



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2021

(Reserved on 23.12.2020)

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

WEB COPY

CRL.OP(MD)No.11665 of 2020

P.Packianatham

... Petitioner

vs.

1)The Superintendent of Police,  
Office of the Superintendent of Police,  
Alagarkovil Road,  
Madurai-625 007.

2)The Deputy Superintendent of Police,  
Melur Taluk,  
Melur.

3)The Inspector of Police,  
Melur Police Station,  
Melur.

4)The Sub Inspector of Police,  
Melavalazhu Police Station,  
Melur.

5)A.Chinnanaih

6)A.Thiraviam

... Respondents

**Prayer** : Petition filed under Section 482 of the Criminal Procedure Code, directing the respondents 1 to 4 herein to provide adequate police protection to the life and limb of the petitioner and for the agricultural works in the lands comprised in S.Nos.198/6A, 199/1, 204/3 B, 204/2 of Seikipatti Village, Melur Taluk, Madurai District, by considering his representation dated 05.10.2020 within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.Veera Kathiravan, Senior Counsel for  
M/s.Veera Associates

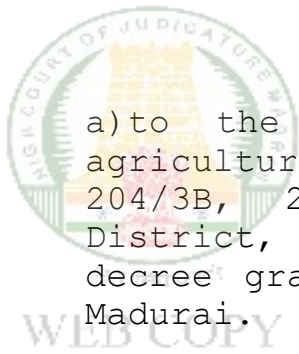
For R1 to R4 : Mr.V.Neelakandan  
Additional Public Prosecutor

For R5 & R6 : Mr.S.Kanagarajan

For Intervener : Mr.Chandrapandi

### **ORDER**

When police protection is sought for, towards the implementation of a civil court order, whether it is justifiable on the part of the police to insist upon a specific court order to give police protection. This is the issue raised in the present petition. The direction to the Police to give police protection



a)to the life and limb of the petitioner, and b)for the agricultural work in the lands comprised in SF.Nos.198/6A, 199/1, 204/3B, 204/2 of Seikipatti Village, Melur Taluk, Madurai District, which is also the subject matter of the civil court decree granted in O.S.No.25/2008 on the file of the Sub Court, Madurai.

2.The issue raised is all the more critical when there is a G.O i.e., G.O.NO.1580, Home Department dated 24.11.2008 which reads as follows:-

'When police protection is sought, for the implementation of a civil court order, it should be given readily. Police should not insist on a specific court direction to give police protection.'

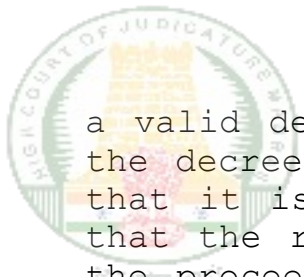
3.The question to be answered is painful when this Hon'ble Court in umpteen number of cases 10 of which are specifically relied upon by the learned counsel for the petitioner reiterate that when police protection is sought, for the implementation of a civil court order, it should be given readily. Police should not insist on a specific court direction to give police protection.

#### 4.Brief facts:-

The subject matter of property originally belonged to the family Trust created by one M.Somasundaram Chettiar vide Document No.934/1940 and is administered by his grandson K.R.Somasundaram Chettiar. The petitioner claims that he is the lessee of the property and that the respondents 5 and 6 are also claiming tenancy rights in the capacity as cultivating tenant. The civil suit filed by the petitioner before the Sub Court, Madurai in O.S.25/2008 seeking the relief of permanent injunction has crystalised into a decree and it has also attained finality.

4.1.The respondents 5 and 6 claimed that it is an exparte decree and that the remedy open to the petitioner is only to file an execution petition and not the present petition for direction. The respondents 5 and 6 claim that they have already moved the Tahsildar, Melur to record their names in the record of tenancy and the applications filed by the respondents 5 and 6 in TR.13/2006 and T.R.13/2008 are pending and that when the applications are pending consideration, there is a bar of jurisdiction under Section 16-A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1969, and therefore, the decree passed without jurisdiction is null and void and the present petition for direction based upon that decree is not valid.

