



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.07.2021

DELIVERED ON: 03.09.2021

CORAM

The Hon'ble Mr.Justice G.ILANGO VAN

Crl.O.P. (MD) .No.10030 of 2021

WEB COPY

Rani.Dr.M.Prasanna Natchiyar

... Petitioner

Vs.

1.The State Reprsedented by
The Inspector of Police,
Anti-Land Grabbing Special Wing,
Tirunelveli City.

2.K.A.Murugappan

3.K.A.Shanmugavel

4.V.Muthuveerappan

5.M.Saraswathi

6.M.Thaiyalnayagi

7.M.Subha

8.M.Senthilnathan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the impugned Closure Report, dated 08.04.2021, on the file of the first respondent and set aside the same as illegal and consequently to register the case, against the respondents 2 to 8 in the light of the order in Cr.M.P.No.1207 of 2021, dated 23.02.2021, passed by the Special Court for Land Grabbing Cases, Tirunelveli, under Section 156 (3) of Cr.P.C.

For Petitioner : Mr.I.Pinaygash

For R1 : Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

This petition is filed seeking to quash the impugned Closure Report, dated 08.04.2021, on the file of the first respondent and to register the case, against the respondents 2 to 8, as per the order of the learned Special Court for Land Grabbing Cases,

<https://hcservices.ecourts.gov.in/hcservices/>



Tirunelveli, in Cr.M.P.No.1207 of 2021, dated 23.02.2021.

2.The case in brief:-

The petitioner is the legal heir of the properties belongs to Sivagiri Zamindar, Tirunelveli District. The accused Nos.2 to 8 tried to grab the disputed properties namely, Ganamaniyammal Chathiram, Kovil Madam, situated at Palayamkottai, Tirunelveli District in S.Nos.73/1C, Town Survey Ward Block No.16 and T.S.No.50, S.Nos.68/1, 68/4, 69/1, 79/12 and 81/1 illegally by creating bogus documents. On coming to know about their illegal activities, the petitioner lodged a complaint before the first respondent police against them. But, the enquiry was conducted in a biased manner and he did not register any case against them. Therefore, the petitioner filed a petition in Cr.MP.No.1207 of 2021 under Section 156 (3) Cr.P.C, before the learned Judicial Magistrate No.I, Trinelveli, seeking a direction to register her complaint and conduct investigation and file a final report. By order, dated 23.02.2021, the learned Magistrate has directed the first respondent to conduct a preliminary enquiry and if any cognizable offence is made out, the case must be registered by following the guidelines issued in Lalitha Kumari's case. Even the order has been passed by the above said Court, the first respondent did not follow the order. He did not register a case for the past four months. So, this petition is filed seeking a direction to the respondent to register a case and investigate the matter as directed by the above said Special Court for Land Grabbing Cases, Tirunelveli District.

3.The matter was heard and the same was taken up for final disposal. Since the question involved in this matter is a legal issue, notice was not sent to the private respondents herein.

4.When the matter was taken up for hearing on 27.07.2021, the learned Additional Public Prosecutor has submitted that even though the order has been passed by the learned Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli, due to the non co-operation of the petitioner in producing the document with regard to the property belonging to Ganamaniyammal Chathiram, Kovil Madam, the enquiry was closed. So, on that ground, both the parties were heard.

5.The learned counsel for the petitioner would straightaway rely upon the judgment of the Hon'ble Supreme Court reported in **Mohammed Yousuf Vs. Afaq Jahan (SMT) and Another (2006) 1 SCC 627** for the purpose of argument that when the order has been passed by a competent Judicial Magistrate, under Section 156 (3) Cr.P.C it is the obligation on the part of the first respondent to register the First Information Report and investigate the same. No choice has given to the first respondent to conduct a preliminary enquiry. According to him, when there is a clear mandate, not only by the concerned Judicial Magistrate, but, also the Hon'ble Supreme Court, the enquiry conducted by the first respondent, which is preliminary in nature, is totally illegal and so, a direction must be issued is



proper in this petition. Whether such a contention can be accepted, is only the question that got to be answered in this petition. This Court need not go into the genuineness of the claim made by the petitioner to the effect that she is the legal heir of the properties, which originally belongs to the erstwhile Sivagiri Zamindar, Tirunelveli District. In the complaint, the petitioner has stated that the private respondents herein, tried to claim title over the property by creating and forging the documents and so, they must be criminally prosecuted.

6.The learned Additional Public Prosecutor has also produced the copy of the statement, given by the petitioner, dated 09.03.2021, in the form of letter.

7.The petition in Crl.MP.No.1207 of 2021 was heard and the order was passed on 23.02.2021 and it is seen that the Station House Officer, the Deputy Commissioner of Police, or the Anti Land Grabbing Special Cell, Tirunelveli, was directed to conduct a preliminary enquiry to ascertain as to whether the informations furnished in the complaint reveals any cognizable offence and the preliminary enquiry would be completed within six weeks from the date of receipt of copy of the order, as per the dictum laid down in Lalitha Kumari's case and during the course of enquiry if any cognizable offence is made out, the Station House Officer, the Deputy Commissioner of Police, or the Anti Land Grabbing Special Cell, Tirunelveli, must take action in accordance with law. In case of closure of the complaint, a copy of the same must also be furnished to the petitioner within a week.

