



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED DATE : 06.07.2021

PRONOUNCED DATE : 28.07.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

W.P. (MD)No.8818 of 2021

R.Ayyasamy Nadar

... Petitioner

Vs.

1. The Superintendent of Police,
Trichy District, Trichy.
2. The Deputy Superintendent of Police,
Deputy Superintendent of Office,
Fathima Malai,
Manapparai Municipality,
Trichy District.
3. The Inspector of Police,
Vaiyampatti Police Station,
Manapparai Taluk,
Trichy District.
4. James
5. Infantraj
6. Divyanathan
7. Julia Margaret

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 & 2 to give adequate police protection to the life and limb of the petitioner, as per Section 21 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

For Petitioner : Mr.J.Jeyakumaran

For R1 to R3 : Mr.R.M.Anbunidhi,
Additional Public Prosecutor

For R4 to R7 : Mr.D.Shanmuga Raja Sethupathi



ORDER

This petition is filed to direct the respondents 1 & 2 to give adequate police protection to the life and limb of the petitioner, as per Section 21 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. The case of the petitioner in brief:-

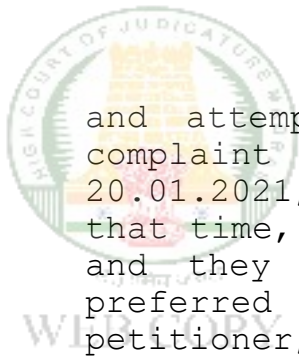
(i) Originally the property in S.No.9/3A1A1 belongs to one Pitchai Gounder. He executed a settlement deed in favour of one P.Shanmugavel Gounder, who was his son.

(ii) The petitioner has purchased 31 cents from the said P.Shanmugavel Gounder on 24.01.2008. Thereafter, his son purchased 30 cents on 01.10.2014. The fifth respondent purchased 17 cents from the said P.Shanmugavel Gounder and thereafter, respondents 6 & 7 purchased 16 cents through a registered sale deed.

(iii) Son of the petitioner, by name, Saravanakumar, purchased another vacant site in the very same S.No.9/3 A1A1 measuring to an extent of 1725 sq.ft and it includes the North South pathway. So, it is seen that the entire property belongs to P.Shanmugavel Gounder in the above said survey field had been sold to various persons through various sale deeds. Now, the respondents 5, 6 & 7 claimed that the above said 1725 sq.ft is the pathway. But, it was not classified as a public pathway in the revenue records and it is a private land, owned by the said P.Shanmugavel Gounder and so, it was purchased by the Saravanakumar. So, the private respondents 4 to 7 claimed that the 4 cents was used as pathway for that property. They have their own access to their properties from some other property. Now, they are creating trouble.

(iv) The respondents 5 to 7 filed a suit in O.S.No.144 of 2020 before the District Munsif Court, Manapparai seeking for the relief of declaration and injunction with respect to 4 cents above mentioned. No interim order was passed. Failed to get interim order, they filed another suit in O.S.No.431 of 2020 before the Sub-Court, Manapparai seeking the very same relief and in the second suit also, no injunction was granted. The Block Development Officer (Village Panchayat), Vaiyampatti Panchayat Union, after visiting the spot, granted no objection for registering the above said disputed portion of 4 cents. After that, a sale deed was registered on 10.09.2020 and the same was withdrawn on 09.10.2020. Based upon this, the fifth respondent approached this Court, in W.P.(MD)No.14423 of 2020 seeking cancellation of the above said sale deed, executed in favour of the petitioner's son. There was no interim order.

(v) Now, the disputed 4 cents is in possession and enjoyment of the petitioner and his son and they also fenced the said disputed property. Now, the respondents 4 to 7 tried to remove the fencing



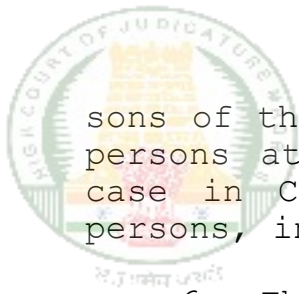
and attempted to make a pathway in their land. So, again, a complaint has been preferred by the son of the petitioner. On 20.01.2021, at about 06.00 a.m, another attempt was made by them. At that time, the petitioner was threatened by them with deadly weapons and they also damaged the fencing. So, another complaint was preferred by the son of the petitioner. So, the son of the petitioner, made a representation to the Police on 04.02.2021, seeking police protection for renovating the fence. Later, his son filed Crl.OP(MD)No.2815 of 2021, seeking police protection for life and limb of the petitioner and to fence the land and the same was disposed on 23.02.2021 with a direction to the third respondent to dispose the representation made by the son of the petitioner, on merits.

