



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.20613 of 2021

Vindhya Vasini Sunkavally

... Petitioner

Vs.

1. The Assistant Commissioner (West Zone),
Koyembedu,
Maduravoyal,
Chennai-600 095.

2. The Inspector of Police,
T-4, Maduravoyal Police Station,
Chennai - 600 095.

3. E.Jeevanandam

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the 2nd respondent to provide police protection to the petitioner and her agents/contractor, to carry out the repair of the compound wall, fencing and gate within the boundary of the land owned by the petitioner in survey Nos.13, 14, 15, 16 and 18, Chettiyaragaram Village, Maduravoyal Taluk, Chennai District by considering the petitioner representation letter dated 27.09.2021.

For Petitioner : Mr.S.Ashok Kumar, Senior Counsel for
Mr.A.Sasidharan

For R1 & R2 : Mr.E.Raj Thilak,
Additional Public Prosecutor

For R3 : Mr.S.Thanka Sivan

ORDER

This Criminal Original Petition has been filed to direct the 2nd respondent to provide Police protection to the petitioner and her agents/contractor to carry out the repair of compound wall, fencing and gate within the boundary of the land owned by the petitioner in survey Nos.13, 14, 15, 16 and 18 Chettiyaragaram Village, Maduravoyal Taluk, Chennai District by considering the representation, dated 27.09.2021.



2. Since no action taken by the respondents 1 and 2, the petitioner has filed this petition seeking appropriate direction of this Court.

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3. The learned counsel for the petitioner submitted that the petitioner and her brother Anuttam Teja Sunkavally are the owners of agricultural lands situated at Nos.13, 14, 15, 16 and 18, Chettiyaragaram Village, Maduravoyal Taluk, Chennai since 2011 and they are in continuous possession and enjoyment of the same. Initially, the said lands were purchased by her grandfather late V.K.P. Sunkavally in the name of her grandmother Rajalakshmi Sundavally, father Vijaya Kunar and aunt Uma and they have been in the continuous possession and ownership of the property. He further submitted that there was civil dispute between one Saradamani Kandappan and the petitioner's family. The said Saradamani Kandappan filed civil suit in C.S.No.95 of 1984 against the family members of the petitioner, which was dismissed and subsequently, O.S.A.No.12 of 1992 was filed and the same was also dismissed, as against which S.L.P was preferred before the Hon'ble Apex Court which was also dismissed on 04.07.2011. During the pendency of the suit before the Hon'ble Apex Court, the 3rd respondent proposed to purchase the lands in survey Nos.19 and 20 from the petitioner's family. This purchase was made by the 3rd respondent knowing very well about the 'lis' and the petitioner's family entered into three separate MOU, dated 05.07.2002. Due to some reasons, the three MOU could not be continued and later, it was terminated vide notice, dated 25.06.2007. Aggrieved by the termination of the agreement, the 3rd respondent filed three suits against the petitioner's grandmother, father and aunt in C.S.Nos.216 of 2010, 656 of 2008 & 673 of 2008 respectively before this Court. Due to old age of grandmother and the parents, they decided to settle their lands in favour of the petitioner and her brother by way of registered settlement deeds and the same was done. Thereafter, the petitioner and her brother became the owner of the property and they have been in continuous possession and enjoyment of the property. Further, the 3rd respondent filed applications in the three civil suits in C.S.Nos.216 of 2010, 656 of 2008 & 673 of 2008 and this Court, by order, dated 11.09.2018 observed that 'no encumbrance shall be created in regard to the suit property, effective today'.

4. The learned counsel for the petitioner further submitted that during the floods in the year 2019, some portion of the compound wall and fencing on one side of the property were destroyed. Due to COVID-19 pandemic, the repair and restoration work could not be immediately carried out. Now the compound wall is in dilapidated condition and it has to be restored immediately. Taking advantage of the damage to the wall and the



property is without proper fencing, several persons are attempting to trespass into the land to encroach upon the same. It is found that some henchmen at the instance of the 3rd respondent are attempting to encroach the property of the petitioner. With a view to protect and safeguard the said lands from miscreants and trespassers, the petitioner decided to carry out necessary repair works for the existing compound wall and to replace the damaged fencing and gate. In view of the same, the petitioner engaged a contractor Rajesh to repair and rebuild existing compound wall, clean and clear the lands and put up a gate in the said lands. When the work was in progress, on 22.09.2021 the 3rd respondent called the petitioner's contractor, abused and threatened him to stop the work immediately. Later, the 3rd respondent's sent his sons Vinoth Jeevanantham and Surender Jeevanandham, who entered the said lands illegally along with muscle men and prevented the petitioner's contractor from continuing the work. Though the contractor informed them that he was instructed to clear the debris and restore wall to safeguard the said lands from miscreants and trespassers, they continued their threat and harassment him. Thereafter, the petitioner filed a complaint against the 3rd respondent and others with the 2nd respondent Police on 24.09.2021. Though CSR issued, no action taken.

5.The learned counsel further submitted that the 3rd respondent using his political clout, is continuing his harassment and disturbing the peaceful possession and enjoyment of the petitioner's land and prevented her to enter into the property. The petitioner in his representation, dated 27.09.2021 informed the Police that she is incurred loss to the tune of Rs.35,000/- per day, since more than 15-20 workers are employed by her contractor to complete cleaning and clearing work. Hence, the petitioner sought for relief from this Court to direct the respondents 1 and 2 to give Police protection to the petitioner to protect her property from encroacher and stop the illegal activities.

