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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/06/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WP (MD) Nos. 9707 and 11237 of 2023

and

WMP (MD) No. 8572 of 2023

(1) WP (MD) No. 9707 of 2023 :-

A.M.Ubaitur Rahman : Petitioner

Vs.

- 1.The Superintendent of Police,
O/o.The Superintendent of Police,
Dindigul District.
- 2.The Deputy Superintendent of Police,
O/o.The Deputy Superintendent of Police,
Palani Sub-Division,
Dindigul District.
- 3.The Inspector of Police,
O/o.The Inspector of Police,
Palani Police Station, Dindigul District.
- 4.Devaki
- 5.Ratha
- 6.Kavitha
- 7.Mahalakshmi : Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 to provide adequate police protection to the petitioner, by considering the representation, dated 28/03/2023 and pass any further order or orders.



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For Petitioner

: Mr.S.M.A.Jinnah

For R1 to R3

: Mr.B.Nambiselvan
Additional Public Prosecutor

For R4 to R7

: Mr.N.Mohan

(2)WP(MD)No.11237 of 2023:-

A.M.Ubaithur Rahman

: Petitioner

Vs.

1.The Superintendent of Police,
O/o.The Superintendent of Police,
Dindigul District.

2.The Deputy Superintendent of Police,
Palani Town,
Palani.

3.The Inspector of Police,
O/o.The Inspector of Police,
Palani Town Police Station, Dindigul District.

4.Devaki

5.Ratha

6.Kavitha

7.Mahalakshmi

: Respondents

(R4 to R7 are *suo motu* impleaded,
vide court order, dated 05/06/2023
in WP(MD)No.11237 of 2023)

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Mandamus or any order or direction in the nature of writ, directing the respondents 1 and 2 to preserve the CCTV footage recorded on 31/03/2023 at about 07 pm to 10/04/2023 6 pm, which is fixed by the respondents nearby the petitioner's shop in front of the Supreme



Mobile Stores, Dindigul Road, Palani, by considering the petitioner's representation, dated 15/04/2023 and pass any further order or orders.

For Petitioner : Mr.S.M.A.Jinnah
For R1 to R3 : Mr.B.Nambiselvan
Additional Public Prosecutor

COMMON ORDER

WP (MD) No.9707 of 2023 has been filed seeking direction to the respondents 2 and 3 to provide adequate police protection to the petitioner, by considering his representation, dated 28/03/2023, whereas WP (MD) No.11237 of 2023 is filed seeking direction to the respondents to preserve CCTV footage recorded, on 31/03/2023 at about 07.00 pm to 10/04/2023 at 06.00 pm, which is fixed by the respondents nearby the petitioner's shop in front of the Supreme Mobile Stores, Dindigul Road, Palani, by considering the petitioner's representation, dated 15/04/2023.

**2. The facts in brief in both matters:-**

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The disputed property belongs to the respondents 4 to 7. The petitioner entered into tenancy agreement with them and from 1985, he is in possession and conducting the business in the name and style of "Maharaja's". In 2013, the 4th respondent and her henchmen, created trouble to his peaceful possession. So, he filed a suit in O.S No.61 of 2013 before the Principal District Munsif, Palani. Pending the above said suit, continuous trouble was made by the private respondents. So, he lodged a complaint, which was registered in Crime No.491 of 2013 for the offence under section 447 IPC. Similarly, on the basis of the complaint given by the Manager namely Ravichandran, a case in Crime No.492 of 2023 was registered against this petitioner and others. Later, he filed WP(MD)No.11883 of 2013 not to enter into the Trade till the disposal of the suit and interim protection was granted to run the shop. Later, the respondents 4 to 7 demanded increase of rent. It was also accepted. The tenancy was extended for 9 more years. The documents are registered before the Joint Sub Registrar No.1, Palani. Later, the above said suit was withdrawn by him.



