



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.04.2021

DELIVERED ON : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.(MD)No.4561 of 2021

R.Sureshkanna

: Petitioner

Vs.

1.The Director,
Vigilance and Anti Corruption Department,
No.293, M.K.N.Road, Alanthur,
Chennai - 600 006.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram, Ramanathapuram District.

3.Latha,
Assistant Engineer,
Public Works Department / WRO,
Keezh Vaigai Basin Sub Division,
Paramakudi Taluk, Ramanathapuram District.

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to direct the first respondent to conduct preliminary enquiry on the complaint of the petitioner, dated 17.08.2020 by appointing a honest police officer and proceed further against the third respondent in accordance with law by considering the complaint, dated 17.08.2020.

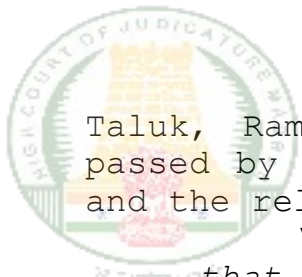
For Petitioner	:Mr.D.Sasikumar
For R1 and R2	:Mr.A.P.GOham Chairma Prabhu Government Advocate (Crl.side)
For R3	:Mr.Ananth C.Rajesh

ORDER

This Criminal Original Petition is filed seeking a direction to the first respondent to conduct preliminary enquiry on the complaint of the petitioner, dated 17.08.2020 by appointing a honest Police Officer and proceed further against the third respondent in accordance with law by considering the petitioner's complaint, dated 17.08.2020.

2.Heard Mr.D.Sasi Kumar, learned Counsel for the petitioner, Mr.A.P.G.Ohm Chairma Prabhu, learned Government Advocate (Crl.side) appearing for the Respondents 1 and 2 and Mr.Ananth C.Rajesh, learned Counsel for the 3rd respondent.

3.Mr.D.Sasi Kumar, learned Counsel for the petitioner submitted that the third respondent, as Assistant Engineer, PWD, Water Resources Organization, Keel Vaigai Basin Sub Division, Paramakudi



Taluk, Ramanathapuram District, had not acted, as per the order passed by this Court in W.P.(MD)No.21464 of 2019, dated 14.10.2019 and the relevant portion of the order is extracted hereunder:

"In any event, the revenue officials cannot state that they cannot identify the tank. Admittedly, for surveying the tank the cooperation of the petitioner or the private respondent is not required. If anybody obstructs the survey conducted by officials, for preventing the Government Servants, they have to be proceeded with criminally. Therefore, we direct that the survey we conducted after putting notice on the petitioner as well as the private respondents with adequate police protection and if any encroachment is noticed, the same shall be removed within two weeks from the date of survey."

4. In pursuant to the above order, when he had contacted the third respondent, the third respondent invited him to her office. When he went to her office on 26.09.2019, at about 11.00 am, she was not in her office. He contacted her on her mobile, for which she insisted that the petitioner shall not insist for removal of encroachment, and if he insists for removal, she will demolish Pillayar Temple as well as Irulandi Temple, that is also constructed in a Government poramboke land. She advised him to go for a compromise with the encroachers. On another occasion, the third respondent visited the village of the petitioner on 03.12.2019 to inspect and survey the land, in which encroachment made. Again, this petitioner requested her to comply with the order of this Court. Again, she warned him. Therefore, the petitioner suspecting her adopting delaying tactics started collecting materials against the third respondent through reliable sources. On such collection of materials, he came across the purchase of agricultural properties by the third respondent in her panchayat limit measuring 4 acre and 8 cents. All these transactions took place after the order of this Court for removal of encroachment. Therefore, it indicates that the third respondent had received bribe at the instance of the encroachers in order to escape from the action of the third respondent.

5. The third respondent being public servant instead of discharging her duty and in an unbiassed manner, abused her power for extraneous consideration. Hence, this petitioner had preferred a complaint with the second respondent to conduct enquiry against the third respondent. After giving such complaint, the third respondent had not initiated any action and not informed about any pending enquiry to the petitioner. Therefore, having no other option, the petitioner had moved this Court seeking a direction to the first respondent to conduct preliminary enquiry on the complaint of the petitioner, dated 17.08.2020.

