 600 017.

3. Mathiyalagan
S/o, Varadharajan

4. R.Ramya
W/o, V.Mathiyalagan

5. R.Shankaran Gargh,
S/o, Rajan

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the constitution of India to pass a) Writ of Mandamus or any other order, direction or writ in the nature of a Writ of Mandamus to direct to transfer the investigation from the 1st respondent's police vide CrI.M.P.No.1319/2020 order dated 23.12.2020 to any competent authority and pass such further or other orders as it may deem fit and proper in the circumstances of the case. b) Issue an order of injunction against 3rd - 5th respondents to restrain their men agents or whomsoever claiming under them from in any manner evicting or disturbing or interfering with the petitioner's peaceful possession and enjoyment of the schedule property herein until disposal of the main writ petition. c) direct the 1st respondent to give police protection to the petitioner in view of the permanent injunction decree in O.S.No.5353 of 2016 in favour of the petitioner regarding the schedule property.



SCHEDULE OF PROPERTY

All that piece and parcel of vacant house site plot No.21-part (South Side Portion) as per sub division plot No. A (Sub Division Approval bearing No.SD/WDC05/00040/2009 dated 18.02.2009 situated at Koyambedu Village, Chennai District, Egmore- Nungambakkam Taluk, Venkatesa Nagar Extension-2, 1st Main Road, comprised in old paimash No.484, From 491 to 496 Survey No.110, as per Tahsildar Record New Survey No.110/2T Block No.79, T.S.No.64, measuring an extent of 472 sq. ft. of undivided share of land out of 3165 sq.ft. And the land being bounded on the North by plot no.21-Part(North side Portion) as per sub-division plot no.B South by 30 feet road, (Venkatesa Nagar Extension-2(1st Main Road)

East by Plot no 22 part

West by Plot no 20 part

Measuring on the

North to south on the eastern side 53 feet

North to south on the western side 521/2 feet

East to west on the northern side 60 feet

East to west on the southern side 60 feet

In all measuring 3165 sq.ft. Of land and situated within the Sub-Registration District of Anna Nagar and Registration District of Central Chennai

SCHEDULE OF PROPERTY-(B-SCHEDULE)

3165 sq.ft. Undivided share of land in schedule -A mentioned property

For Petitioner : Mr.B.Sundar

For R1 & R2 : Mr.A.Damodaran
Government Advocate

For R3 to R5 : Mr.V.Subramanian

ORDER

The Writ petition has been filed for giving direction to the respondents 1 and 2 to transfer the investigation from the 1st respondent's police vide CrI.M.P.No.1319/2020 order dated 23.12.2020 to any competent authority

2. The petitioner allege the complaint was given to the respondent police on 06.10.2020, despite the complaint discloses commission of cognizance offence, the respondent police had not taken any action. Thereafter, he filed the petition before the XXIII Metropolitan Magistrate, under section 156(3) Crpc, in C.M.P.No.1319 of 2020. The XXIII Metropolitan Magistrate by an order dated 23.12.2020, forwarded the complaint to the respondent police with the direction to register the FIR. Thereafter the respondent police failed to take any action. Hence, he filed this Writ Petition seeking transfer of investigation from the file of the Inspector of police (respondent) to any other competent



agency. The petitioner had already obtained a order in Civil Suit and the findings in the said judgment is in favour of the petitioner.

3. Mr.V.Subramaniam, the learned counsel for R3 to R5 submits that the petitioner is blowing out of proposition a civil dispute, given criminal colour and making allegation that the respondents 3 to 5 has committed criminal offence. The petitioner had admitted that the Civil Suit is pending which would clearly reflect that it is only a civil case which is attempted to be given a criminal colour.

4. The respondents' counsel further submitted that the petitioner relies on the civil court finding in O.S.No.5353 of 2016. If there is a violation of the Civil Court orders, he has to approach the Civil Court and to obtain necessary orders and not by filing police complaints.

5. The learned Government Advocate appearing for the respondents 1 and 2 has filed the counter and submitted that the relief sought for by the petitioner in the Criminal complaint is to restrain the respondent No.5 and who was the defendant in O.S.No.5353 of 2016 and their men from in any manner evicting or disturbing or interfering with the petitioner's peaceful possession and enjoyment of the property. The respondent police had issued summons to R3 and R4 to appear for enquiry on 19.06.2021 and submitted that they are not added as a party in the suit in O.S.No.5353 of 2016. Further submitted that there is some dispute with regard to the property and their rights. On receipt of the complaint, Crime No. 664 of 2021 has been registered under sections 447 and 427 IPC. Further submitted that the investigation would be properly conducted and final report will be filed shortly within a period of three months.

6. In view of the fact that the official respondent has registered the case and undertakes that the investigation would be completed within a period of three months and final report to be filed, recording the same, the Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. The petitioner is given liberty to approach the respondent police and submit the available materials in his possession.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police (L&O),

R-5, Virugambakkam Police Station,

<https://hcservices.ecourts.gov.in/hcservices/>
Virugambakkam, Chennai - 600 092.



2. The Deputy Commissioner of Police,
T.Nagar, Chennai - 600 017.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Subramaniyan, Advocate SR.No. 31766

+1cc to Mr.R.Sundar, Advocate SR.No. 31138

W.P.No.9282 of 2021

and

W.M.P.No.9847 of 2021

SSI (CO)

B.VC (27.07.2021)