8.Reading of the order shows that option has been given to the first respondent to conduct a preliminary enquiry to ascertain whether *prima facie* reveals any cognizable offence is made out. It appears that the first respondent had conducted a preliminary enquiry and during the course of enquiry, he came to the conclusion that the petitioner has not produced any document to show that the property belongs to the erstwhile Sivagiri Zamindar, Tirunelveli District. It is also noted that several persons have attended the enquiry and stating that they are having right over the property, which belongs to the Ganamaniyammal Chathiram, Kovil Madam. The property in dispute is also involved in a civil suit. So, *prima facie* does not reveal any offence involving land grabbing. Even though, in the statement, in the form of letter, written by the petitioner, she has stated that she is not having any document to show that the property belongs to the erstwhile Sivagiri Zamindar, Tirunelveli District.

9.It is further shown that the various properties in Palayamkottai Municipal Area in S.Nos.73/1C, Town Survey Ward Block No.16 and T.S.No.50, S.Nos.68/1, 68/4, 69/1, 79/12 and 81/1 in an extent of 4 hectares and 29 cents in the name of Ganamaniyammal Chathiram, Kovil Madam, Tirunelveli District. Tax had been paid in the name of One Ayya Thaiyalnayagi Ammal, who was the important ~~kartha~~ of Ganamaniyammal Chathiram, Kovil Madam and one Sartguna

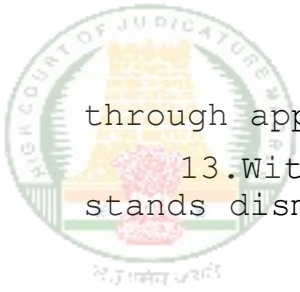


Devar, S/o.Aaseervatha Devar had taken the said land for lease and due to the dispute arose between them, a suit was filed by the above said Sartguna Devar, against another kartha namely, Murugappan in O.S.No.482 of 2003 for not to interfere in the possession and enjoyment of the property and the same was allowed by the order, dated 06.07.2005. Similarly, another suit in O.S.No.70 of 2008 was filed by one K.A.Murugappan and others to declare that the property belongs to Ganamaniyammal Chathiram, Kovil Madam and the same was decreed on 18.10.2010. Later, the property was converted into a commercial area. So, on that ground, legal heirs of the above said Sartguna Devar have tried to sell the property to various persons and they also sold some properties and release deed was also executed by the legal heirs of the above said Sartguna Devar. After that, one K.R.Shanmugavel filed a complaint stating that the Ganamaniyammal Chathiram, Kovil Madam. belongs to his mother namely, Ayya Thaiyalnayagi Ammal and several persons indulged in creating bogus documents. So, a case in Crime No.3 of 2012 for the offence punishable under Sections 341, 506 (i), 120(b), 465, 467, 468, 471 and 420 was registered on 03.01.2012. Final report was also filed before the learned Judicial Magistrate No.I, Tirunelveli and it is pending. Similarly, the suit in O.S.No.488 of 2011 was dismissed on the ground that no document was produced to show that the property belongs to Ganamaniyammal Chathiram, Kovil Madam. so, against that, the above said K.A.Murugappan and others filed a suit in A.S.No.84 of 2019 before the learned Sub Court, Tirunelveli, and it is also pending.

10.Observation made by the learned counsel for the first respondent clearly shows that a thorough enquiry has been undertaken by the first petitioner to know about the origin of the dispute and as well as the title to find out whether any *prima facie* case has been made, on the basis of the complaint, to take cognizance for filing First Information Report. So, the detailed enquiry reveals that there is no *prima facie* ground. So, such is being the position, the contention, on the part of the petitioner that without undertaking the preliminary enquiry, the first respondent ought to have registered First Information Report, is clearly out of place and cannot be accepted.

11.The judgment cited by the learned counsel for the petitioner in Crl.R.C.No.249 of 2017 has been rendered much before the Constitution Bench judgment of Lalitha Kumari's case. In Lalitha Kumari case, the Constitution Bench has clearly set out under what circumstances and in what nature of offence, preliminary enquiry is permissible.

12.The enquiry made by the first respondent clearly shows that it is a fit case to make a preliminary enquiry. So, the contention on the part of the petitioner that no option was available to the first respondent to make a preliminary enquiry in whole is misconceived one. So, the contention of the petitioner is rejected and the petitioner is at liberty to approach the concerned Court



through appropriate proceedings for redressing her grievance.

13. With the above said liberty, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

To

1. The Special Court for Land Grabbing Cases,
Tirunelveli.
2. The Inspector of Police,
Anti-Land Grabbing Special Wing,
Tirunelveli City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RS (16.09.2021) 5P 4C