



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.298 of 2021

and

C.M.P(MD) .Nos.996, 998 and 5683 of 2021

Against W.P(MD) No. 18666 of 2020

1. S.Srinivasan
2. S.Laxmanan ... Appellants/Respondents 4 to 6

Vs.

1. Mr.Gurusamy ... 1st Respondents/Petitioner
2. The Superintendent of Police,
Tenkasi District.
3. The Deputy Superintendent of Police,
Puliyangudi, Tenkasi District.
4. The Inspector of Police,
Sivagiri Police Station,
Tenkasi District.
5. S.Suresh
6. Malaiyammal
7. Kaliammal
8. Ramar ... Respondents 2 to 8/
Respondents 1 to 3,5, 7 to 9

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.18666 of 2020, dated 17.12.2020.

Prayer in WP(MD) . 18666/ 2020 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the 3rd respondent to give appropriate protection at the time of four foundry fencing by iron paling in the property comprised in S.F.Nos.1010/15A1 and 1010/15A2 of Rayagiri Village -I, Sivagiri Taluk, Tenkasi District in the light of the order dated 08.07.2020 made in I.A.No. 300 of 2018 in O.S.No. 12 of 2011 on the file of the



learned Additional District Cum Judicial Magistrate, Sivagiri.

For Appellants : Mr.I.Pinaygash
For Respondents : Mr.M.Ramu,
for R1
Mr.A.K.Manikkam,
Standing Counsel for Government
for R2 to R4
No Appearance for R5 to R7

J U D G M E N T

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.I.Pinaygash, learned counsel appearing for the appellants; Mr.M.Ramu, learned counsel appearing for the first respondent and Mr.A.K.Manikkam, learned Government Counsel appearing for the respondents 2to 4.

2. This writ appeal has been filed by the fourth respondent in W.P(MD).No.18666 of 2020, which was disposed of by order dated 17.12.2020.

3. The writ petition was disposed of at the admission stage without hearing the private respondents 4 to 9, one of whom is the appellant before us, namely, S.Srinivasan. On the date when the writ petition was disposed of, the first respondent-writ petitioner was armed with the decree of permanent injunction in O.S.No.12 of 2011, on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri. Taking note of the said submission made by the first respondent, the learned Writ Court without going into the merits of the case, directed the respondent-Police to consider and pass orders on the first respondent's representation dated 02.11.2020 after giving notice to the respondents 4 to 9, by following the principles laid down by the Hon'ble Supreme Court in **D.K.Basu vs. State of West Bengal**, AIR (1997) SC 610 and if it is found that police protection is necessary, the same may be given to the first respondent-writ petitioner. The Court also fixed the time frame within which the order should be complied with. Further, the Court specifically directed that the respondent-Police shall keep in mind the judgment in O.S.No.12 of 2011, while considering the first respondent's representation.

4. In our view, when the matter is pending before the civil Court and if the first respondent herein had obtained an ex-parte decree, it would be well open to the first respondent to move the executing Court for executing the decree and the route chosen by the



first respondent is incorrect and the Writ Court cannot issue any direction for grant of police protection. It is brought to our notice that the appellant had filed I.A.No.300 of 2018 under Order IX Rule 9 read with Section 151 C.P.C., to set aside the ex-parte decree and restore the suit and give him opportunity. The said petition was dismissed by the trial Court by order dated 08.07.2020. Aggrieved by the same, the appellant has filed C.M.A.No.2 of 2020, on the file of the Principal Subordinate Court, Sankarankoil and the appeal is pending.

5. In the light of the above factual position, any direction issued by the Writ Court will definitely cause prejudice not only to the plaintiff, but also to the defendant and there is likelihood of misuse of police power. Therefore, the order and direction issued in the Writ Court deserves to be set aside.

6. In the result, this **Writ Appeal is allowed** and the order passed in the writ petition is set aside, consequently, the writ petition is dismissed. We leave it open to the appellants and the first respondent-writ petitioner, who are parties in the civil suit to agitate all their rights in the civil proceedings including the appeal pending in C.M.A.No.2 of 2020, on the file of the Principal Subordinate Court, Sankarankoil.

7. It is made clear that this Court is not gone into the merits of the matter and the parties shall have their respective rights before the civil Court, which shall be decided based on the oral and documentary evidence, which may be placed before the Court and not in any manner be influenced by any observations made by the learned Writ Court, which we have set aside in its entirety. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1. The Superintendent of Police,
Tenkasi District.
2. The Deputy Superintendent of Police,
Puliyangudi, Tenkasi District.
3. The Inspector of Police,
Sivagiri Police Station,
Tenkasi District.

+1 CC to M/s.S.RAMU, Advocate (SR-23542[F] dated 22/07/2021)

+1 CC to M/s.GP (SR-23729[F] dated 23/07/2021)

W.A. (MD) No.298 of 2021

22.07.2021

MGJ(02.08.2021) 4P 6C