



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.07.2021

DELIVERED ON : 05 .08.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **G. ILANGO VAN**
Crl.O.P. (MD)No.7207 of 2021

L.Alagusundaram

... Petitioner

Vs.

1. The Commissioner of Police,
O/o. Commissioner of Police,
Alagar Koil Main Road,
Madurai City,
Madurai.

2.The Assistant Commissioner of Police,
(Law and Order)
O/o.Thallakulam Police Station,
Madurai City,
Madurai.

3.I.Vetrivel

4.S.Seetharaman

... Respondents

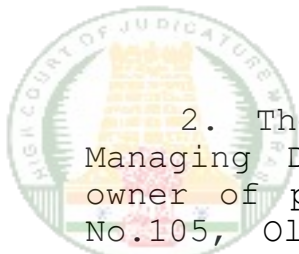
R4 impleaded as per the order of this Court dated 23.07.2021 made in
Crl.M.P(MD).No.4696 of 2021 in Crl.O.P(MD).No.7207 of 2021

PRAYER : Criminal Original Petition is filed under Section 482 of
Cr.P.C, to direct the respondent Nos.1 and 2 to give an adequate
protection to the petitioner from the third respondent.

For Petitioner	: Mr.Lajapathi Roy.T
For R1 & R2	: Mr.R.M.Anbunithi Additional Public Prosecutor
For R3	: Mr.Issac Mohanlal, Senior Counsel For Mr.K.Samidurai
For R4	: Mr.V.R.Shanmuganathan

O R D E R

This petition has been filed seeking a direction to the
respondent Nos.1 and 2 to give police protection on the basis of the
representation dated 17.05.2021.



2. The case of the petitioner in brief is that he is the Managing Director of the Mahalakshmi Textiles Mills Limited and owner of property which is situated in Town S.No.2796, New Block No.105, Old Block No.25 Ward No:10 new Town Survey No:2796/2 in Chokkikulam Madurai North Taluk Madurai District, which consists of a building in ground floor and first floor. He is in occupation of the above said building for several years. Due to some financial issues and to avoid the attachment proceedings, he sold the properties to the third respondent on 22.02.2021 along with one M/s.Viswas Promoters Private Limited. On earlier occasion, there was a sale in favour of M/s.Viswas Promoters Private Limited and he was also joined as vendor. But nothing was stated about the possession. It was executed without adhering to the legal formalities. The possession of the property should not be disturbed, unless the entire amount due to M/s.Viswas Promotes Private Limited is settled by the third respondent. After that only, the third respondent can approach the appropriate forum to get remedy. But he has taken coercive steps to vacate the petitioner from the premises without resorting to law.

3. The petitioner is still residing in the ground floor and retaining his gas connection and Aadhaar card in the same address. Now, the third respondent is an influential money lender, who is having money and muscle power. Hence, the petitioner has filed this petition seeking police protection under Section 13 of the Police Act, which provides Additional Police Officers employed at cost of individuals, who seek police protection. Therefore, on that basis, he sent a representation dated 17.05.2021 to the respondent Nos.1 and 2 because of emergency situation, he moved this present petition.

4. After filing this petition, the fourth respondent was impleaded as a party, as per the order dated 23.07.2021 in Crl.M.P (MD).No.4696 of 2021.

5. Counter affidavit was filed by the third respondent with the following averments:-

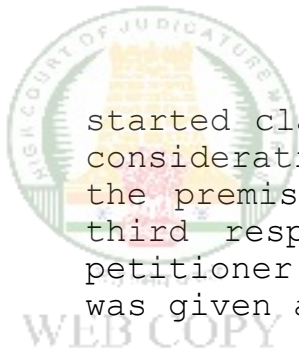
It is not in dispute that the property mentioned in the petition belongs to the petitioner. Originally, the same was sold to the third respondent on 22.02.2021 through a registered sale deed. So, Mahalakshmi Mills Limited is no longer the owner of the property. The sale consideration was fixed at Rs.8.5 crores. It was duly registered and eversince, he has been in possession of the property. For the purpose of avoiding the attachment proceedings, the property was sold to the third respondent. The patta was also transferred on 15.03.2021 by the Revenue Authorities. After obtaining patta, the third respondent obtained the planning permission to construct a new building and he paid a sum of Rs.9,00,000/-. Demolishing work of the said existing building is also under way, after getting building permission.



