



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.12.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1183 of 2014
and
M.P.Nos.1 & 2 of 2014

G.Subramaniam

...Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai,
Commissionerate,
Egmore, Chennai - 600 008.
2. The Deputy Commissioner of Police,
Adayar Range, Adyar,
Chennai - 600 002.
3. The Inspector of Police,
Thiruvanniyur Police Station,
Thiruvanniyur, Chennai.
4. The Divisional Officer / Officer in charge,
Thiruvanniyur Fire Station,
Fire and Rescue Department,
No.49, Thiruvanniyur,
Chennai - 600 041
5. Owners of Prime Terrace &
Residents' Association (OPTRA)
Rep.by its Secretary,
K.Venkatanarayanan,
150, L.B.Road, Thiruvanniyur,
Chennai - 600 041.

...Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 4th respondent to ensure the life safety and security of the petitioner and his family members, as guaranteed in the Article 21 of the Constitution of India.



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For Petitioner :Mr.S.Mahaveer Shivaji

For Respondents:Mr.T.Venkatesh Kumar
Special Government Pleader
[For R1 to R4]

Mr.R.Parthasarathy
[For R5]

ORDER

The writ on hand is filed to direct the 4th respondent to ensure the life safety and security of the petitioner and his family members, as guaranteed in the Article 21 of the Constitution of India.

2.The learned counsel for the petitioner strenuously contended that the Fire Service officer issued a certificate, stating that a steel handrail in the common area adjacent to the house of the petitioner is required in order to provide safety. Relying on the said findings of the Fire Service officer / 4th respondent, the learned counsel for the petitioner reiterated that the petitioner has already constructed a Steel handrail, which was removed by the 5th respondent / Owners Association.

3.The learned counsel appearing on behalf of the 5th respondent/ Owners Association opposed the contention by stating that there is a dispute regarding the usage of common area and the petitioner without any authority, is attempting to use the common area, which is allotted to all owners.

4.It is further contended that the petitioner has put up a door for the usage of the common area, which is not permissible.

5.The learned counsel for the petitioner disputed the same by stating that he has not put up any door, but it was initially available.

6.The parties are raised various disputes in respect of the usage of the flat and common area and also construction of parapet wall or steel handrail for effective purpose. But, when there is a dispute between the owners Association and the Residential flat and the particular owner, then all such disputes are to be resolved by conducting a full-fledged trial before the competent Court of law. Contrarily, such disputes cannot be resolved by conducting a Roving enquiry in a writ proceedings under Article 226 of the Constitution of India.

7.It is brought to the notice of this Court that the very same petitioner has already filed CrI.O.P.No.10342 of 2013,



wherein this Court passed an order on 23.07.2013 and the relevant paragraphs are extracted hereunder:

"4. I have carefully heard the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and perused the materials available on record.

5. On perusal of the materials available on record, this Court is of the view that the dispute between the parties is civil in nature. On the present allegations made by the petitioner, this Court cannot give a direction to the respondents to register a case on the basis of the petitioner's complaint dated 08.04.2013.

6. Hence, the present criminal original petition is dismissed. However, the petitioner is at liberty to work out his further remedy before the appropriate forum."

8. When this Court has already made a finding that the dispute is of civil nature and dismissed the Criminal Original Petition, the present writ petition cannot be entertained and this Court also heard the parties for a considerable length of time and found that the dispute is of civil nature and therefore, the parties have to resolve the same by approaching the competent Court of law based on the documents and evidences to be considered and examined.

9. With this liberty, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Greater Chennai,
Commissionerate,
Egmore, Chennai - 600 008.



2. The Deputy Commissioner of Police,
Adayar Range, Adyar,
Chennai - 600 002.

3. The Inspector of Police,
Thiruvanmiyur Police Station,
Thiruvanmiyur, Chennai.

4. The Divisional Officer / Officer in charge,
Thiruvanmiyur Fire Station,
Fire and Rescue Department,
No.49, Thiruvanmiyur,
Chennai - 600 041

+1cc to the Government Pleader, S.R.No.69812

W.P.No.1183 of 2014

SSI(CO)
RGA(11/01/2022)