

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.05.2021

CORAM

THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

W.P. No. 11959 of 2021

Ramzan Thaikkal Pallivasal
Rep. by its Muthavalli, Mohamed Shahid
S/o. Mohamed Ishak, Ramzan Thaikkal,
Udayargudi, Kattumannarkoil,
Cuddalore - 608 301. ... Petitioner

Vs.

- 1.The Superintendent of Police,
District Police Office,
Cuddalore.
- 2.The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil,
Cuddalore District - 608 301.
- 3.Mahboob Sharif
- 4.Mohamed Farooq
- 5.Mathiyazhagan
- 6.Lenin ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of mandamus directing the first and second respondents to give police protection to remove the underwood plants and bushes and to put up fence at the property situated at Udayargudi village, Kattumannarkoil comprised R.S. 103/1, 2 and 3 admeasuring 9.60 Acre owned by the Ramzan Thaikkal Pallivasal.

For Petitioner : Mr. G.Pugazhenthir

For Respondents 1&2 : Mr. L.Baskaran

O R D E R

The petitioner is the Muthavalli of Ramzan Thaikkal Pallivasal, Kattumannarkoil, Cuddalore District. The properties situated at Udayarkudi, Kattumannarkoil Taluk, comprised of R.S.No.103/1, 2 and 3, admeasuring 9.60 Acres, were granted to

Ramzansha, to maintain the Thaikka and Chavadi and the said Ramzansha and his descendants were in possession and enjoyment of the said properties. The said properties were alienated to and in favour of the 4th respondent and Mumtaj Begum and Rabiyyathul Bazari. Thereafter, the then Muthavalli of Ramzan Thaikka and the Tamil Nadu Wakf Board have jointly filed suits for recovery of possession against the said persons, as they were the owners of the properties, before the Principal District Munsif Court, Chidambaram, in O.S.Nos.710, 711 and 712 of 1986.

2.The trial Court had decreed the suit by a decree and judgment, dated 13.10.1988, aggrieved by which, the defendants in the suits had filed appeals before the Sub-Court, Chidambaram, in A.S.Nos.1, 2 and 3 of 1989 and the same were dismissed by judgment dated 06.08.1992. As against the above judgment, the defendants in the suits had filed second appeals in S.A.Nos.1466, 1467 and 1468 of 1992 before this Court and the same were dismissed by this Court by judgment, dated 30.01.1997, holding that the Ramzan Thaikka Mosque is the owner of the property and they are entitled to recovery of possession and other reliefs. On filing execution petitions, possession was handed over and now, the Pallivasal is in the possession and enjoyment of the properties.

3.In order to construct buildings for the welfare of the village people, attempts have been taken by the petitioner to clean the lands of the Pallivasal, but, the private respondents are preventing them from doing cleaning works stating that they have right over the property.

4.The petitioner has submitted a representation, dated 07.04.2021, to the 1st and 2nd respondents seeking police protection to complete the cleaning works in the property, however, it is yet to evoke any kind of response. Due to the inaction on the part of the respondent police, the present writ petition has been filed for police protection.

5.Learned counsel appearing for the petitioner submits that the petitioner has succeeded in the civil proceedings before the trial Court and the matter came up to this Court by way of second appeal and the petitioner has succeeded in the second appeal and has proved its right over the suit properties. Though the petitioner has succeeded in the civil proceedings, the third party private respondents are causing obstructions for removal of bushes and cleaning of the properties, and hence, the petitioner submitted a representation, dated 07.04.2021, before the 1st and 2nd respondents, but to no avail. Therefore, left with no other option, the petitioner has approached this Court by way of this writ petition.

6.Per contra, Mr.L.Baskaran, learned counsel for Government (Crl. Side), submit that there is a civil dispute between the petitioner and the private respondents, and it involves adjudication of disputed questions of facts, which cannot be gone into in a writ petition under Article 226 of the Constitution of India and it has to be decided only before the civil Court.

7.Heard the learned counsel on either side and also perused the materials available on record.

8.A perusal of the affidavit filed in support of this petition disclose that the petitioner has succeeded in the civil proceedings up to Second Appeal before this Court. However, it appears that the private respondents are claiming right over the properties. The suit in which the petitioner has obtained relief in no way concerns the private third party respondents and that being the position, the issue relates to title to the property, which involves disputed question of facts, which cannot be decided by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and it has to be decided only before the civil Court. Therefore, the prayer of the petitioner cannot be granted at this point of time.

9.Accordingly, this writ petition is dismissed. No costs. However, it is open to the petitioner to agitate the issue in a manner known to law to establish his right vis-a-vis the third party respondents.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Superintendent of Police,
District Police Office,
Cuddalore.
- 2.The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil,
Cuddalore District - 608 301.

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srg 10/06/2021