6. Originally, the property was sold to M/s.Vishwas Promoters Private Limited by the Company, but without complying the legal formalities in the year 2012. So, there was prolonged dispute between them. Later, they arrived at an understanding by which it was agreed to sell the said property jointly and divide the sale proceeds in the manner agreed between them. Only in such circumstances, Viswas Promoters Private Limited was also joined as vendor. Further, the averment made by the petitioner that the petitioner's possession should not be disturbed until the due amount is settled by the third respondent is denied. The fact that the petitioner is residing and living in the ground floor is denied. The EB Service Connection was also transferred in the name of the third respondent. He is paying the charges. The Corporation Property Tax Assessment was also changed into the name of the third respondent, after the inspection made by the Authorities. In the representation dated 15.05.2021, no mentioning has been made as to manner, on which date, the third respondent attempted to dispossess the petitioner's property. The true fact is that after selling the property, the petitioner requested to give some time to remove his belongings and the request was acceded. The petitioner has dumped his belongings in one room of the building and shifted his residence to Bangalore. He assured that he would remove his belongings after lifting of pandemic and transfer restrictions. The building plan permission was issued on 11.05.2021. So, only on that ground, the respondent permitted the petitioner to keep his belongings. Most of the portion of the first floor and the second floor was demolished. The third respondent requested the petitioner to remove the belongings and he wanted additional money to be paid. He also brought local police to the place. The local police perused the records submitted by the third respondent. Now, this is a clear abuse of process of law. The petitioner is also involved in cheating many people and the cases were also registered in Crime No.54 of 2014 on the file of the District Crime Branch, Madurai and Crime No.56 of 2016, on the file of the Central Crime Branch, Madurai.

7. In the counter affidavit filed by the fourth respondent, it has been stated that M/s.Mahalakshmi Textiles Mills Limited was established in the year 1929 and during that time, the sixth respondent helped the petitioner financially. So, the petitioner's father as the Director of MTML executed a registered sale deed dated 24.09.2012. But the same has to be approved by the Company Board. So, it was agreed that if any sale is effected in future, the same may be executed by MTML and M/s.Viswas Promoters Private Limited. Only on that basis, he joined as a vendor in the sale deed dated 22.02.2021 in favour of the third respondent.

8. The third respondent has paid a sale consideration of Rs.8,50,00,000/-, in the said registered sale deed dated 22.02.2021. After the sale, the petitioner sought time to vacate the premises. After a lapse of time, the petitioner has not kept his promise and



started claiming that the third respondent has not settled the sale consideration to him. Thereafter, the petitioner undertook to vacate the premises on or before 30.06.2021. He vacated the same and the third respondent started the demolition work. But, however, the petitioner trespassed into the premises. Therefore, the complaint was given and First Information Report has also been registered.

9. The ground made by the petitioner is not maintainable and the petitioner is not a lawful owner of the property. Therefore, the police protection cannot be granted. The petitioner is not in the possession of the property as on date. No legal right is available to the petitioner to claim police protection.

10. A Rejoinder has been filed by the petitioner. Even though the sale has been registered, the petitioner is in the possession of the property. The photograph taken on 10.06.2021 will also show the same. The petitioner sent a representation to the first respondent by enclosing the copy of the representation dated 17.05.2021 stating that one Mr.Sekar working in Tallakullam Police Station is acting in biased manner against him. Building permission that has been mentioned by the third respondent in the counter is not related to the petition mentioned property. Even though the fourth respondent was added as a joint vendor, the third respondent is yet to pay the balance amount as it was agreed. The third respondent has engaged three persons outside the gate. Therefore, the petitioner is inside the house as a prisoner in his own house and two policemen are posted in the gate. The representation has not been rejected by the respondent No.1 so far.

11. Heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the respondent Nos.1 and 2, Mr.Issac Mohanlal, learned Senior Counsel appearing for the third respondent and Mr.V.R.Shanmuganathan, learned counsel appearing for the fourth respondent.

12. Elaborately submissions have been made by both sides. But a short point arises for consideration is, whether the petitioner is entitled for such a direction.

13.The maintainability of the petition is challenged by making preliminary objection by the learned counsel appearing for the fourth respondent to the effect that the petitioner is not a lawful owner of the property as the sale has been effected as mentioned in the pleadings. So, according to him, only a lawful owner can get lawful possession and his possession can be protected by lawful means. After the sale is effected and the possession was handed over to the third respondent, the petitioner cannot be treated as lawful owner. If at all he can be treated as trespasser, such trespasser cannot make a request for giving police protection under Section 13 of the Police Act. This is his submissions. Section 13 of the Police



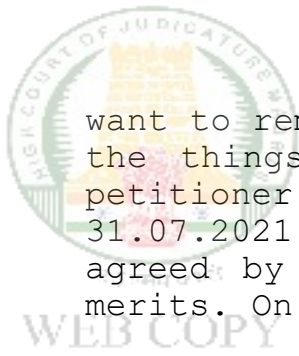
13. Additional police- officers employed at cost of individuals.-- It shall be lawful for the Inspector-General of Police, or any Deputy Inspector- General, or Assistant Inspector- General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police- officers to keep the peace at any place within the general police- district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application:

14. In view of the above provision, for granting such police protection, necessity must be shown and the second purpose is that to keep the peace and the third condition is that action must be deemed proper. So, the Authority must be satisfied to the effect that the action to be undertaken is proper and in the interest of keeping the peace and the necessity for giving police protection is available.

