



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C. (MD)No.627 of 2020

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T.K.Paramasivam

... Petitioner/2ND 'B' Party member

Vs.

1.The Revenue Divisional Officer
cum The Sub Divisional Magistrate,
Thanjavur,
Thanjavur District. ... 1st Respondent

2.The Inspector of Police,
Medical College Police Station,
Thanjavur, Thanjavur District. ... 2nd Respondent/ Complainant

3.T.Gyana Prakasam,
Vice President,
Diocese of Tanjore Society,
Thanjavur District.

4.A.John Jakkariyas,
Secretary,
Diocese of Tanjore Society,
Thanjavur District.

5.Antonyraj,
Member,
Diocese of Tanjore Society,
Thanjavur District.

6.Stephen,
Member,
Diocese of Tanjore Society,
Thanjavur District.

7.Plavendran ... Respondents/ 1st to 5th 'A' Party member

Prayer: This Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to call for the records pertaining to the order passed in Pa.Mu.No.3569/2019/A3, dated 08.08.2020 passed by the learned Revenue Divisional Officer, Thanjavur/the first respondent herein and set aside the same by allowing this criminal revision petition.



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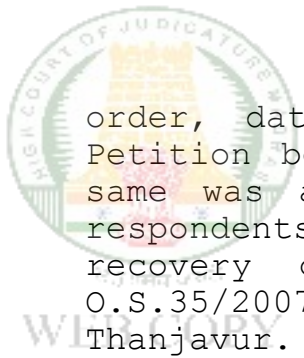
For Petitioner : Mr.B.Rajesh Saravanan
For R1 and R2 : Mr.M.Aasha
Government Advocate (Crl. Side)
For RR3 to 7 : Mr.C.Arulvadivel @ Sekar

ORDER

The criminal revision case has been filed seeking to quash the order passed by the Revenue Divisional Officer, Thanjavur, in Pa.Mu.No.3569/2019/A3, dated 08.08.2020, thereby directing both the A and B parties not to enter into the subject property. If they entered into the subject property, the police officials are directed to evict them from the subject property.

2.The learned Counsel appearing for the petitioner would submit that the petitioner is the president of Nirmala Nagar Kudiyirupor Sangam, Thanjavur. He is one of the purchasers of the plots at Nirmala Nagar, Thanjavur and after constructing a house, he is residing there. The total extent of the property is 90 acres 15 cents comprised in Re-Survey No.40, situated at Pattukottai Road, Thanjavur. It was originally belonged to Diocese of Thanjavur Society, which had developed the subject property into house plots in the name and style of 'Nirmala Nagar'. At the time of developing the subject property into house plots, the Diocese of Tanjore Society had ear-marked an extent of 26,400 Sq.Ft as 'B' in the layout and reserved another 30,710 Sq.ft marked as 'C' and also reserved another 88,057 Sq.ft marked as 'A' in the layout for the common purpose. However, the Diocese of Tanjore Society had occupied the property reserved and ear-marked for common purpose as 'A' property in the layout and constructed a Church in the common place.

3.Insofar as B and C schedule properties are concerned, they put up a fence and tried to sell the same to private parties. Therefore, the petitioner society filed a suit for permanent injunction in O.S.No.85/2000, on the file of the District Munsif Court, Thanjavur as against the Diocese of Tanjore Society, in respect of the B and C marked portions of the properties of the layout of Nirmala Nagar, Thanjavur. It was decreed in their favour by judgment and decree, dated 28.06.2022. Aggrieved by the same, the diocese of Tanjore Society, namely the respondents 3 to 7 had filed an Appeal in A.S.No.94/2002, on the file of the learned Principal District Court, Thanjavur and the same was dismissed by judgment and decree, dated 10.01.2003. They also filed a Second Appeal in this Court in S.A.(MD)No.645 of 2003 and the same was also dismissed by judgment and decree, dated 27.02.2008 and it was also



order, dated 10.11.2008. Thereafter, they also filed a Review Petition before this Court in Rev.Petition No.82 of 2009 and the same was also dismissed by order, dated 06.09.2009. Again the respondents 3 to 7 herein had filed a suit for declaration and for recovery of possession in respect of the same property in O.S.35/2007, on the file of the learned Additional Sub Court, Thanjavur. While pending the suit, the petitioner's association had filed an application in I.A.No.212/2011 for rejection of plaint and the same was allowed. Aggrieved by the same, they preferred an Appeal Suit in A.S.No.99/2016 before this Court and it is pending.

4.The petitioner's association had intended to construct a temple in the B and C ear-marked portion of the layout property and as such, the respondents 3 to 7 lodged a complaint and the same has been referred before the first respondent for initiation of proceedings under Section 145 of Cr.P.C. Both the parties had appeared before the first respondent and after due enquiry, the first respondent had ordered that both the parties i.e., A and B were restrained from entering into the subject property. If they made any encroachment in the subject property, they were ordered to be evicted by the police personals.

5.Infact, already the petitioner had challenged the summon issued by the first respondent to initiate proceedings under Section 145 of Cr.P.C before this Court in W.P(MD)No.16002/2019, in which, this Court directed both the parties to appear before the first respondent, submit their written statement and proof of the disputed properties. Further, this Court directed the first respondent to pass orders on the strength of the judgment passed by this Court in S.A.No.645/2003, dated 27.02.2008, within a period of six weeks from the date of receipt of a copy of that order. However, the first respondent though considered the order passed by this Court in S.A.No.645/2003, the petitioner's association attempted to construct a temple without prior permission. The first respondent passed an order not to enter into the subject property till the disposal of the suit filed by the respondents 3 to 7 herein for declaration and for recovery of possession in respect of the subject property.