6.Per contra, the learned counsel for the 3rd respondent filed counter and submitted that by filing the above petition seeking police protection for putting up compound wall and fencing by installing a gate, the petitioner is attempting to enter into the property through back door. On inspection of the property, it could be seen that there was no compound wall at all in the property and fencing was available only on one side. Further, there can be no fencing on all sides of the agricultural lands. The averments made by the petitioner amounts to playing fraud on the Court. In the MOU executed between the petitioner's family and the 3rd respondent, there is no mention about the compound wall or fencing. Infact, the gate and two pillars available in a small portion of the property was



erected for the entry to burial ground of late Kandhappan husband of Saradha Mani. He further submitted that Advocate Commissioner to be appointed to inspect the property to ascertain the physical features. This Court in the civil suits in C.S.Nos.216 of 2010, 656 of 2008 & 673 of 2008 had passed common order, dated 11.09.2018 prohibited the defence by creating any encumbrance with regard to the said property. In view of the above, no development or encumbrance can be made in the above property which would amount to violation of the prohibitory order passed by this Court in the civil suits.

7.The 3rd respondent admitted that the subject land totally measuring to the extent of 25 acres are all agricultural lands. He also referred to the various civil suits pending in respect of the property and some reached up to the Hon'ble Apex Court. Now, the 3rd respondent admitted that the civil suits in C.S.Nos.216 of 2010, 656 of 2008 and 673 of 2008 are pending before this Court. On 22.09.2021, after coming to know that certain men were engaged by the petitioner to encroach upon the property, the 3rd respondent called the contractor over phone and informed about the pendency of the civil suits and also the prohibitory orders and also informed him that creating of any encumbrance in the property would amount to violating the orders of this Court in the civil suits. Thereafter, the work was stopped. According to the petitioner, the observations made by this Court in the civil suits by order, dated 11.09.2018 that no encumbrance could be made which also means to maintain status quo of the property. Now, the petitioner is attempting to encroach upon the property by making developments and creating third party interest which is not permissible in law.

8.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that the petitioner and the 3rd respondent were called for enquiry by the 2nd respondent and directed them to produce the documents and orders of the Court in their favour and to maintain peace. During enquiry, finding the claim and counter claim of the petitioner and the 3rd respondent, they advised to get appropriate orders from the concerned Court.

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

10.It is seen that the petitioner along with her brother had inherited their family property. There was three MOU with the 3rd respondent by the petitioner's family, which were cancelled. Aggrieved by the cancellation of the MOU, civil suits in C.S.Nos.216 of 2010, 656 of 2008 and 673 of 2008 were filed by the 3rd respondent and the same are pending before this Court. The photographs produced by the petitioner clearly shows the



damage of the wall and fencing. The property is situated at Chettiyaragaram Village, Maduravoyal Taluk, Chennai, which is close proximity to the city. Now, the value of the property is multi level and this vast track of land would be an eyesore to the land sharks and grabbers.

11. Taking advantage of the pendency of the civil suits, the 3rd respondent is unnecessarily entering into the property for encroachment and to create third party interest. Hence, by fencing or putting up compound wall, would safeguard the property from encroacher. The relief sought for by the petitioner is that there is imminent threat of land sharks and grabbers to encroach upon the property. In view of the same, putting up compound wall and fencing around the property by the petitioner cannot be construed as development, encroachment and creation of third party interest. Since the apprehension of the 3rd respondent appears to be misgiving, the petitioner was directed to file affidavit to remove this misgivings.

12. The undertaking affidavit filed by the petitioner is extracted hereunder:-

"2. I submit that I and my brother are the current Owners of the property located at Sy. No. 13, 14, 15, 16 & 18 at Chettiaragaram Village, Maduravoyal Taluk, Chennai district. I submit that I have filed the above CrI.O.P. No. 20613 of 2021 before this Hon'ble Court to seek a direction against the 2nd Respondent to provide Police Protection to myself and my agents/contractors, to carry out the repair of the compound wall, fencing and gate within the boundary of the above mentioned lands owned by us, by considering the Representation Letter dated 27.09.2021.

3. I have been advised by my learned counsel to submit an Affidavit in respect of the above Criminal O.P. as to the reason to undertake the activity as mentioned in my Petition.

4. Accordingly, I hereby state on oath that I undertake to maintain, repair, fence and build compound wall solely with the intention to safe guard my property from encroachers and interlopers in the above stated property. I made it clear that the above undertaking is without prejudice to my rights in the pending Civil Suit in respect of the above properties."

13. In view of the above, this Court directs the 2nd



respondent to provide Police protection to the petitioner to put up compound wall, fencing gate to safeguard the property from the obstruction of the 3rd respondent, his men or agent or by others.

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14. With the above directions, this Criminal Original Petition is disposed of. The charges for the Police protection if any to be taken care by the petitioner.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Assistant Commissioner (West Zone),
Koyembedu,
Maduravoyal,
Chennai-600 095.
2. The Inspector of Police,
T-4, Maduravoyal Police Station,
Chennai - 600 095.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. Sasithar, Advocate, S.R.No.61007

Crl.O.P.No.20613 of 2021

MG(CO)
SU(03/12/2021)