3.As per the tenancy agreement, he paid Rs.4,00,000/- as advance and the rent was fixed at Rs.45,000/- from 01/04/2014 to 31/03/2017. Later, it was raised to Rs.54,000/- and now, Rs.64,800/- from 01/04/2020 to 31/03/2023.

4.Because of the pandemic situation, the above said shop was closed temporarily. So, he made request, on 10/01/2023 to renew the tenancy. That was received by the 4th respondent. But refused to extend the lease in writing. Later, they started demanding the petitioner to vacate the premises and a complaint was given by the petitioner. The petitioner was heavily indebted to because of the textile business. When the above said complaint was pending, on 09/04/2023 in the early hours, the respondents 4 to 7 with the help of their henchmen, entered into the property and blocked the same with iron sheet. When, he went to the shop at 07.45 am, he found that the shop was covered with iron sheet. When he tried to open the same, he was threatened. Even though, the above said occurrence was intimated to the 4th respondent, no prompt action was taken. The official respondents also threatened the petitioner to hand over



the key to the respondents 4 to 7. Rs.75,00,000/- worth articles are now available in the shop. Because of the above said illegal blocking of the entry with iron sheet, his livelihood is affected.

5. Seeking, writ of mandamus directing the respondents 2 and 3 to give police protection, on 28/02/2023, CrI.OP(MD)No.9707 of 2023 has been filed. Notice was ordered to the private respondents. They also appeared.

6. After hearing them, the following order was passed by the this court, on 28/04/2023:-

"It is the land-lord and tenant issue.

2. It is contended by the petitioner that by utilizing the might and man power, they blocked the entire shop by installing or putting up the tinned sheet in front of the shop, preventing him from opening the shop for business and way of approach.



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3.It is the contention on the part of the landlord that the private respondents herein, when the lease period itself expired, on 31/03/2023, the petitioner voluntarily surrender and vacated the same for the purpose of carrying out the maintenance work. He has put up the above said tinned sheet in front of the shop. According to him, no illegality was committed by him.

4.Lease deed copy was produced. Wherein we find that the lease stated to be expired, on 31/03/2023.

5.Now the learned counsel appearing for the petitioner would submit that he has not vacated the premises and surrender the possession. Per contra, he made a request to extend the lease period, agreeing to pay the rent 20% above the agreed rental amount.

6.But however, the landlord insisted upon vacation by using the mighty and they blocked the road and put up tinned sheet. The articles worth about Rs.75,00,000/- of the stock and cash amount of Rs.1,00,000/- and other



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articles are within the above said shop.

7. *Prima facie*, it is seen that the above said tinned sheet has been put up covering the entire shop area preventing the tenants' entry and undertake the usual business. The complaint, that was given by the petitioner against the private respondents was closed, because of the non cooperation on the side of the petitioner as well as finding that it is a civil dispute between the parties.

8. It is also further seen that in respect of the issue, a suit was also filed by the petitioner, so also the landlord.

9. According to the petitioner, suit has been filed for permanent injunction restraining the landlord from evicting forcibly and the above suit is stated to be pending. Further particulars are not available.

10. It has been submitted that he has filed a petition for temporary injunction before the civil court an



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now it is also stated to be pending. Now pending the above said process, this writ petition has been filed seeking police protection for continuing the above said business. When the petitioner has been virtually prevented from opening the shop and continuing the business, whether police protection will serve any purpose is a matter for consideration in the writ petition.

11.A request has been made by the learned counsel for the petitioner that it is nothing, but a mighty act undertaken by the landlord, affecting the livelihood. Since the extraordinary circumstance has been created by the landlord, extraordinary remedy has been sought by the petitioner. But whether removal of tinned sheet, that has been put up by the landlord can be made available to the petitioner is a matter for consideration by the civil court before whom the petition is pending. The petitioner can very well approach the civil court even in the vacation court. For opening of the shop by exercising power conferred under Article 226 of the Constitution of



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India, may not be proper on the part of this court to consider his request. Even though, such a request has not been sought directly and relief in the form of police protection is in-effect to remove the tinned sheet that was put up by the landlord.

