



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.08.2021

PRONOUNCED ON : 02.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.11185 of 2021

Boobalu

... Petitioner

Versus

1. The Superintendent of Police,
Office of the Superintendent of Police,
Erode - Post & District.
2. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Sathyamangalam - Post & Taluk,
Erode - District.
3. The Inspector of Police,
Punjai-Puliyampatti Police Station,
Punjai-Puliyampatti - Post,
Sathyamangalam - Taluk,
Erode - District.
4. P.G.Sathish

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd and 3rd respondents to provide Police protection to the petitioner and property bearing Survey No.268/5, 268/6 and 268/7 to an extent of 3.13 acres along with K.G.Thitumana Mandabam, Punjai Puliyampatti - Village, Erode - District based on the complaint lodged before the 3rd respondent dated 13.12.2020 and 18.12.2020.

For Petitioner : Mr.D.Veerasekaran

For R1 to R3 : Mr.A.Damodaran,
Government Advocate (Crl. Side)

For R4 : Mr.V.P.Sengottuvel



ORDER

This Writ Petition has been filed to direct the respondents 2 and 3 to provide Police protection to the petitioner and his property bearing Survey Nos.268/5, 268/6 and 268/7 to the extent of 3.13 acres along with K.G.Thirumana Mandabam situated at Punjai Puliyampatti Village, Erode District based on the complaints, dated 13.12.2020 and 18.12.2020.

2.The learned counsel for the petitioner submitted that the petitioner lodged a complaint to the 3rd respondent on 13.12.2020 and again, lodged another complaint to the 1st respondent on 18.12.2020 seeking Police protection for him and also for marriage hall viz., K.G.Thirumana Mandabam, Punjai Puliyampatti Village, Erode District which is unauthorizedly locked by the 4th respondent, who is making counter claim over the property. The learned counsel further submitted that Palanisamy and Saraswathy are parents of the petitioner and his maternal uncle is one N.K.Gopal. The said N.K.Gopal had purchased property from the year 1987 to 1998 in Puliyampatty Village in Survey Nos.268/5, 268/6 and 268/7. In the said property, a marriage hall was constructed, wherein the electricity connection, water connection and sewage connection are in the name of N.K.Gopal. On 02.02.2017, a settlement was done by N.K.Gopal in favour of the petitioner's mother Saraswathy which was registered in document No.268 of 2017. From thereon, the properties were enjoyed by the petitioner and his mother Saraswathy. On 22.11.2017, the petitioner's mother died. Thereafter, the properties in the name of the petitioner's mother were enjoyed by the petitioner, his father and his sister. On coming to know about the same, the 4th respondent, the son of N.K.Gopal started giving trouble to the petitioner for the property. Hence, the petitioner, his father Palaniswamy and sister Malarvizhi filed a civil suit in O.S.No.80 of 2018 before the learned Subordinate Judge, Sathyamangalam, in which an application in I.A.No.311 of 2018 was filed. Initially, an interim injunction in I.A.No.311 of 2018 was granted in favour of petitioner and thereafter, made permanent on 14.07.2018, against which the 4th respondent preferred Civil Miscellaneous Appeal before the learned III Additional District Judge, Erode, which was dismissed, confirming the permanent injunction granted in favour of the petitioner, against which no Civil Revision Petition was filed. Thus, the finding of the learned Subordinate Judge, Sathyamangalam became final. With regard to the other right over the property, it has to be decided only in O.S.No.80 of 2018.

3.The learned counsel for the petitioner further submitted that on 17.11.2020, the petitioner's maternal uncle N.K.Gopal passed away. The petitioner and his family members were taking



part in the last rites ceremony. The marriage hall key was entrusted with one Udhayakumar. The 4th respondent had taken away the key from him and placed another lock. Now, the petitioner's access and enjoyment of the marriage hall is denied. Hence, the petitioner lodged a complaint with the respondents 1 to 3. The specific contention of the petitioner is that the petitioner is armed with the orders of the civil Court, despite the same he is unable to enjoy the property. Hence, necessary direction has to be issued to the 1st and 3rd respondent for his peaceful enjoyment of the property.