6.It is true that this Court while dismissing the S.A.No.645/2003 by judgment and decree dated 27.02.2008 observed as follows:

'15. The appellant being a responsible society managed by the Diocese, while preparing the lay out for the purpose of sale to the general public, thought it fit to earmark certain portion for community use which appears to have prompted the purchasers, like the respondents to take assignment of the individual plots. As per the report and sketch filed by the Advocate Commissioner in Exs.C1 and C2, the property was found to be used as a play ground by



the children and the Commissioner also reported that the suit property has been used for various social purposes.

17.The learned Senior Counsel for the appellant also contended that the appellant did not hand over the reserved area to the local body and as such, the respondents are not entitled the claim the reserved area as a matter of right. But in the present case, the suit is not for declaration, but only for injunction restraining the appellant from interfering with the common possession and common enjoyment of the property by the plot owners. The respondents are not claiming ownership right, title or adverse possession in respect of the property. They are only claiming use of the property for community purpose and it is their case that by the course of conduct and the long and continuous usage of the property for community purposes and it is their case that by the course of conduct and the long and continuous usage of the property for their common purpose coupled with the fact that the property is marked in the lay out as reserved, they have got a right to use the property for their community purpose. By the course of conduct, it is evident that the reserved area was intended only for the benefit of the plot owners. In fact, construction of church, temple, Mosque etc., are all for the use of the community as a whole. The construction of the Church in one of the reserved areas is also a pointer to show that the reserved plots were meant only for community purpose.

22.The area now ear-marked for reserved purpose as plot property has been used by the respective plot owners of the respondent Society for their community purpose which is evident from the documents exhibited as well as oral evidence, as also from the admission of D.W.1

25.The trial Court as well as the first appellate Court, on the basis of the pleadings and evidence, arrived at a categorical conclusion that the reserved plot had been used for the community purpose of the respondents. Considering the large number of plots and the area covered by the lay out, the only possible conclusion with regard to the reserved area is to construe them as reserved for community purposes and not as reserved for the use of appellant and as such, I do not find any reason to disagree with the findings of the Court below.



26. Admittedly, the respondents are not claiming ownership right in respect of the open space and the same continue to vest in the appellant, as there is no dedication of the ear-marked portion in favour of the local body. In the absence of open space kept for community use, the respondents and their children would be denied of a healthy living. Right to live with human dignity enshrined in article 21 of the Constitution of India includes protection of health and right to clean environment. The witness examined on the side of the appellant clearly admitted that the open space is also to be used by the general attending circumstances, like the resolution of the Municipality to open a vegetable market in the property, the steps taken by the Municipality to provide drinking water to the inhabitants of the area and all other similar circumstances would show that the property had all along been considered by the appellant as meant for community use and there is nothing to show that the appellant ever objected the use of the property by the respondents for such social purposes. In fact, the pleading as well as the evidence goes to show that the respondents have been using the reserved area for their social living and the same is proved by various exhibits marked on the side of the respondents. Therefore, considering the matter from any angle, the only possible conclusions that the area ear-marked as reserved plot in the layout plan was ear-marked only for the community use and no other inference is possible from the given facts.'

7. Further this Court observed in W.P(MD)No.16002/2019 by order dated 19.11.2019 as follows:

'10. Accordingly, the suit ended in favour of the residents of Nirmala Nagar Sangam, Thanjavur. Though, the suit was filed for declaration, the observation made by this Court revealed that the ear-marked portion as 'A', 'B' and 'C' in the layout used for community purpose of residence of the Nirmala Nagar Sangam. At the same time, there is no evidence to show that the layout is approved one. Therefore, the fourth respondent is claiming title over the property which are ear-marked 'A', 'B' and 'C' for common purpose of the residents. However, the fourth respondent filed a suit for declaration in O.S.No.35 of 2007 and as against which, the appeal suit is pending in A.S.No.99 of 2016 before this Court. However, till today, the injunction is in



favour of the residence of Nirmala Nagar Sangam, Thanjavur, in respect of the disputed property. While being so, there is a dispute between the fourth respondent group and the petitioner group and as such, the third respondent rightly registered the case in Crime No.138 of 2018 and referred the same to the second respondent to initiate proceedings under Section 144 of Cr.P.C., Now, the parties are appeared before the second respondent and filed their written statement.'

8.Though the respondents 3 to 7 were restrained from constructing a house in the subject land, the petitioner's association members, the petitioner and other residents of Nirmala Nagar, Thanjavur are attempting to construct a temple, that too, without any prior permission from the authority concerned. That is why, the first respondent was constrained to pass an order made in this manner.

9.It is made clear that the petitioner and other residents of Nirmala Nagar, Thanjavur were already permitted to enjoy the subject land for common purpose by the Civil Court decree and thereby, respondents 3 to 7 were restrained from constructing any common purpose building in respect of the subject property.

10.Therefore, the petitioner and other residents of Nirmala Nagar, Thanjavur cannot be prevented from housing the subject property for common use. At the same time, if the general public intends to construct any temple or any other construction in the subject land, which is subject to the approval and permission of the authorities concerned.

11.In view of the above, the impugned order passed in Pa.Mu.No.3569/2019/A3 is set aside and the criminal revision petition is allowed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

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 Revenue Divisional Officer
cum The Sub Divisional Magistrate,
Thanjavur,
Thanjavur District.

2.The Inspector of Police,
Medical College Police Station,
Thanjavur, Thanjavur District.

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

Copy to:

The Section officer, Criminal Section,
Madurai Bench Of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.C. ARUL VADIVEL @ SEKAR, Advocate (SR-19026[F] dated
18/04/2022)

+1 CC to M/s.B. RAJESH SARAVANAN, Advocate (SR-19605[F] dated
20/04/2022)

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_RD(11.05.2022) 7P 8C