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Contempt Petition No.2339 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2022

Coram

The Honourable Mr.Justice R.MAHADEVAN

Contempt Petition No.2339 of 2018

&

Sub Application No.42 of 2019

K.Palanisamy

...Petitioner

Versus

Mr.Senthilkumar,
The Inspector of Police,
D3 Sooramangalam Police Station,
Salem City Police, Sooramangalam,
Salem.

...Respondent

Contempt Petition filed under Section 11 of the Contempt of Court Act, 1971 praying to punish the respondent herein for the wilful disobedience of this Court's order dated 23.06.2017 made in Crl.O.P.No.11933 of 2017.

For Petitioner : Mr.M.R.Jothimanian

For Respondent : Mr.R.Murali,
Government Advocate (Crl. Side)

Petitioner in
Sub Application : Mr.K.Raja for M/s.T.Dharani

ORDER

Heard both sides and perused the materials available on record.



2.The petitioner has come up with this contempt petition for the alleged disobedience of the order of this court dated 23.06.2017, passed in CrI.O.P.No.11933 of 2017, in and by which, the respondent police was directed to provide adequate police protection to the petitioner herein so as to enable him to fence his property in S.No.121/3A, Karuppur Village, Omalur Taluk, Salem District.

3.During the pendency of this contempt petition, one R.Madhavan, filed a sub application seeking to implead himself as party to the contempt proceedings, stating that S.No.121/3A is nothing but a Odai property, for which, there cannot be any fencing, as it is a public property and the petitioner was trying to encroach the public property.

4.By order dated 28.06.2019, this court, considering the nature of the dispute involved herein, appointed one Ms.D.Nishanshiya Velanganni, as Advocate Commissioner to ascertain the actual position of the subject property, after conducting inspection, in the presence of the parties and with the assistance of the Revenue officials, and file a detailed report.



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5. Accordingly, the Advocate Commissioner conducted inspection on 10.07.2019 and filed a report on 18.07.2019, wherein, it is *inter alia*, stated as follows:

XIV) Report on Inspection:-

.... Therefore, existence of Odai before 4 decades was true, but at present, there is no sign of water in the area marked as Odai in S.No.121/3A as per FMB Sketch produced by the Revenue Officials. Notwithstanding the Revenue records, the land in S.No.121/3A is ploughed in the curved side where the Odai is indicated.

XVI) Denouement:

a) Thus according to the present inspection, there is no water flow in S.No.121/3A. A pathway from Northern East runs straight to concentrate to the adjacent lands. The starting point of pathway is Odai as per Revenue records and it curves at the North Western end into S.No.121/1. In future, if there is rain or sufficient water flow from the nearby Eri's the area marked as Odai in the FMB Sketch in S.No.121/3A will be the channel for water to run through. Insofar as the breath of the Odai is concerned, I am of the view that the same can be ascertained by deducting the extent of the nearby pattadar's land on either side and by taking into consideration the FMB sketch prior to grant of patta for S.No.121/3A."

6. Repudiating the report filed by the Advocate Commissioner, the petitioner filed his objections dated 16.08.2019 stating that the report of the Advocate Commissioner is against the Judgment and decree passed in O.S.No.55 of 2009, wherein, the trial Court observed that there is no pathway for the public or neighbouring land owners as alleged. It is further stated by the petitioner that there is a water wavy line passes along his patta land in S.No.121/3A and the said fact has been admitted by the Revenue Authorities, but the Advocate Commissioner wrongly stated that there is an



odai in S.No.121/3A, which is contrary to the real fact. Thus, according to the petitioner, if he fences his patta land, it is no way going to affect the water flows and no prejudice would be caused to anyone.

7.When the matter came up for hearing on 28.01.2022, this Court directed the Revenue Officials to survey the property and directed the respondent to provide police protection. Pursuant to the same, on 11.03.2022, the property of the petitioner was surveyed by the Revenue Officials and it was fully fenced without any untoward incident, as evident from the report filed by the respondent on 01.04.2022. Thus, according to the learned counsel for the respondent, the order of this court dated 23.06.2017 has been complied with by the respondent.

8.Such being the factual scenario, this court, taking note of the report filed by the Advocate Commissioner as well as the claim of the petitioner in the sub application and the objections filed by the petitioner, deems it appropriate to direct the Tahsildar, Omalur Taluk, Salem District to inspect the property in Survey No.121/3A (Old S.No.120/1) at Karuppur Village, Omalur Taluk, Salem District, with the help of the revenue officials and



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remove the encroachments therein, if any, after providing due opportunity of hearing to all the parties, as expeditiously as possible.

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9.With the above directions, this contempt petition stands closed.

Consequently, connected Sub Application is also closed.

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Index : Yes/No



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