4.The learned Government Advocate (Crl. Side) appearing on behalf of the respondents 1 to 3 submitted that in this case, the civil suit in O.S.No.80 of 2018 is still pending between the petitioner and the 4th respondent. After conclusion of the civil suit, the right over the property would be confirmed. There are claim and counter claim over the disputed property. The 4th respondent herein has to maintain peace till disposal of the petition. He further submitted that the complaint was received by the 3rd respondent from the 1st respondent. On receipt of the same, the 3rd respondent conducted enquiry and found there is civil dispute between the parties and sent a report to the 1st respondent that the parties to approach the civil Court and to resolve their issues.

5.The learned counsel for the 4th respondent filed his counter and made submissions that K.G.Thirumana Mandapam comprised in survey Nos.268/5, 268/6 & 268/7, totally measuring to the extent of 3.13 acres situated at Puliyampatti Village, Sathyamangalam Taluk, Erode District originally belongs to N.K.Gopal, father of the 4th respondent. The father of the 4th respondent purchased the same under sale deeds in document Nos.930/1988, 289/1993 & 888/1998, dated 14.09.1987, 01.08.1988, 17.03.1993 and 27.11.1998 registered in Sub Registrar Office, Punjai Puliyampatti. These properties are purchased out of the income derived from his ancestral properties. The family members of N.K.Gopal were in enjoyment of the said properties. The mother of the petitioner saraswathy executed two release deeds in favour of N.K.Gopal releasing and relinquishing her rights in the joint family properties. The 4th respondent was in the complete management of the aforementioned Kalyana Mandabam and other properties belonging to his father. The 4th respondent's mother Eswari died on 21.01.2000 and his father married one Maragathamani as second wife. Due to which, there was some misunderstanding between the 4th respondent and his father N.K.Gopal. Hence, the 4th respondent demanded partition and separate possession of the joint family properties, which includes the aforementioned Kalyana Mandabam. Since the 4th respondent's father failed to come for amicable settlement, the 4th respondent filed a suit in O.S.No.4 of 2017 before the



learned III Additional District and Sessions Judge, Gobichettipalayam against his father, sister K.G.Gowri and step mother Maragathamani for partition of the suit property. In the suit in O.S.No.4 of 2017, the 4th respondent filed an application in I.A.No.79 of 2017 seeking direction to restrain the respondents therein from making any encumbrance or alienation of the suit property. This Application was contested by the petitioner herein and his group. The learned III Additional District and Sessions Judge, Gobichettipalayam in fair and final order, dated 02.11.2017 allowed the application and the same was not challenged.

6.The learned counsel for the 4th respondent further submitted that on coming to know about the order dated 02.11.2017, the 4th respondent father executed a settlement deed, dated 02.02.2017 in document No.268/2017 in favour of his sister Saraswathy, mother of the petitioner to defeat the interest of the 4th respondent in the partition suit. On coming to knowledge of the same, the 4th respondent filed I.A.No.472 of 2017 to implead the Sub Registrar, Puliampatti and also the petitioner's mother Saraswathy as defendants in the suit in O.S.No.4 of 2017. During the pendency of I.A.No.472 of 2017, the petitioner's mother died on 22.11.2017. Hence, the 4th respondent filed application in I.A.No.689 of 2018 in I.A.No.472 of 2017 in O.S.No.4 of 2017 to bring the legal heirs of Saraswathy on record. The petitioner with a view to disturb the 4th respondent's possession and enjoyment of the property filed a suit in O.S.No.80 of 2018 before the learned Sub Judge, Sathyamangalam seeking declaration and injunction suit. In the suit, the petitioner filed an application in I.A.No.311 of 2018 seeking injunction and obtained interim order on 12.06.2018, against which the 4th respondent filed appeal in C.M.A.No.6 of 2018 before the learned III Additional District Judge, Gobichettipalayam, which was dismissed on 03.07.2020. Due to successive lock down of Court, the 4th respondent was unable to challenge the same before the Superior Court.

