



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11311 of 2021

A.Arumugam

... Petitioner

Versus

1.State House Officer,
Thavalakuppam Police Station,
Puducherry - 605 007.

2.Rajaram

3.R.Osaimani

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, directing the Station House Officer, Inspector of Police, Thavalakuppam Police Station, Puducherry - 605 007 to provide adequate police protection based on the petitioner's representation dated 07.05.2021.

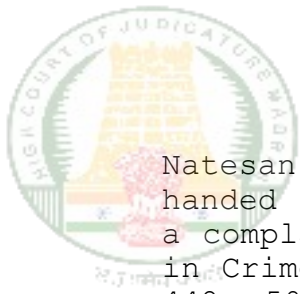
For Petitioner : Mr.D.Sreenivasan

For R1 : Mr.V.Balamurugane,
Additional Public Prosecutor, Puducherry

ORDER

This Criminal Original Petition has been filed to direct the 1st respondent Police to provide Police protection by considering the representation of the petitioner dated 07.05.2021.

2.The petitioner is a senior citizen aged about 75 years and he is in absolute possession and enjoyment of the property measuring to the extent of 2304 sq.ft comprised in R.S.No.93/85 and 93/87 of Abishegapakkam Revenue Village, Abishegapurampet, Arainkuppam Commune, Puducherry for the past 68 years. Earlier, the petitioner has constructed a house with compound wall in all four sides in the said property and leaving a vacant space of 900 sq.ft. Inside the compound wall, he has grown plantain trees, guava trees, coconut trees, neem trees etc. The petitioner has been regularly paying property tax and all other statutory payments. This being the case, on 14.02.2013, at about 09.00 a.m., the respondents 2 and 3 entered into the said property and claimed that the property belongs to their father



Natesan and threatened him that the petitioner to vacate and handed over the property to them. Hence, the petitioner lodged a complaint to the respondent Police and the same was registered in Crime No.41 of 2014 on 06.06.2014, for offence under Sections 448, 506(i) r/w 34 of IPC against the respondents 2 and 3 and two others. The respondent Police have not taken any steps to conduct investigation. In the meanwhile, the respondents 2 and 3 had filed a suit in O.S.No.471 of 2014 before the learned Principal District Munsif, Puducherry seeking permanent injunction restraining the petitioner from interfering with their peaceful possession in the suit property. In the suit, the respondents 2 and 3 obtained exparte ad-interim injunction against the petitioner, by order, dated 25.02.2014 in I.A.No.475 of 2014 in O.S.No.471 of 2014. Taking advantage of the exparte order, the respondents 2 and 3 demolished the compound wall in the suit property. Later, the petitioner filed counter in the Interlocutory Application and ad-interim injunction granted earlier was vacated. Challenging the same, the respondents 2 and 3 filed an appeal in C.M.A.No.3 of 2016 before the Additional Subordinate Judge, Puducherry and the appeal was dismissed on 05.07.2017. Having achieved their plain in demolishing a part of the compound wall, the respondents 2 and 3 withdrawn the suit in O.S.No.471 of 2014 and the same was dismissed as not pressed vide judgment and decree dated 08.01.2020.

3.The contention of the petitioner is that the petitioner has been in possession and enjoyment of the suit property for the past 70 years and he was living along with his aged wife. The intruders namely the respondents 2 and 3 and two others, who are the accused in Crime No.41 of 2014, had threatened the petitioner and also approached the civil Court, obtained exparte interim injunction order and taking advantage over the same, the respondents 2 and 3 demolished the compound wall and finally, withdrawn the suit. Had the plaintiff/respondents 2 and 3 therein had a case in favour of them, they would not have withdrew the suit, which exposes the illegal act of respondents 2 and 3. Now, the petitioner is seeking to restore the compound wall as before.

4.The learned Additional Public Prosecutor, Puducherry appearing for the 1st respondent Police filed counter and submitted that the respondents 2 and 3 are the plaintiffs in the suit in O.S.No.471 of 2014 and they filed an Application in I.A.No.475 of 2014 in O.S.No.471 of 2014 and obtained an exparte ad-interim injunction order and later, the interim injunction order was vacated on the counter filed by the petitioner. While vacating interim injunction order, the learned Principal District Munsif, Puducherry had observed that the petitioner is an encroacher. While being so, the petitioner cannot claim his



right over the suit property and construct the compound wall. He further submitted that the withdrawal of the suit in O.S.No.471 of 2014 by the respondents 2 and 3 would not absolve the petitioner from the encroachment. Now, the respondents 2 and 3 had filed the suit in O.S.No.82 of 2020 before the learned Principal District Munsif, Puducherry. In view of the civil cases are pending between the petitioner and the respondents 2 and 3, the petitioner cannot seek any protection.

5.In order to substantiate his submissions, the learned Additional Public Prosecutor, Puducherry relied on the order of this Court in case of "G.Meena Versus The Commissioner of Police (Sub-Urban), St.Thomas Mount, Chennai and others in Crl.O.P.No.20980 of 2008, dated 08.12.2008," wherein this Court had relied on the judgment of the Hon'ble Apex Court in the case of "P.R.Muralidharan and Others Versus Swami Dharmananda Theertha Padar reported in (2006) 4 SCC 501," wherein it had held that while exercising the writ jurisdiction as it also involved determination of disputed questions of fact cannot be gone into.

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

7.The respondents 2 and 3 are the accused/A1 and A2 in Crime No.41 of 2014 pending on the file of the respondent Police. The FIR was registered, since the respondents 2 and 3 demolished the compound wall of the petitioner's property. Initially, the respondents 2 and 3 filed the suit in O.S.No.471 of 2014 and also filed I.A.No.475 of 2014 in the suit and obtained interim injunction order. Using the same, the respondents 2 and 3 demolished the compound wall. Against the order in I.A.No.475 of 2014 in O.S.No.471 of 2014, the petitioner filed counter and the injunction order was vacated, against which, the respondents 2 and 3 filed Civil Miscellaneous Appeal before the Principal Subordinate Judge, Puducherry and the same was dismissed. Thereafter, the respondents 2 and 3 withdrawn the suit in O.S.No.471 of 2014.

8.The contention of the learned Additional Public Prosecutor, Puducherry that since the petitioner was referred as encroacher in the interim injunction order in I.A.No.475 of 2014 in O.S.No.471 of 2014, he cannot claim right over the property, is not acceptable. Once the civil suit is withdrawn, the observation made in Interlocutory Application get submerged and it has no bearing and the plaintiff had given up all his right. There is no reservation of any right for filing fresh suit. For the same cause of action, now the respondents 2 and 3 filed a fresh suit in O.S.No.82 of 2021 against the petitioner. Hence, the pendency of the suit will not have any bearing and it cannot



be a reason to deny Police protection.

9. In view of above, the respondent Police is directed to give protection to the petitioner for putting up the compound wall. Since the petitioner and his wife are senior citizens, the respondent Police to cooperate with the petitioner in safeguarding his property, since the petitioner is in enjoyment of the property for the past 70 years.

10. With the above directions, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

1. Principal District Munsif, Puducherry.
2. The State House Officer,
Thavalakuppam Police Station,
Puducherry - 605 007.
3. The Public Prosecutor,
Puducherry.

+1cc to Mr.D.Sreenivasan, Advocate SR.No.36409

CRL.O.P.No.11311 of 2021

PMK(CO)
CT(27/08/2021)