



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

WP (MD) No. 22630 of 2017

M.Asilar

: Petitioner

Vs.

1.The Chief Secretary to the Government,
Secretariat, Chennai-09.

2.The Secretary to the Government,
Home Department,
Secretariate, Chennai-09.

3.The Superintendent of Police,
D.P.O. Nagercoil Post,
Kanyakumari District.

4.Sai Saran Thejasvi,
Assistant Superintendent of Police,
Colachel Sub Division,
Colachel & Post,
Kanyakumari District.

5.Devaraj
A.S.P Writer,
Colachel Police Sub Division,
Colachel & Post,
Kanyakumari District.

6.Jinnah Beer Muhammed,
Sub Inspector of Police,
Eraniel Police Station,
Eraniel, Neyyoor & Post,
Kanyakumari District.

7.Alex,
Head Constable,
District Superintendent of Police, Special Branch
Eraniel Police Station,
Eraniel,
Neyyoor & Post,
Kanyakumari District.



8.The Director General of Police,
Chennai.

9.Maria Sebastian

: Respondents

(R8 & R9 are suo motu impleaded vide court order dated 19.07.2021 in WP(MD).No.22630 of 2017 by GIJ)

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondents 1 and 2 herein to award a sum of Rs.30,00,000/- as compensation to the petitioner taking into consideration of the petitioner representation, dated 10.08.2017, as expeditiously as possible within the time stipulated by this court.

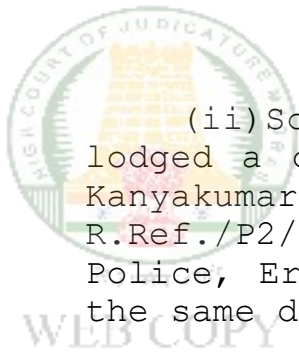
For Petitioner : Mr.S.Ramasamy

For R1 to R3 : Mr.R.M.Ambu Nithi
Additional Public Prosecutor

ORDER

This writ petition has been filed seeking for a Writ of Mandamus, directing the respondents 1 and 2 herein to award a sum of Rs.30,00,000/- as compensation to the petitioner taking into consideration of the petitioner's representation, dated 10.08.2017, as expeditiously as possible within the time stipulated by this court.

2.(i)The case of the petitioner is that the property to an extent of 30 cents situated in S.No.871/2008, which originally belongs to one John Selasteen Charles. In the year 2013, he approached the petitioner for leasing out the same for lease amount of Rs.1,00,000/- and it was registered on 20.11.2013, at Sub Registrar Officer, Eraniel. Later, he approached the petitioner with an intention to sell the above mentioned property. The petitioner and his wife made arrangements for purchasing the land and also, purchased the same for Rs.15 lakhs by registered sale deed, dated 18.01.2016. That amount was settled by taking bank loan and hand loan from the relatives. After purchasing the land, patta was issued in the name of the petitioner's wife. Later, out of 30 cents, 5 cents were sold by his wife to meet out the medical expenses of the petitioner's mother. Knowing the aspect of increased value of the property, the said Maria Sebastian and John Selasteen Charles started to disturb and make trouble.



(ii) Son of John Selasteen Charles, namely, Maria Sebastian, lodged a complaint before the District Superintendent of Police, Kanyakumari, which was forwarded to Eraniel Police Station in R.Ref./P2/S.P//2145/2017. It was enquired by the Inspector of Police, Eraniel, on 18.07.2017 and later, it came to be closed on the same day, since the complainant has not produced any document.

(iii) Later, on 07.08.2017, the 5th respondent called the petitioner through mobile phone and asked him to appear for an enquiry. On that date, he appeared before the Assistant Superintendent of Police, Colachel. There, he was threatened and forced to execute a release or re-sale deed in favour of the above said Maria Sebastian. He was criminally intimidated through force and pressure. They obtained his signature in white paper and let him out. Later, he made a request for supplying the C.C.T.V Camera footage through RTI Act, on 10.08.2017. It was replied that there was no such C.C.T.V footage and the same got damaged or repaired. So, he sent a notice under Section 80 C.P.C, which was also received by the Assistant Superintendent of Police, Colachel and by the Sub Inspector of Police, Eraniel Police Station and they also gave reply on 23.08.2017 & 26.08.2017. It is also seen that Maria Sebastian filed a suit before the learned Principal Subordinate Court in O.S.No.266 of 2017 and the same is pending. Hence, the petitioner approached this Court with the above Writ Petition.

3. Heard the learned counsel for the petitioner and the official respondents and on going through the materials available on record as well as from the records produced by the Inspector of Police, Eraniel Police Station, it came to know that there was a dispute between the petitioner and one Maria Sebastian, who is the son of the original seller of the property with regard to the property in favour of the wife of the petitioner. A copy of the sale deed is also available in the copy of the records, produced by the Inspector of Police, Eraniel, wherein, we will find that the property was sold for Rs.4,25,102/- on 18.01.2016. What had happened to the seller, is not clear on record. But, it appears that the wife of the seller started to make trouble and her son lodged a complaint before the Eraniel Police, on the first occasion, viz., on 20.07.2017 and it came to be closed since he did not co-operate and produce the relevant documents as it has also been mentioned that the wife of the petitioner is in enjoyment of the property after purchasing the same. It also came to know that the document was not executed by John Selasteen Charles, under pressure, force or coercion and advise was given to her to seek appropriate relief before the Civil Court.

