



W.P.No.23993 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.23993 of 2013

and

M.P.No.1 of 2013

1.Smt.K.C.Anusuya Devi

2.C.Ramani

... Petitioners

Vs.

1.The Commissioner of Police,
Greater Chennai, Chennai – 600 009.

2.The Inspector of Police,
D-3 Ice House Police Station,
Ice House, Chennai – 600 005.

3.The Tahsildar-cum-Executive Magistrate,
Triplicane, Chennai.

4.M.Kabali

... Respondents

(R4 impleaded as per order dated 06.09.2013
by KKSJ in M.P.No.2/13 in W.P.No.23993/13.)

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to refer the complaint lodged in No.51/CSR/D3/PS/2013 dated 11.03.2013 with the 2nd respondent under Section 145 of Crl.Procedure Code to the 3rd respondent



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herein viz., Tahsildar-cum-Executive Magistrate, Triplicane for conducting enquiry and for passing orders on merits.

For Petitioner : Mr.P.Gopalan

For Respondents : Mr.P.Rajarajeswari
Government Advocate
for R1 to R3

ORDER

There is no representation on behalf of the newly impleaded private respondent/4th respondent.

2.The petitioners have filed this writ petition for a mandamus to direct the first and second respondents to refer the complaint lodged in No.51/CSR/D3/PS/2013 dated 11.03.2013 with the second respondent under Section 145 of Crl.Procedure Code to the third respondent herein viz., Tahsildar-cum-Executive Magistrate, Triplicane for conducting enquiry.

3.The facts on record indicates that the petitioners have earlier given a complaint on 10.03.2013 and also filed by another complaint dated 11.03.2013, wherein, the petitioners have alleged that the fourth respondent at the behest of their nephew namely J.Gunasekaran had locked the house.



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4.The case of the petitioner is that the petitioners' house was constructed by the petitioners' father and that the petitioners have been living there since after the petitioners' father demise. It is submitted that the petitioners' brother's son namely J.Gunasekaran had engaged the fourth respondent henchmen for vacating the petitioners from premises and he wanted to sell the property. It is further submitted that the petitioner had therefore filed CrI.O.P.No.11130 of 2013, the case was however closed recording the submission of the respondents and that the case was civil in nature.

5.The learned counsel for the petitioner submits that a copy of the report based on which the above submission in CrI.O.P.No.11130 of 2013 was not made available to the petitioner.

6.It is submitted that the respondents should have invoked Section 145 of Cr.P.C. It is therefore submitted that the petitioners' complaint ought to have been acted upon. It is further submitted that the petitioners were aged about 56 years in 2013 when the present writ petition was filed.



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7.The writ petition is opposed by the official respondents stating that the petitioners ought to have filed a private complaint under Section 200 of Cr.P.C, in case, the petitioners complaint was not considered by the official respondents.

8.That apart, it is submitted that against the closure report, the petitioners also have an alternate remedy for filing an appropriate application before the concerned Judicial Magistrate and therefore on this count also this writ petition is liable to be dismissed.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first to third respondents.

10.The facts on record also indicates that the petitioners have also filed a suit in the year 2016 against the fourth respondent which was dismissed. The fourth respondent in turn had also filed a suit in O.S.No.4899 of 2013. The suit filed by the fourth respondent in O.S.No.4899 of 2013 was dismissed by a judgment and decree dated 22.06.2015 and the another suit



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filed by the petitioners in O.S.No.4980 of 2013 was also dismissed by a judgment and decree dated 26.10.2015.

11.It appears that the petitioners have also filed C.R.P.No.3620 of 2016 against the judgment and decree dated 26.10.2015 in O.S.No.4980 of 2013. The said Civil Revision Petition is said to be pending before this Court.

12.Considering the above, I am of the view there is no merits in the present writ petition. At the same time, liberty is given to the petitioner to initiate appropriate proceedings against the fourth respondent by filing private complaint before the Magistrate or in the alternative to take steps for recalling the closure report in accordance with law.

13.This writ petition stands dismissed with the above observations.
No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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To
WEB COPY

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C.SARAVANAN, J.

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