



W.P.No.5090 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.5090 of 2014

Vijayalakshmi

... Petitioner

Vs.

1.The Union Territory of Puducherry
Rep. by its Chief Secretary
Puducherry

2.The Union Territory of Puducherry
Rep. by its Secretary (Home)
Home Department, Puducherry 605 001

3.The Director General of Police
Police Head Quarters
Dumas Street, Puducherry 605 001

4.The District Collector
Collectorate, Saram
Puducherry 605 013

5.The Sub Collector-cum-
Sub Divisional Magistrate (North)
Saram, Puducherry 605 013

6.Dr.Muthamma
7.Sachidanandam



W.P.No.5090 of 2014

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8.Manikandan

9.The Inspector of Police
Odiansalai Police Station
Puducherry 605 001

10.Arivuselvan

11.Dhanasekaran

12.Manjini

13.Sandeep Jain

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order of the 6th respondent vide proceedings No.9919/SCR(N)/PP/2011 dated 23.12.2011 and consequential F.I.R. in Crime No.17 of 2014 dated 17.01.2014 on the file of 9th respondent police station and quash the same and consequently direct the respondents to restore the possession of the property at No.70, Mulla Street, Puducherry in favour of the petitioner and indemnify the petitioner and her family by paying a sum of Rs.50 lakhs towards compensation for depriving their guaranteed right to life with dignity and for human right violation of putting the petitioner behind the bar with malice for invading into her constitutional right causing great harassment and taking away the right to peaceful life as guaranteed under Article 21 of the Constitution of India.

For Petitioner : Mr.R.G.Narendhiran



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W.P.No.5090 of 2014

For Respondents : Ms.V.Usha, AGP (Puducherry)
for R1 to R5 & R9

Mr.A.Raymond
for M/s.Babu Rangasamy Associates
for R13

R8 – Not ready in notice

R1 to R7 & R10 to R12 No Appearance

Mr.A.G.Rayan for R11

ORDER

The Writ Petition has been filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order of the 6th respondent vide proceedings No.9919/SCR(N)/PP/2011 dated 23.12.2011 and consequential F.I.R. in Crime No.17 of 2014 dated 17.01.2014 on the file of 9th respondent police station and quash the same and consequently direct the respondents to restore the possession of the property at No.70, Mulla Street, Puducherry in favour of the petitioner and indemnify the petitioner and her family by paying a sum of Rs.50 lakhs towards compensation for depriving their guaranteed right to life with dignity and for human right violation of putting the petitioner behind the bar with



W.P.No.5090 of 2014

WEB COPY

malice for invading into her constitutional right causing great harassment and taking away the right to peaceful life as guaranteed under Article 21 of the Constitution of India.

2.The case of the writ petitioner is that she was in possession of the subject property for more than 38 years and the property originally belongs to her husband's sister. While so, on 10.07.2008, one Colonel Mohamed Mustafa, claiming to be the Power Agent of the house, gave a complaint against the petitioner before the 5th respondent regarding land grabbing, wherein an enquiry was conducted by the Sub Collector, the 5th respondent herein and order has been passed on 21.07.2008 holding that the writ petitioner was in possession of the property and directed the parties to approach the Civil Court and to maintain status quo. When that being the case, the 13th respondent herein obtained a Power of Attorney and also obtained orders on 23.12.2011 from the Sub-Collector-cum Sub Divisional Magistrate, wherein the Sub Collector has passed an order indicating that the petitioner is an encroacher and directed her to vacate the property. Consequent to which, the petitioner was arrested



W.P.No.5090 of 2014

WEB COPY

based on the false F.I.R. dated 17.01.2014 for the alleged offence under Sections 453, 448, 506(ii) R/w 188 I.P.C. and dispossessed from the property illegally. Therefore, the petitioner seeks for restoration of her possession and also quashing of the F.I.R. besides compensation.

3.Counter Affidavit has been filed by the 5th respondent and adopted by the 4th respondent.

4.The counter affidavit states that the subject property originally belonged to one Mr.Cruz Marie Yuves Michel and Mrs.Fanovard Emelda Theophanie Seraphine Rosie W/o. Mr.Cruz Marie Yves Michel. Thiru Fanovard Guy was the younger brother of Mrs.Emelda Theophanie Seraphine Rosie and as such he was entrusted the above said house by Mr.Cruz Marie Yuves Michel and Mrs.Fanovard Emelda Theophanie Seraphine Rosie, who were French nationals, at the time of their departure to France. Thiru Fanovard Guy was residing in the house along with his wife and children as the caretaker of the house which belonged to his sister. On enquiry it came to light that the said Fanovard Guy



W.P.No.5090 of 2014

WEB COPY

separated from his family and was residing with the petitioner Vijayalakshmi since 2005. In April 2007, the writ petitioner had a dispute with Fanovard Guy and had filed a complaint in the Women Commission. Thiru Fanovard Guy also participated in the enquiry and furnished an undertaking on 17.04.2007 and on that basis, the complaint was closed. The said Fanovard Guy expired on 03.07.2007 and his last rites were performed by his family members. The petitioner stealthily trespassed into the house by breaking open the house and occupied the same. Thereafter, on the complaint of one Colonel Mohammed Moustafa, against the petitioner for land grabbing and on conducting a detailed enquiry, it is found that the petitioner has trespassed into the suit property. Therefore, orders have been passed by the Sub Collector. The entire facts has been disputed.

5.Though the learned counsel for the writ petitioner drew the attention of the orders of the Sub Collector dated 21.07.2008 and 23.12.2011 to contend that the 2nd order has been passed only at the instance of the 13th respondent, on perusing both the orders, the same



W.P.No.5090 of 2014

WEB COPY

indicate that the petitioner had lived with the deceased Fanovard Guy only for few years and after the death of the Fanovard Guy, his original Family members came from France and conducted his last rites and closed the entire house. Thereafter, the petitioner has stealthily trespassed into the house by breaking open the house and occupied the entire possession of the property, accordingly, orders have been passed.

6.This Court has observed that the entire facts are disputed by the other side and the orders have also been passed by the Sub Collector. The enquiry also revealed that the petitioner was living with the deceased Fanovard Guy only for sometime and his last rites were performed by his original wife and family members and kept the house in lock and key. Thereafter, the petitioner has trespassed into the property and occupied the same, thereby, a complaint has been filed.

7.This Court is of the view that, if it is the contention of the petitioner that she has been dispossessed from her legal possession, nothing prevented her from approaching the Civil Court for restoration of



W.P.No.5090 of 2014

WEB COPY

her possession under Section 6 of the Specific Relief Act, but it is not done so. Now, the F.I.R. has been registered and since there are disputed facts, all these cannot be gone into in this writ petition. Therefore, when the authorities have found the encroachment of the petitioner, orders have been passed. I do not find any illegality or irregularity in the order passed by the 5th respondent herein.

8.This writ petition stands dismissed accordingly. It is well open to the petitioner to approach the Civil Court for appropriate remedy in the manner known to law. No costs.

26.10.2022

kas

Index: yes / no

Internet: yes / no

Speaking / Non speaking

To

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The Union Territory of Puducherry
Puducherry



W.P.No.5090 of 2014

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N.SATHISH KUMAR, J.



WEB COPY



W.P.No.5090 of 2014

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W.P.No.5090 of 2014

26.10.2022