12.This court, in the above said circumstance, confine only with regard to the offence said to have been committed by the landlord. There should not be any impression on the landlord that they can do anything and no law will take care of the situation. They have to invoke the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, for vacating or repossessing the premises.

13.As per the provisions of the above said Act, the learned counsel appearing for the petitioner would submit that even though, the tenancy period expired on 31/03/2023, it is humanly impossible to vacate over a night. According to him, statutory rights are available to him to continue the tenancy agreement. Probably, he is



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referring to section 5 of the above said Act.

14. Whether the above said tenancy agreement was intimated to the competent authority or not is also not clear on record. It is a matter for consideration by the concerned civil court. As per section 5 of the above said Act, right is available to the tenant to approach the landlord for renewal or extension of the tenancy before the expiry of the period prescribed. If the tenancy is not extended or renewed and the tenant has not vacated the premises, there is deeming provision that it shall continue or renew on month to month basis. The above said deeming tenancy will continue for a maximum period of six months. So probably, the petitioner rely upon the provision stating that they got every right to remain in possession on the very same agreement. These are the matters for consideration before the civil court, in which the matters are pending. I am not going into those aspects, because these are the disputed issues now.



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15. Now this court concentrate only the above said alleged offence that has been committed by the landlord.

16. Even though, the complaint has been closed, in the facts and circumstances of the case, there shall be a direction to the Deputy Superintendent of Police, Palani, to reopen the above said complaint and proceed the enquiry in accordance with law, for which the parties are directed to cooperate. Depending upon the outcome of the enquiry, further action may be taken by the competent authority and if so, aggrieved by the parties concerned. In the meantime, the Inspector of Police, Palani Town Police Station, Dindigul District is directed to make a spot inspection on the place of occurrence and assess the situation as to whether the above said tinne sheet blocked the entire pathway and if any articles are available within the shop and a report may be filed for further orders before this court, on 01/06/2023.

17. Call on 01/06/2023."



7. In pursuance of the above said order, the matter has been listed for further hearing. On that date, the learned Additional Public Prosecutor also submitted a report, Similarly, the petitioner also produced the photographs.

8. From the report of the police, it is seen that stocks are available in the shop and the outer area has been covered with iron sheet, also locked by the private respondents herein. The main shop door is also locked by this petitioner, key was available with him. This is the present status.

9. At the time hearing, I asked the private respondents that they can remove the iron sheet, so the the petitioner may enter into the premises. Resolve the issue in the pending suit between them before the civil court. The learned counsel appearing for the private respondents would submit that the tenancy agreement already expired. On the date of the expiry itself, the possession was handed over to them and now, renovation work is undertaken. With regard to the stock, he would submit that the petitioner agreed to sell the stock to



the third party, but the third party has not taken the stock so far. But the said contention is rejected by the petitioner stating that there is no such surrender of the shop and there was no agreement to sell the stocks. It is apparent that the outer portion of the shop has been covered with iron sheet, that too locked. So, the petitioner request to permit him to enter into the shop and conduct the business.

10.Now the learned counsel appearing for the petitioner would submit that because of the above said situation, let the police protection be grated to him, so that he can enter into the shop and conduct the business as usual.

11.The question, which arises for consideration is whether this course is available to this court while invoking the jurisdiction under Article 226 of the Constitution of India.

12.As mentioned earlier, it is seen that in respect of the issue over the tenancy issue, both sides filed suit before the civil court and stated to be pending. The



relief that was sought by the petitioner in the above said suit is not to evict him, otherwise than under due process of law. Now, he has not been evicted. He has been prevented from entering into the shop. For entering the shop, naturally the iron sheet, which have been put up by the private respondents, must be removed.

13. Whether that removal can be ordered by this court by exercising the jurisdiction under Article 226 of the Constitution of India, is the first point to be answered.