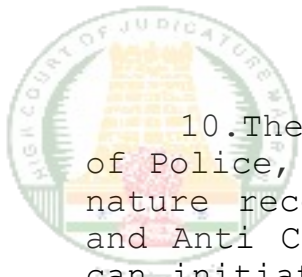


6.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor had replied to the submissions of the learned Counsel for the petitioner stating that counter had been filed on behalf of the first respondent by the second respondent in which, they had clearly stated that there had been 30 feet paver block road on the tank bung, which is in encroachment. The Respondents 1 and 2 in the counter submitted that there had been an order of this Court in W.P. (MD)No.21464 of 2017. However, by another order from this Court, dated 14.10.2019, there had been an another interim stay, dated 16.10.2020 in W.M.P.(MD)No.4764 of 2020 in W.P.(MD)No.5664 of 2020. Therefore, the respondents 1 and 2 do not offer any remarks to the contents of the affidavit in paragraph no.3.

7.The respondents 1 and 2 also stated that they had come across documents furnished by the petitioner regarding the purchase of the property by the third respondent, dated 02.12.2019. For allegations made against the third respondent, the respondents 1 and 2 submitted that it is for the Engineer in-Chief of Water Resource Organization and Chief Engineer(GL), Chepauk, Chennai, for initiating any action against the third respondent vide DVAC Petition No.3351/2020/PWD/RM, dated 29.05.2020. The Engineer-in-Chief is the competent authority to look into the matter and act upon such petition as per the instructions issued in Government Memo No.1356/64/2 Public (Services-B), dated 08.04.1964 and incorporated in Para 10(3) of the Manual of the DVAC. Since the petition, dated 17.08.2020 was mere repetition of earlier petition, the same is kept on the file of the Director of Vigilance and Anti Corruption.

8.When the petitioner had sought direction to the Respondents 1 and 2 through this Court, it is found that the Respondents 1 and 2 had acted fairly and they conducted preliminary enquiry. Since some materials had been collected, they had forwarded the petition for appropriate action by the Engineer-in-Chief of the Water Resource Organization. Only the Water Resources Orgnization can appreciate the encroachment in the water body and the role of the third respondent as Assistant Engineer of the Keezh Vaigai Basin Sub Division, Paramakudi.

9.The third respondent had engaged a Counsel and filed counter affidavit. She had replied to the claim of purchase of the property stating that she had obtained prior permission from the higher officials and only then, she had purchased the property and the same had been registered in her name and the registration also informed to the higher officials. Subsequent to the filing of this original petition, she had been transferred as Assistant Engineer, South Vellar Basic Division, Pudukottai. Therefore, she cannot answer the contention raised in the Original Petition regarding the encroachment. She had also stated that the encroachers had filed Writ Petitions, after she had issued notice directing them to remove the encroachment.



10. Therefore, what had been stated by the Deputy Superintendent of Police, Vigilance and Anti Corruption that the complaints of this nature received by them is forwarded by the Director of Vigilance and Anti Corruption to the head of the department. Only then they can initiate steps. Based on their enquiry, if they find that there are reasons to register the case against the third respondent, they are within their rights. As on today, the Engineer-in-Chief of Water Resources Organization is seized of the matter, as per the vigilance manual. Therefore, as per the submissions made by the learned Additional Public Prosecutor, the Directorate of Vigilance and Anti Corruption had forwarded the petition received from the petitioner to the Engineer-in-Chief of Water Resources Organisation. It is for them to conduct enquiry and initiate action. If they direct the Directorate of Vigilance and Anti Corruption, the Director of Vigilance and Anti Corruption are sure to act. Till such time, they cannot act. Therefore, whatever is possible they had done, as per the Vigilance manual.

In the result, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

Cmr
To

1. The Director,
Vigilance and Anti Corruption Department,
No.293, M.K.N.Road, Alanthur, Chennai - 600 006.

2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram, Ramanathapuram District.

3. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s. ANANTH C. RAJESH, Advocate (SR-24860[F] dated
02/08/2021)

+1 CC to M/s. D. SASI KUMAR, Advocate (SR-25118[F] dated 03/08/2021)
CRL.O.P. (MD)No.4561 of 2021
30.07.2021

SE (CO)
KB(13.08.2021) 4P 6C