



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.07.2021

Delivered On : 23.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.14619 of 2020

WEB COPY

1. R.Suresh Kumar
2. P.Jayachandran
3. T.Sasi Kumar
4. R.David Raj

.. Petitioners

vs.

- 1.State of Tamil Nadu
Represented by The Superintendent of Police,
Kanyakumari at Nagercoil,
Kanyakumari District.

- 2.The Deputy Superintendent of Police,
Thuckalay, Kanyakumari District.

- 3.The Inspector of Police,
Thiruvattar,
Kanyakumari District.

- 4.The Sub-Inspector of Police,
Thiruvattar,
Kanyakumari District.

- 5.K.Justin Jose
- 6.Jeen Kirubha
- 7.Stalin Jose

.. Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct respondents 1 to 4 to give the petitioners necessary police protection and help to evict criminal trespassers from their property of 56.290 cents (24519.92 square feet, equal to 2278.62 square metres) with all things in the same, including house, bearing Door No.1-25-1 of Aruvikarai Village Panchayat and compound wall, in Re-Survey No.80/1A, sub-divided as Re-Survey No.80/1A2 (Old Survey No.1397) in Mathoor Desom, Aruvikarai Village, Aruvikarai Panchayat, Tiruvattar Taluk (earlier Kalkulam Taluk), Kanyakumari District.

For Petitioners : Mr.K.N.Thampi

For R1 to R4 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R6 : Mr.G.Cenil



ORDER

This Criminal Original Petition is filed to direct respondent Nos. 1 to 4, to give necessary police protection to the petitioners and help to evict criminal trespassers from the petition mentioned property.

2.The case of the petitioners in brief is that the property situated in Re-survey No.80/1E sub-divided as Re-Survey No.80/1A, sub-divided as Re-Survey No.80/1A2 (Old Survey No.1397) in Mathoor Desom, Aruvikarai Village and Panchayat, Tiruvattar Taluk (earlier Kalkulam Taluk), Kanyakumari District, belongs to the fifth respondent. He mortgaged the property in favour of Tamil Nadu Mercantile Bank, Thalakkulam Branch, by depositing the title deeds and obtained loan. He defaulted in repayment of the loan amount. So, the proceeding under Section 14(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, was initiated. It was brought for sale. The symbolic possession was taken over by the Bank, by the order, dated 17.12.2019, the Chief Judicial Magistrate, Kanyakumari, at Nagercoil, in Cr.M.P.No.11932 of 2019, appointed one Mr.P.Gnanaseelan, as Advocate Commissioner, to assist the Bank for taking the property. So, the Commissioner visited the property along with the Authorisation Officer, on 13.02.2020, at that time the gate and building was found locked. The Bank got possession of the property on 13.02.2020 and Security Staff was posted in the property, a report was filed before the Court on 07.03.2020.

3.Later, auction proceeding was initiated on 20.01.2020 and in that auction, the petitioners purchased the property for a sum of Rs.69,20,000/-. The sale deed was also executed on 18.03.2020 and was registered on the file of the Sub-Registrar, Tiruvattar, in Document No.1117 of 2020. The possession of the property was handed over to the petitioners and also took possession of the same.

4.On 31.05.2020, the workers went to the property for the purpose of maintenance and repair work, at about 9.00 a.m., they found that the front gate and doors of the of the house were broken and was replaced by some other locks. The sixth respondent, who is the wife of the fifth respondent, and the seventh respondent, who is the younger brother of the fifth respondent were available in the house. The matter was informed by them to the workers. The sixth respondent abused and threatened the workers, joined with the others. Later, the petitioners tried to enter into the house, which was prevented by the sixth respondent with the help of others.

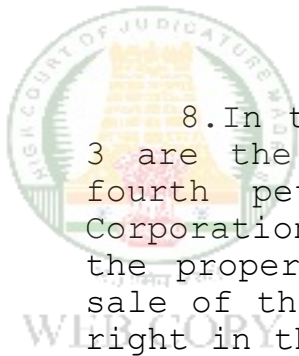
5.So, a petition was given on 31.05.2020 by the petitioners before the fourth respondent, against the sixth respondent, a C.S.R. receipt has also issued in C.S.R.No.366 of 2020 and the sixth respondent appeared before the respondent police and gave a statement and there was no action, on 03.06.2020, a petition was



given to the second respondent. The sixth respondent appeared before the respondent police and gave a statement and the Police informed, they will take action.

