



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.1663 of 2021
and
C.M.P.No.10481 of 2021

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

Prayer: Writ Appeal filed under clause 15 of the Letters Patent praying to set aside the order made in W.P.No.11959 of 2021 dated 20.05.2021.

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 Appellant	:	Mr.G.Pugazhenth
For Respondents 1 & 2	:	Mr.D.Ravichander
		State Government Counsel



For Respondents 4 to 6 : Mr.S.Rajmakesh
For Respondent 3 : Not ready in notice

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JUDGMENT
(delivered by PUSHPA SATHYANARAYANA, J.)

The writ appeal is directed against the order dated 20.05.2021 passed in W.P.No.11959 of 2021.

2. The prayer in the writ petition is for issuance of a Writ of Mandamus, seeking a direction to respondents 1 and 2, who are the police officials, to give police protection to remove the under-wood plants and bushes and to put up fence around the property situated at Udayargudi Village, Kattumannarkoil comprised in R.S.No.103/1, 2 and 3 ad-measuring 9.60 acre owned by the Ramzan Thaikkal Pallivasal, who is the appellant herein.

3. The learned Single Judge had found that though the writ petitioner/appellant herein has succeeded in the civil proceedings upto Second Appeal before this Court, the respondents 3 to 6 were not parties to the same and they are claiming separate right over the property as tenant. In paragraph 8 of the affidavit filed in support of the writ petition, the writ petitioner/appellant has also stated that the respondents 3 and 4 joined hands with the respondents 5 and 6, trespassed into the lands and prevented the appellant and other trustees from cleaning the land. Therefore, it is admitted that the private respondents are in possession of the property as trespassers, according to the writ petitioner/appellant herein.

4. The learned counsel appearing for the private respondents would submit that they are the cultivating tenants, who are in possession.

5. Be that as it may, the relief sought for in the writ petition was for police protection, which was refused by the Writ Court. Whether an intra-Court appeal is maintainable against such an order making the police as a party? In fact, one of us (Justice Pushpa Sathyanarayana) sitting in another Division Bench before the Madurai Bench, had passed a similar judgment in W.A(MD).No.18 of 2016 on 20.01.2021 relying on the earlier Division Bench order of this Court in the case of K.N. Pudur Primary Agricultural Co-operative Credit Society Ltd., Salem District and others v. G.Balakrishnan and others reported in AIR 2018 Madras 149, wherein, it has been specifically held that under Clause 15 of the Letters Patent, intra-Court appeal is not provided if the Writ Court has exercised the criminal jurisdiction sitting and deciding the matter under Article 226 of the Constitution of India. The First Division Bench also in the case of D.Kumar Vs. Raichand Daga and Others reported in (2020) 6 MLJ 245 held that the



appeal is not maintainable against the order passed in the writ petition, exclusively making the police as parties. The relevant paragraph in the said judgment is extracted hereunder:

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"25. It is no doubt true that the Court can exercise powers appropriately but the facts of this case do indicate that the appellant even though was arrayed as a proper and necessary party, as held by the Apex Court in the case of Narain Singh Malpaharia v. Board of Revenue, LNIND 1962 SC 338 : AIR 1963 SC 786, yet the learned Single Judge appears to have proceeded to issue directions in the absence of the facts as indicated by the appellant and narrated hereinabove. In the above background since the impugned order has been passed in a Writ Petition filed under Article 226 of the Constitution of India and is not a petition under Sec.482 Cr.P.C., it may be open to an aggrieved person to seek review or recall of an order on the principle Actus Curiae Neminem Gravabit - act of the Court shall prejudice no man. The power of review can be exercised if it is established that principles of natural justice have been violated and prejudice has been caused on account of issue of any such direction by pointing out an error apparent on face of the record. The Apex Court in the case of Mst.Jamna Kuer v. Lal Bahadur, AIR 1950 F.C. 131, has held that a mistake, even if that of the Court, can be corrected through review."

6. In view of the above, we have to hold that the present case is arising out of a Writ Petition under Article 226 of the Constitution of India and not a proceeding under the Criminal Procedure Code. The exercise of extraordinary powers under Article 226 are prerogative Writs involving judicious discretion. Therefore, the intra-Court appeal is not maintainable, however, it is open to the appellant to take appropriate initiative, as he may be advised to evict the private respondents.

7. In view of the aforesaid legal position, the Writ Appeal cannot be entertained and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//



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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.

+1cc to Mr.G.Pugazhenthii, Advocate, S.R.No.52626

+2cc to Mr.S.Rajmakesh, Advocate, S.R.No.52900

+1cc to the Government Pleader, S.R.No.53231

W.A.No.1663 of 2021

and

C.M.P.No.10481 of 2021

RLD(CO)
GN(02/11/2021)