4. Later, a complaint was given by him on 08.08.2017, before the Assistant Superintendent of Police, Colachel, Sub Division,

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



Eraniel, wherein, this Court finds endorsement to call the petitioner and counter petitioner for enquiry. Now, according to the petitioner, much trouble was made by the Assistant Superintendent of Police, Colachel, on 08.08.2017, when he appeared for the enquiry. As mentioned earlier, he was criminally intimidated and signature was obtained in white paper and then he was let out.

5.A reading of the alleged statements given by the petitioner shows that during the course of enquiry, he admitted that he agreed to sell the property to him and on that ground, the total price was estimated as Rs.14,000,00/- and he agreed to pay the amount on 10.09.2017 and on that date, after receiving the price, he undertakes to execute a sale deed. So, according to him, the police has no role to play in the entire transaction. It is absolutely civil in nature. So, on that ground, he seeks compensation.

6.In the counter, it is stated that there was a compromise between the parties, in pursuance of which, the above said undertaken was given by the petitioner and there was no coercion, threat or intimidation, but, a glaring, catch the point of the case is at para 11, wherein it has been stated that during the course of enquiry, it was found that the property was given only as security for loan. Paragraph 12 says that the possession and enjoyment of the property was in the hands of Maria Sebastian.

7.Whether such a finding or observation can be made by the Police during enquiry is a matter of concern and this sort of findings can be recorded only by a competent Civil Court after appreciating the evidence on record. Again and again, it has been repeatedly held by the several Court that in case of civil dispute, Police has absolutely, no role to play, even a caution has been expressed by PSO 592 (b).

8.Even in the earlier occasion, when a similar issue came up before this Court, this Court directed the Director General of Police, Chennai, to issue a circular with regard to the procedure to be adopted by the Police Officials while entertaining civil dispute. The judgment reported in **M.Balamurugan Vs the Superintendent of Police, Trichy and Another in Crl.OP(MD)Nos.6493 of 2018 & 17119 of 2017**. But, it appears that so far, no such circular, has been issued and it appears that it is the main reason for this sort of occurrences.

9.So, the Director General of Police, Chennai is *suo-motu* impleaded as necessary party in this petition. Similarly, the complainant namely, Maria Sebastian S/o.John Sebastian Charles, ~~Eraniel Street~~ Madathattuvilai, Villukurichi Post, Kanyakumari



District is suo-motu impleaded as necessary party in this petition.

10 For further direction, let the learned Additional Public Prosecutor get instructions with regard to the development and inform this Court on 16.08.2021.

11. In pursuance of the order of this court, dated 19.07.2021, further order is passed. On 09.01.2021, the learned Additional Public Prosecutor submitted that in pursuance of the passed by this court in Crl.OP Nos.12170 and 11567 of 2008, direction was issued to the Investigating Officer regarding the procedures to be followed, while entertaining complaint involved in civil dispute. Similarly, in pursuance of the order passed by this court in Crl.OP(MD)Nos.6493 of 2018 and 17119 of 2017, dated, 19.07.2018, G.O.Ms.No.1580, Home (POL.VIII) Department, dated 24.11.2008 and a Circular Memorandum in Rc No.226313/Crime.4(3)/2013 were issued. So the learned Additional Public Prosecutor submitted that all the directions that have been issued by this court have been complied with by issuing the above said G.Os. The above said submission made by the learned Additional Public Prosecutor was placed on record.

12. Now even though, the petitioner has sought for a larger relief of awarding compensation, considering the fact that unless enquiry against the erring officials by fixing their responsibility, the compensation cannot be assessed and ordered in this petition. So, the petitioner can work his remedy in the civil court, in so far as the compensation for the mental agony, harmony etc. In so far as the second relief with regard to the taking of the departmental action, I am of the considered view that it is the fittest case, which the Superintendent of Police, Kanyakumari District may be directed to initiate departmental proceedings against the erring police officials, who were involved in the enquiry process.

13. In view of the above, this writ petition is disposed of with the following directions:-

(i) The Superintendent of Police, Kanyakumari District is directed to initiate disciplinary action against the police officials, who are involved in the enquiry process; and

(ii) The petitioner is at liberty to work out his remedy through civil proceedings, in the manner known to law.



14. With the above said direction and liberty this writ petition shall stand **disposed of**. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar (CS)

er

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 Chief Secretary to the Government,
Secretariat,
Chennai-09.

2. The Secretary to the Government,
Home Department,
Secretariate,
Chennai-09.

3. The Director General of Police,
Chennai.

4. The Superintendent of Police,
D.P.O. Nagercoil Post,
Kanyakumari District.

5. The Superintendent of Police,
Kanyakumari District.

6. The Assistant Superintendent of Police,
Colachel Sub Division,
Colachel & Post,
Kanyakumari District.

7. The Sub Inspector of Police,
Eraniel Police Station,
Eraniel, Neyyoor & Post,
Kanyakumari District.

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



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

WEB COPY

WP (MD) No.22630 of 2017
01.10.2021

RK(23/12/2021) 7P 9C