6. When encumbrance certificate was obtained, it was found that Court attachment was found. It appears that a collusive suit in O.S.No.204 of 2019 on the file of the Additional District Judge, Padmanabhapuram, filed against the fifth respondent by the seventh respondent. In the suit in I.A.No.3 of 2019 has been filed for attachment of the property. The attachment was effected on 20.03.2020. This petitioners filed a petition in I.A.No.6 of 2020 before the concerned Court for adjudication for their claim. The petitioners are entitled for legal possession of the property, the respondents 5 and others trespassed into the property and they are remaining there. So, this petition is filed seeking a direction to the respondents 1 to 4 to give police protection and help to evict the criminal trespassers in the property mentioned above.

7. Counter filed by the sixth respondent is that the mortgage by the fifth respondent with the Tamil Nadu Mercantile Bank, Thalakkulam Branch, is admitted. So, because of the business loss, the fifth respondent did not in a position to repay the amount. The other Debtors were demanding money back, the fifth respondent went Abroad in search of job. At that time, Recovery Proceeding has been initiated in O.A.No.788 of 2018 and O.A.No.876 of 2018, since the fifth respondent left India, the sixth respondent approached the Bank Authority and sought time to settle the amount. But, however, the Manager of the Bank told her that if the Factory is sold, the entire Debts to Bank will be cleared. This was accepted by the sixth respondent. The property in Re-Survey No.631/6 to the extent of 65 cents along with six constructed Factory Buildings and Machineries worth about Rs.90,00,000/- (Rupees Ninety Lakhs only) were brought for auction. But, the Bank Manager misusing the power, issued sales certificate to his employees, who are working as Securities in the Tamil Nadu Mercantile Bank. The value fixed by the Bank Manager shows the guilty and illegal intention. Challenging the sale certificate issued by the Bank, the sixth respondent filed an appeal, along with the deed of Power of Attorney and the same was questioned by the Tribunal, regarding the maintainability and after clarification, the appeal is numbered as S.A.No.173 of 2020 and it is pending before the Debt Recovery Tribunal, Madurai. So, at that time, these petitioners are indulging in vacating the respondent illegally. The sale itself is under question before the Debt Recovery Tribunal, Madurai and the sixth respondent is staying in the house with two children, the seventh respondent, who is the brother of the fifth respondent, also filed a suit against her husband (fifth respondent). So, this Criminal Original Petition is clear abuse of process of the Court. The petitioners 1 to 3, who are the employees of the Bank, can approach the Debt Recovery Tribunal, Madurai, for possession.



8.In the reply counter, it is denied that the petitioners 1 to 3 are the employees of the Bank, they are Ex-Serviceman and the fourth petitioner is the Driver of the Tamil Nadu Transport Corporation. The sixth respondent has not stated about her right in the property. The allegation with regard to conduct auction-cum-sale of the Bank Officers also denied. The sixth respondent has no right in the property and she has got other buildings for residence, before her trespass, she was living in Attoor. Taking advantage of gender, the sixth respondent is preventing the petitioners from exercising their legal right.

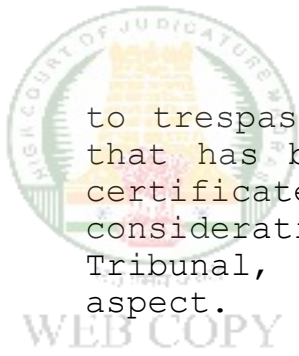
9.Heard both sides.

10.The question arises for consideration is whether police protection can be granted for the purpose of evicting or removing the alleged encroacher upon the property.

11.Now, the learned counsel for the petitioners would vehemently submit that soon after symbolic possession of the property that has been taken by the Bank in pursuance to the order passed by the Chief Judicial Magistrate, Kanyakumari at Nagercoil, in Crl.M.P.No.11932 of 2019, dated 17.12.2019 and subsequent possession of the sale certificate by the petitioner, the private respondents, namely, fifth and sixth respondents, have no right over the property or to re-occupy the property by trespassing into the same. As such, they must be removed with the help of the police.