(vi) After that, a detailed representation was sent to the third respondent. But, there was no action. On 01.04.2021, at about 10.00 a.m, when he visited his property, the respondents 4 to 7 found to have trespassed into his property and insisted the petitioner to sell the same. When the same was refused, they assaulted him and abused him in filthy language and damaged the car also. So, a case has been registered in Crime No.142 of 2021 for the offences punishable under Sections 147, 148, 294(b), 323, 427, 506 (ii) of IPC, dated 19.04.2021 against the respondents 4 to 7. But, there was no action. Hence, this petition.

3. A counter affidavit was filed by the fourth respondent. It is seen that the fifth respondent is his son. He purchased 17 cents as mentioned in the petition from P.Shanmugavel Gounder, on 02.01.2017. So, in that sub division S.No.9/3A1A1, a common pathway, to an extent of 1075 sq.ft was earmarked for having access to the said land from Dindigul to Trichy National Highway. So, they have been using the common pathway as ingress and egress for the above said land.

4. In the sale deed, in favour of the respondents 6 & 7, the above said property has been mentioned as a common pathway. P.Shanmugavel Gounder had sold the property by making layout to various persons on various dates through registered deeds. In all the deeds, the above said 5 cent pathway has been described as a 'common pathway for all the purchasers'. So, among the 10 documents, in 3 documents, the petitioner and his son, namely, Saravanakumar also signed. But, later, Saravanakumar, illegally purchased the common pathway through a registered sale deed. It has been mentioned as 'Sale of Pathway'. But, no other land is available to Saravanakumar in S.No.9/3. The last portion, in the above said survey field, was purchased by the fourth respondent, on 27.04.2018. They filed a separate suit in O.S.No.431 of 2020 before the SubCourt, Manapparai, seeking a relief of declaration that the sale deed, dated 10.09.2020 as not valid.

5. The petitioner and his son are doing Real Estate business along with P.Shanmugavel Gounder and his sons. They wanted to grab the land by fabricating false documents. On 01.04.2021, the



sons of the petitioner by name, Saravanakumar and Vadivel and other persons attacked the fifth respondent and in respect of which, a case in Crime No.151 of 2021 has been registered against seven persons, including the sons of the petitioner.

6. They are residing above two kilometres, away from the disputed properties. Now, they are making obstruction to the pathway by putting fence. The petitioner and his son parked a car across the pathway by making self-inflicted damages and foisted a false complaint against the private respondents. The petitioner has also filed a petition in CrI.OP(MD)No.2815 of 2021, seeking police protection. But, no positive direction was issued. So, the petitioner filed this petition, seeking police protection, as per Tamil Nadu Rule 21 of the Maintenance and Welfare of Parents and Senior Citizens Rules, 2005. It is not intended to protect the Senior citizens, which the petitioner has claimed. So, all other allegations in the petition, with regard to the occurrence are denied.

7. Heard both sides.

8. It appears that there is private pathway dispute between the petitioner and the private respondents herein. A narration of the entire facts and events shows that the Civil Courts have been trying two suits with regard to this matter. One at the instance of the fourth respondent and another at the instance of the respondents 6 & 7, as detailed above. So, it is seen that the two suits, one in District Munsif Court, Manapparai in O.S.No.144 of 220 and another suit in O.S.No.431 of 2020 before the Sub-Court, Manapparai are pending with regard to the same issue. So, pending the above said two suits, this petition came to be filed by the petitioner, on the ground that he is a Senior Citizen.

9. In respect of dispute, he and his son were assaulted. For which, criminal case have been registered. So, he seeks police protection, for the purpose of fencing the property. But, it remains that only the son of the petitioner, purchased the disputed property measuring an order of 1075 sq.ft in S.No.9/3A1A1, as correctly mentioned by the private respondents. Even in the sale deed, standing in favour of the son of the petitioner, it has been mentioned as 'pathway'. It is seen that 'No Objection' certificate, issued by the Block Development Officer, Vaiyampatti, in Na.Ka.No.A2/1336/2020, has been subsequently cancelled, by order, dated 09.10.2021.

10. Now, **whether it is a common pathway or a private pathway** is a matter for consideration, at the time of trial, through documentary and oral evidence in the pending suits. So, this Court in exercising its jurisdiction under Section 482 of Cr.P.C, cannot go into the disputed question of facts.



11. Moreover, as mentioned earlier, the petitioner is not the owner of the disputed property. But, whereas, his son namely, Saravanakumar is the proper and necessary party. On behalf of him, the petitioner cannot maintain, this petition. Moreover, it is also seen that Saravanakumar had filed CrI.OP(MD)No.2815 of 2020, seeking police protection for the very same property. But, there was no positive direction in that petition. But, however, a copy of the order was not made available by the parties, after disposing the above said petition, on 23.02.2021. So, as mentioned earlier, the petitioner is not competent to maintain such a petition when the dispute is between the petitioner's son and the private respondent herein.