5.The first question to be answered is whether this petition for direction based upon a civil court decree, is null and void or



a valid decree. The contention of the respondents 5 and 6 that the decree is a void decree is baseless. The further contention that it is an exparte decree is also invalid. It is not as if that the respondents 5 and 6 remained exparte without contesting the proceedings in O.S.No.25/2008. When the suit was posted for the evidence of the defendants, the counsel for the defendants have reported no instructions and the suit was decreed on 20.04.2010. Thereafter, the respondents 5 and 6 filed I.A.No.49/2015 in O.S.No.25/2008 with an application to condone the delay of 1651 days in filing the application to set aside the exparte decree that was dismissed on 13.12.2017. Challenging the same, CRP(MD) (NPD)No.2016/2018 filed was also dismissed on 17.09.2018. Thus, the civil court decree in O.S.No.25/2008 has attained finality. The issue regarding jurisdiction under Section 16-A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1969, should have been raised only in O.S.No.25/2008, but wilfully during the part heard stage, the respondents 5 and 6 remained outside the court perhaps with an intention to drag on the proceedings which is evident from the application filed to condone the delay of 1651 days in filing the application to set aside the exparte decree. It is not as if they had no knowledge about the institution of the suit. It is not a case of non service of summons. It is not a case of proceedings between 2 third parties where they had knowledge at subsequent point of time. The respondents 5 and 6 were parties to the proceedings having knowledge and having participated in the proceedings. Having failed to establish the defence with regard to jurisdiction under Section 16-A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1969, the respondents 5 and 6 are estopped from raising the very same defence in this petition.

6.At any stretch of imagination, the decree cannot be claimed to be an exparte decree. Even assuming for the sake of argument that it is an exparte decree, the exparte decree is as good as a contested decree. Therefore the contention that the decree is not a valid decree is not correct. The next contention is that the remedy open to the petitioner is only to file an execution petition and not the present petition for direction. The question of seeking an alternative remedy depends upon the effectiveness of the remedy and the nature of the remedy sought for. The relief sought for or the relief expected/relief needed is important for the decree holder and even assuming that there was an alternative remedy, it is only a policy of law and not a rule of law. The possible remedy that could be obtained by invoking the provisions of Order 21 whether could have been sufficient or effective for the decree holder has to be looked into.

7.Order 21 Rule 32(1) and (5) provides for execution of decree for injunction which reads as follows:-

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



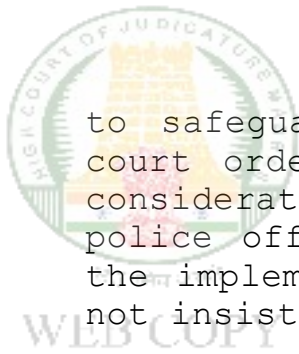
"32. Decree for specific performance for restitution of conjugal rights, or for an injunction.-(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

[Explanation.-For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.]"

8.The very nature of the relief that could be obtained are the arrest of the respondents 5 and 6 or the attachment of their properties. The relief expected for the decree holder is that his property should be protected/his life should be protected. When the decree holder did not derive any pleasure either by attaching the property of the respondents 5 and 6 or by arresting the respondents 5 and 6 and when no fruitful result would ensue for the benefit of the petitioner by doing it, it would be futile to seek the enforcement of the decree under Order 21 Rule 32 CPC. Therefore, the contention that there had been an alternative remedy that too an effective alternative remedy is not correct when no remedy would be fruitful for the petitioner/decreed holder.

9.Right to life is a precious remedy under Article 21 of the Constitution of India. The main concern of the decree holder is that if his right to property (possession and enjoyment) as confirmed by the civil court decree can be protected only by getting the order of protection from the police, necessarily that relief has to be conferred in order to protect his right. Right to property is possible only if the right to life is protected. Therefore, this petition for direction is justified and the only question is whether there should be a specific order by this Court directing the police to offer or render police protection in order



to safeguard the rights that are finally granted in the civil court order. As would be implied/conveyed in the question for consideration, the Government itself has issued guidelines to the police officers directing them to give police protection towards the implementation of a civil court order and that police should not insist on specific court order.

10.The Government has taken the responsibility of rendering police protection in the light of the civil court decree by constituting a committee and based on the recommendations of the committee, has issued such guidelines with a direction to circulate the order to all the police stations and the relevant paragraph which is highlighted in the judgment of this Court in M.S.Sivasubramaniam vs. Inspector of Police, Thirumullaivoyal, is towards recollection of memory for the police officers.