7.It is further submitted that after demise of the 4th respondent's father on 17.11.2020, the 4th respondent was in continuous possession and administration of Kalyana Mandabam and other properties. Taking advantage of the 4th respondent father's death, the petitioner broke open the lock of main gate of Kalyana Mandabam and attacked the Manager of Kalyana Mandabam. The Manager R.Karthikeyan lodged a complaint on 13.12.2020 to the 3rd respondent and C.S.R.No.109 of 2020, dated 15.12.2020 was assigned. As a counterblast, on 18.12.2020 a false complaint was lodged by the petitioner's group and enquiry was conducted in C.S.R.No.109 of 2020. During enquiry, the petitioner and his group gave undertaking that they will not interfere with the possession and enjoyment of the 4th



respondent's property and they would approach the civil Court. After giving such undertaking, the petitioner filed a complaint under Section 156(3) Cr.P.C., in C.M.P.No.522 of 2021 before the learned Judicial Magistrate, Sathyamangalam for the same relief. Thereafter, the petitioner filed a petition in Crl.O.P.No.4009 of 2021 before this Court seeking direction to the learned Judicial Magistrate, Sathyamangalam to consider and pass orders in C.M.P.No.522 of 2021. The learned Judicial Magistrate, Sathyamangalam, by order, dated 11.03.2021 dismissed the petition of the petitioner and held that the civil suits are pending between the parties for consideration before the civil Courts and the petitioner did not come with clean hands. Now, the 4th respondent has filed Civil Revision Petition challenging the order passed in C.M.A.No.6 of 2018, dated 03.07.2020. While being so, no Police protection would be given to the petitioner.

8.This Court considered the rival submissions and perused the materials available on record.

9.The primary contention of the 4th respondent is that the 4th respondent's father N.K.Gopal after receiving Court summons for the partition suit filed by him in O.S.No.4 of 2017, executing a settlement deed in document No.268 of 2017 on 02.02.2017 in favour of his sister Saraswathy is not correct. On the date when the settlement deed was executed, there was no impediment or restriction for N.K.Gopal to execute settlement deed in favour of his sister Saraswathy, mother of the petitioner.

10.It is seen that the 4th respondent did not prefer any appeal against the order dated 03.07.2020 in C.M.A.No.6 of 2018. During pendency of the representations, dated 13.12.2020 and 18.12.2020, it is stated that the Civil Revision Petition has been filed against C.M.A.No.6 of 2018, which is after thought and the same cannot be countenanced.

11.This Court in the case of "Radhika Sri Hari and another Versus the Commissioner of Police, Coimbatore City, Coimbatore reported in 2014 (2) CTC 685" had given direction for Police protection to the original owners of the property. In this case, since the petitioner is armed with the civil Court order, this Court directs the 3rd respondent Police to provide Police protection to the petitioner and his property in survey Nos. 268/5, 268/6 and 268/7 to the extent of 3.13 acres along with K.G.Thirumana Mandabam, Punjai Puliyampatti Village, Erode District, unless any contrary order from the civil Court is produced by the 4th respondent.



WEB COPY

12. With the above direction, this Writ Petition is disposed of. No Costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Superintendent of Police,
Office of the Superintendent of Police,
Erode - Post & District.
2. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Sathyamangalam - Post & Taluk,
Erode - District.
3. The Inspector of Police,
Punjai-Puliyampatti Police Station,
Punjai-Puliyampatti - Post,
Sathyamangalam - Taluk,
Erode - District.
4. The Public Prosecutor,
High Court, Madras.

+1CC to Mr.D.Veerasekaran, Advocate, Sr.No.44318

+1CC to Mr.V.P.Sengottuvel, Advocate, Sr.No.44371 (09.09.2021)

PRE-DELIVERY ORDER IN
W.P.No.11185 of 2021

NMI (CO)
K.RK. (02.09.2021)