12. It appears that this petition is totally misconceived one. He requested this Court to give police protection by exercising the power under Section 226 of the Constitution of India and as per Tamil Nadu Rule 21 of the Maintenance and Welfare of Parents and Senior Citizens Rules, 2005. The Rule 21 reads as under:-

"Section 21 of the act reads action plan for the protection of life and property of Senior Citizens.-

(1) The District Superintendent of Police and in the case of cities having a Police Commissioner, such Police Commissioner shall take all necessary steps, subject to such guidelines as the Government may issue from time to time for the protection of life and property of senior citizens.

Rule 21 of the Tamil Nadu Act reads,

(2) Without prejudice to the generality of sub-rule (1):-

(i) each police station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves (i.e. without there being any member in their household who is not a senior citizen);

(ii) a representative of the police station together as far as possible, with a social worker or volunteer, shall visit such senior citizens at regular intervals of atleast once a month, and shall, in addition, visit them as quickly as possible on receipt of a request of assistance from them;

(iii) complaints/problems of senior citizens shall be promptly attended to, by the local Police;

(iv) one or more Volunteers' Committee(s) shall be formed for each Police Station which shall ensure regular contact between the senior citizens, especially those living by themselves, on the one hand, and the police and the district administration on the other;

(v) the District Superintendent of Police or, as

may be, the Police Commissioner shall cause



to be publicised widely in the media and through the Police Stations, at regular intervals, the steps being taken for the protection of life and property of senior citizens;

(vi) each Police Station shall maintain a separate Register containing all important particulars relating to offences committed against Senior Citizens as in

Annexure IV;

(vii) the Register referred to in clause (vi) shall be kept available for public inspection, and every officer inspecting a Police Station shall invariably review the status as reflected in the Register;

(viii) the Police Station shall send a monthly report of such crimes to the District Superintendent of Police by the 10th of every month;

(ix) list of Do's and Don'ts to be followed by senior citizens, in the interest of their safety will be widely publicised;

(x) antecedents of domestic servants and others working for senior citizens shall be promptly verified, on the request of such citizens;

(xi) community policing for the security of senior citizens will be undertaken in conjunction with citizens living in the neighbourhood, Residents' Welfare Associations, Youth Volunteers, Non-Government Organisations, etc;

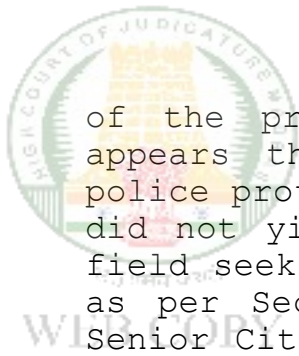
(xii) the District Superintendent of Police shall submit to the Director General of Police and to the District Collector, a monthly report by the 20th of every month, about the status of crimes against senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month;

(xiii) the District Collector shall cause the report to be placed before the District-level Coordination-cum-Monitoring Committee constituted under rule 23.

(xiv) The Director General of Police shall cause the reports submitted under clause

(xii) to be compiled, once a quarter, and shall submit them to the Government every quarter as well as every year for, inter-alia, being placed before the State Council of Senior Citizens constituted under rule 22."

13. This Act can be invoked by the parent or in case of childless Senior Citizen. So, it cannot be invoked for the purpose
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of the private property dispute on behalf of the children. It appears that the attempt made by the petitioner's son, seeking police protection, for the purpose of fencing the disputed property, did not yield any positive result. As mentioned, this petition is filed seeking the similar relief for fencing the disputed property, as per Section 21 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and as mentioned earlier, it is a clear case of misconception and law. So, the petitioner's son has to work out his remedy in the above said pending suits. On behalf of his son, no police protection can be granted to the petitioner, for the purpose of fencing the property.

14. Moreover, there is no life threat to the petitioner, as evident from the case, which has been filed between the parties. Case and counter has been registered against both the parties. In such event, police protection under the guise of life threat is also misplaced one. So, the petition lacks *bonafideness*. Hence, this petition deserves dismissal and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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, Trichy District, Trichy.

2. The Deputy Superintendent of Police,
Deputy Superintendent of Office,
Fathima Malai, Manapparai Municipality, Trichy District.

3. The Inspector of Police,
Vaiyampatti Police Station, Manapparai Taluk, Trichy District.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-24681[F] dated 30/07/2021)

W.P. (MD)No.8818 of 2021

28.07.2021

MGJ(11.08.2021) 7P 5C

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