''4.This Court already held in 2014(2) CTC 695 ?Radhika Sri Hari and another Vs. Commissioner of Police, Coimbatore City, Coimbatore that,

7.In the aforesaid circumstances, this Court considers it appropriate to refer to Report of the Committee constituted by the Government in G.O.(3D) No.42, Home dated 30.06.2008 towards review of the system of treating complaints relating to money and land matters and to suggest a legally acceptable methodology. The Report of such Committee touching upon several issues, was accepted by Government. Having done so, under G.O.Ms.No.1580, Home (Pol.VII) Department dated 24.11.2008, the Director General of Police was required to circulate the Report along with the 14 point guidelines annexed to such Government Order to Police Officers/Stations for appropriate adherence. Under C.No.43/CRB/CSP/2008 dated 08.12.2008, the Commissioner of Police, Chennai Sub-Urban, has caused communications to all Deputy Commissioners, Assistant Commissioners and Inspector of Police for necessary action. Guideline 11 issued by the Committee reads as follows:-

11.When police protection is sought for the implementation of a Civil Court Order, it should be given readily. Police should not insist on a specific Court direction to give police protection.?

8.What is informed above makes clear that the petitioner would be entitled to police protection as prayed for. Criminal Original petition is allowed. There will be a direction to respondents to provide police protection to the petitioners for a period of three weeks from the date of receipt of a copy of this order towards enabling them raising fresh barbed wire fences on their property. The same will be at the cost of the petitioner.?''

11. Even after the expiry of 14 years (Vanavasam period), this



Government Order is not implemented in letter and spirit driving people unnecessary to the court. It is high time the police officers are required to respect to the orders of this Court and also to respect the Government Order.

12. In the light of the legal position indicated, it should have been the responsibility of the police to have rendered police protection in terms of the representation dated 05.10.2020. To avoid further recurrence of this kind of petition, the Director General of Police, Tamil Nadu, is once again required to issue reminder to all the police stations under his jurisdiction with regard to the report of the committee constituted by the Government in GO(3D)No.42, Home dated 30.06.2008 and G.O.Ms.No.1580, Home (Pol.VII), Department dated 24.11.2008. It is appropriate to point out dividing/demarcating line of jurisdiction for the police as to when to interfere and when not to interfere in civil matters. This demarcation has been pointed out in the judgment of this Court reported in G.Anand vs. The Inspector of Police, ICF Police Station, Chennai (W.P.No.12956 of 2006 dated 25.02.2015). The relevant portion of the judgment reads as under:-

''4.It is trite to say that function of the police authorities is to control law and order and to investigate the crime. The objective is not to be an arbiter of civil dispute. The police authorities, thus, cannot take over the job of Civil Court to adjudicate the disputes and that being the problem appears to have been redressed by G.O.Ms.No.1580, dated 24.11.2008. Suffice for us to say that G.O.Ms.No.1580, dated 24.11.2008 should be followed in letter and spirit and the process of investigation of any crime has to be in accordance with law laid down by the highest Court.''

13. Perhaps without understanding the stage at which the police can interfere in the civil jurisdiction, the police is insiting upon the production of the civil court order. If necessary, the the Director General of Police, Tamil Nadu, may also issue a clarification.

14. With the above observation and directions, this Criminal Original Petition is disposed of.

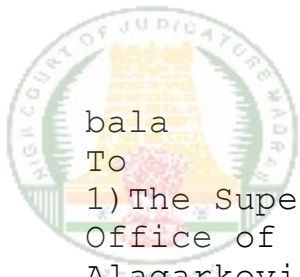
Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)



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To

1)The Superintendent of Police,  
Office of the Superintendent of Police,  
Alagarkovil Road,  
Madurai-625 007.

2)The Deputy Superintendent of Police,  
Melur Taluk,  
Melur.

3)The Inspector of Police,  
Melur Police Station,  
Melur.

4)The Sub Inspector of Police,  
Melavalazhu Police Station,  
Melur.

5)The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**Copy to:-**

The Director General of Police,  
Radhakrishnan Salai, Mylapore, Chennai.

ORDER MADE IN  
CRL.OP (MD)No.11665 of 2020  
DATED : 03.08.2021

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