14. With regard to the second issue of the criminal liability, as mentioned above, the complaint given by the petitioner was directed to be enquired by the Deputy Superintendent of Police, Palani, now it is pending before him without any conclusion.

15. Let the Deputy Superintendent of Police, Palani complete the above said enquiry within a period 15 days from the date of receipt of a copy of this order. Depending upon the outcome of the enquiry, the authorities may take further action. If the petitioner is still aggrieved, he can work out his remedy through appropriate proceedings.



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16. So far as with regard to the removal of the iron sheet is concerned, I am of the considered view that such a course is not available to this court. Removal of the iron sheet by the private respondents will virtually amounts to writ of mandamus directing the private respondents to do the removal of iron sheet. But the writ of mandamus cannot be issued against the private parties. If it is issued, then it will have the effect of interim mandatory injunction. So, this course is not available to this court.

17. By way of this writ petition, the petitioner wants to remove the iron sheet put up by the private respondents, of course, in the presence of the police official, resorting to such relief permissible under law by the High Court exercising the power under Article 226 of the Constitution of India.

18. This matter has been resolved by the Hon'ble Supreme Court in the case of **Roshina T. Vs. Abdul Azeez K.T and others (Civil Appeal No.11759 of 2018, dated 03/12/2018)**. Previously High Courts were passing orders directing the parties to restore the property under



dispute in the pending suit, considering the delay, which civil litigations will take. But the Supreme Court resolved the issue stating that such a course is not at available to the High Courts. The parties must be relegated to work out their remedy. So, I am of the considered view that no writ of mandamus will lie against the police officials to grant police protection to the petitioner to remove the iron sheet. The petitioner has to work out his remedy before the civil court itself. Observation was made by this court, even in the earlier occasion to the effect that for such relief, he can approach the vacation court. But repeatedly, the petitioner is approaching this court seeking civil remedy in the form of filing the writ petitions against the police officials.

19. So far as the other writ petition namely 11237 of 2023 is concerned, it has been filed seeking direction to the official respondents to preserve CCTV footage available nearby area. By way of preservation of the above said CCTV footage, the petitioner wants to prove his case that in the earlier hours, on 01/04/2023, the shop was covered with iron sheet by the private



respondents. During the course of investigation, the Deputy Superintendent of Police, Palani, may take note of the above said CCTV footage, which are available in the nearby area, so that truth will come out.

20. So both the writ petitions are disposed with the following directions:-

(a) **WP (MD) No. 9707 of 2023** is disposed of with the following directions:-

(i) The Deputy Superintendent of Police, Palani, is directed to complete the enquiry process on the basis of the complaint given by the petitioner for blocking the entry, within a period of 15 days from the date of receipt of a copy of this order and conclude the same. Depending upon the outcome of the same, if the petitioner is still aggrieved, he can approach the appropriate forum for the appropriate relief.

(ii) So far as the removal of the iron sheet is concerned, the petitioner has to work out his remedy in the pending civil suit. If any interim mandatory



injunction is passed by the competent civil court, that may be complied by the parties.

21.**WP (MD) NO.11237 of 2023** is disposed of with the following direction:-

(i)The Deputy Superintendent of Police, Palani, is directed to take note of the availability of the CCTV footage, while making the enquiry in the complaint, dated 15/04/2023.

22.Accordingly, both the writ petitions stand disposed of. Consequently, connected Miscellaneous Petition is closed.

26/06/2023

Index:Yes/No
Internet:Yes/No
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To,

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- 1.The Superintendent of Police,
O/o.The Superintendent of Police,
Dindigul District.
- 2.The Deputy Superintendent of Police,
O/o.The Deputy Superintendent of Police,
Palani Sub-Division,
Dindigul District.
- 3.The Inspector of Police,
O/o.The Inspector of Police,
Palani Police Station, Dindigul District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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WP (MD) Nos.9707 and 11237 of 2023

26/06/2023

21.06.2023



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