15. No doubt, the belongings to the petitioner lies in the petition mentioned property. So, the third respondent would say that only for the purpose of removing the belongings, he sought time and later, since COVID-19 Situation was going on, it was extended. So, according to the learned senior counsel for the third respondent, he is not at all making trouble to him to remove his belongings.

16. Originally, the learned counsel appearing for the petitioner came forward to make suggestion that he may be permitted to vacate the premises within a short time or two months. The learned Senior Counsel for the third respondent insisted that he must vacate the premises on or before 31.07.2021. At one stage, the learned counsel for the petitioner agreed to the same and he has also filed an affidavit to that effect. But later it was not agreed on one or two points.

17. At this juncture, the learned counsel appearing for the fourth respondent would submit that as undertaken by the petitioner, he must keep his promise and vacate the premises on or before 31.07.2021 on the basis of the affidavit. Since according to him, this is the Court of record, the petitioner cannot simply take away the affidavit that has been presented before this Court. But, however, it is seen that one or two points mentioned in the affidavit created problem and even, the learned senior counsel for the third respondent submitted that he is ready to arrange an alternative accommodation for the wife of the petitioner and even, they can provide electricity by genset. This genuinity and courtesy that has been shown by the third respondent clearly shows that they



want to remove his belongings in a comfortable manner. But, however, the things went out of control. So, the affidavit filed by the petitioner undertaking to vacate the premises on or before 31.07.2021 must not be taken into account. Since the same was not agreed by the third respondent, the matter is to be decided on merits. On that ground, petition was heard.

18. The learned counsel for the petitioner would submit that he seeks only a limited request for issuing a direction directing the first respondent to consider his representation. The second respondent has already acted in a biased manner against him, because he has also given a copy of the report to the second respondent. The learned Additional Public Prosecutor would submit that the representation given by the petitioner was closed by the second respondent. At this juncture only, the learned counsel for the petitioner would submit that as per Section 13 of the Police Act, only, the Commissioner of Police is empowered to decide the necessity.

19. Now the next point has been elaborately argued on both sides. Even for issuing such a direction, the Court must be satisfied with regard to the availability of *prima facie* ground and the legal right to seek such a relief at the hands of the Court. As mentioned earlier, after the sale has been effected in favour of the third respondent, the petitioner is not entitled to keep the possession forever. At one point of time, he has to vacate the premises. Only on that ground, this Court suggested the third respondent to give some time to the petitioner to remove his belongings and vacate the premises. The petitioner as well as the first respondent agreed for the suggestions and later, it turned out of control as stated above.

20. The petitioner claims that his possession must be protected till he is dispossessed through legal process. This argument heavily objected by the fourth respondent as stated above. A trespasser cannot seek police protection.

21. No doubt, the petitioner cannot be dispossessed by using the power. But, at the same time, he can seek protection only for lawful purpose. At this juncture, the learned Senior Counsel appearing for the third respondent would submit that refusing to vacate even after getting permission to remove the belongings within a short time, the claim now made is obnoxious in nature. In the petition, it has been mentioned that without reference to his possession, recitals are made. But, the learned Senior Counsel will take this Court through recitals in the sale deed and mutation of records. On the date of the sale deed, it reads that, the possession was handed over to the third respondent.



22. Even if it is taken that possession was not handed over on the date of sale deed, the duty of the vendor is set out in Section 55(f) of the Transfer Property Act, which reads as under:

"Duty of seller:-

to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;"

23. This is a mandatory provision which the petitioner has to follow. He cannot claim that he is in possession of the property and so, his possession must be protected by the Police force. The ground that the petitioner is entitled to remain in the property, till the third respondent settle the sale consideration to the fourth respondent is not acceptable, since the fourth respondent himself has filed a counter affidavit stating that no amount is due from the third respondent. So, on that ground, the petitioner cannot keep the possession and claim police protection.

24. *Prima facie*, it shows that the possession of the petitioner is not lawful. Even if we consider that he is in possession, his claim that the same must be protected through police is not legal. Continuation of unlawful activity, cannot be protected by granting police protection. Section 13 of the Police Act, certainly does not intent to give protection to such sort of unlawful possession. This petition is not maintainable in the absence of bonafideness. The petitioner is not entitled for such a direction. Accordingly, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

To

1. The Commissioner of Police,
O/o. Commissioner of Police,
Alagar Koil Main Road,
Madurai City,
Madurai.
2. The Assistant Commissioner of Police,
(Law and Order)
O/o. Thallakulam Police Station,
Madurai City,
Madurai.



+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-25678[F] dated
09/08/2021)

+1 CC to M/s.K.SWAMI DURAI, Advocate (SR-25538[F] dated
06/08/2021)

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SSIII (CO)
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