12.The counsel for the private respondents 6 and 7 would submit that against the sale certificate and the auction sale conducted by the Bank, an Appeal has been preferred in S.A.No.173 of 2020 before the Debt Recovery Tribunal, Madurai, and now it is pending. So, according to the sixth respondent, who is the wife of the fifth respondent, would say that since the auction as well as the sale proceedings itself under challenge before the Debt Recovery Tribunal, Madurai, the question granting police protection to the petitioners for removing them will not lie. According to her, all along, she was occupying the property and what has been taken by the petitioners is only symbolic possession and not actual possession. The fact that only symbolic possession is admitted. As I mentioned earlier, it is pertinent to state in the petition it is stated that in pursuance to the order passed by the Chief Judicial Magistrate, Kanyakumari, in the above said Crl.M.P.No.11923 of 2019, the Authorisation Officer and along with the Advocate Commissioner visited the property on 13.02.2020 and found that the gate building of the property remain locked. So, it appears that on the date of visiting the property, remained locked. It is further stated that since the property has been locked for long time, electricity supply as well as the water supply were cut off. So, for the purpose of making of the repair, when the workers went to the property on 26.05.2020, they found that the lock was found broken and new lock

<https://hcservices.go.in/hcservices/> So, according to the petitioners, this will amount



to trespass in the property. But, whether the symbolic possession that has been taken by the petitioners, in pursuance of the sale certificate will amount to actual possession is a matter for consideration in the Appeal that is pending before the Debt Recovery Tribunal, Madurai. So, this Court cannot go into the factual aspect.

13.The learned counsel for the petitioners would submit that even in the counter filed by the sixth respondent, there is no specific denial with regard to the symbolic possession, that has been taken by the petitioners. More over, the sixth respondent has no right over the possession and she is not a party before the O.A. Proceedings. Whether the auction conducted by the Bank officials is proper and genuine cannot be also the matter for consideration in this petition.

14.The learned counsel for the petitioners would rely upon the judgment of the Hon''ble Supreme Court reported in **2006 (5) SCC 539 [Howrah Mills Co.Ltd and another Vs. MD.Shamin and others]** for the purpose of argument that, it is the duty of the State to protect an interest of lawful owner against the trespassers. He would also rely upon the judgment of this Court in reported in **2018(1)MWN (Criminal)447 [T.Ravikrishnan Vs. The Commissioner, Office of the Commissioner of Police]**, dated 14.02.2018, for the purpose of argument that since a Civil Court decree is granted in favour of the petitioner, necessary police protection ought to be granted. No doubt, that when a Civil Court granted a decree in favour of the person that fact can be taken in to account by the authorities, while considering the representation for giving police protection. There can be no quarrel on this proposition. But, here, the problem is only with regard to actual possession. As I mentioned earlier, symbolic possession only has been taken by the petitioners. Though it will not amount to physical possession, whether the sixth respondent and her husband / fifth respondent got any right to occupy the property which was symbolically taken is a matter for consideration before the Debt Recovery Tribunal, Madurai, in S.A.No.173 of 2020, as the sale is itself is in dispute. This Court cannot go into the factual aspect, as I mentioned earlier, so, when the matter is before the competent Tribunal, it may not be proper on the part of this Court to order police protection and that too for the purpose of removing the private respondents from the premises. The police protection can be granted only when possession is admitted. So, for the purpose of removing the alleged trespassers no police protection can be granted, unless there is a civil suit decree. Now, the petitioners rely upon the symbolic possession that has been taken through the Commissioner, as per the order of the Chief Judicial Magistrate. But, as I mentioned earlier, it has been denied by the fifth respondent. So, in such circumstances, factual aspect cannot be gone into in this petition. So, on this ground also, this petition will not lie. The only course available to the



petitioners is to work out remedy before the Debt Recovery Tribunal, Madurai, which is pending in S.A.No.173 of 2020.

15.So, with this liberty, this Criminal Original Petition is dismissed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
Kanyakumari at Nagercoil,
Kanyakumari District.
- 2.The Deputy Superintendent of Police,
Thuckalay, Kanyakumari District.
- 3.The Inspector of Police,
Thiruvattar, Kanyakumari District.
- 4.The Sub-Inspector of Police,
Thiruvattar, Kanyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Presiding Officer,
Debt Recovery Tribunal, Madurai.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-23986[F] dated 27/07/2021)

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-23978[F] dated 27/07/2021)

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