



W.P.(MD)No.12241 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.(MD)No.12241 of 2021

and

W.M.P.(MD)No.9632 of 2021

S.Vijaya

... Petitioner

Vs.

1.The Superintendent of Police,
Sivagangai District, Sivagangai.

2.The Inspector of Police,
Natchiyarpuram Police Station,
Natchiyarpuram, Sivagangai District.

3.The Sub Inspector of Police,
Natchiyarpuram Police station,
Natchiyarpuram, Sivagangai District.

4.Arumugam

5.Sathya

6.Subakathir

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned order passed by the third respondent vide his letter dated 27.04.2021 and quash the same as illegal and consequently to direct the second respondent to give adequate police protection to the petitioner and her family members life and liberty within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
For R1 to R3 : Mr.R.M.Anbunithi,
Additional Public Prosecutor
For R4 to R6 : Mr.I.Robert Chandrakumar

ORDER

This Writ Petition has been filed to to call for the records relating to impugned order passed by the third respondent vide his letter dated 27.04.2021 and quash the same as illegal and consequently to direct the second respondent to give adequate police protection to the petitioner and her family members life and liberty within the period that may be stipulated by this Court.



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2. According to the petitioner, he is residing in the disputed property with his family. One Karuppai, who is the petitioner's mother's elder sister, was residing at Thanakkavur village, Sivagangai District, has not married and she is owner of a small tiled house along with land in S.No.379/4 in the above said village. Out of love and affection, the said Karuppai had executed the above said property in favour of the petitioner on 21.04.2008. In the year 2016, the said Karuppai died. Thereafter, all the revenue records were mutated in favour of the petitioner. For few days the petitioner resided in the above said property. Thereafter, she went to her husband's village Visalayankottai. On account of cleaning and maintaining purpose, monthly once the petitioner used to go to the said property. While so, the petitioner came to know that the fifth respondent herein, who is the neighbour of the above said property, had criminally trespassed into the house by way of breaking the lock and stored cement bags in the above said premises. On knowing the same, on 28.01.2020, at about 12.00 pm., the petitioner went to the house, at that time, the fifth respondent was available in the said house. The petitioner questioned her illegal encroachment. At that time, 4th and 5th respondents picked up quarrel with the petitioner and used unparliamentary words



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and also gave life threat. For that, the petitioner lodged a complaint before the Deputy Superintendent of Police, Thiruppattur on 28.01.2020 and requested to take action as against the fifth respondent. On the basis of the said complaint, the second respondent police called for enquiry. But the fifth respondent dragged the proceedings.

3. On 04.03.2020, the fifth respondent appeared before the second respondent and during enquiry, she has given a written statement and assured to vacate the premises. Thereafter, the fifth respondent failed to vacate the premises. Hence, the petitioner again requested the second respondent to take appropriate action. Based on the same, CSR.No.36 of 2020 was issued on 23.05.2020 and assured to take appropriate action as against the fifth respondent. On 30.10.2020, the petitioner went to the house and requested the fifth respondent to vacate the house and she again assured to vacate the property within 15.12.2020. Hence, the petitioner went to the house on 15.12.2020, at that time, the fifth respondent abused the petitioner in filthy language and also threatened her with dire consequences. The said incident was informed to the second respondent, but no action was taken. Without having any right,



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the fifth respondent has been trespassing the house property of the petitioner and refused to vacate the said property. After receipt of the representation from the petitioner, the first and second respondents have not taken any action.

4. Therefore, the petitioner filed a writ petition in W.P.(MD)No. 4069 of 2021 before this Court seeking direction to the respondent to adequate police protection to her through representation dated 26.12.2020. This Court by an order dated 02.03.2021 disposed of the petition by directing the second respondent to consider the petitioner's representation within two weeks from the date of receipt of copy of the said order. Thereafter, the third respondent issued a summon dated 03.03.2021 requesting the petitioner to appear before him on 05.03.2021 and she also appeared and explain about the facts. While so, the third respondent passed the impugned order dated 27.04.2021 stating that this is a civil dispute and advised her to approach the concerned civil Court. The private respondents, without any semblance of right over the property, have encroached and trespassed into the petitioner's property, which clearly makes out an offence under Sections 441 and 452 IPC and



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as such, it is bounden duty of the police either to give protection or to register FIR against the private respondent herein. Now, the petitioner challenges the above said order through this writ petition.

5.No counter was filed by the respondents.

6.The learned counsel appearing for the petitioner would contend that the petitioner is the owner of the property and the fifth respondent trespassed into the property and refused to vacate the premises. Thereby, the petitioner gave a complaint before the respondent police and they enquired the matter. Thereafter, the fifth respondent sought for some time to vacate the premises. After some time, the fifth respondent refused to vacate the premises. Thereby, the petitioner again sent representation before the police and they also closed the matter as it is civil dispute. According to the petitioner, it is not civil dispute and it constitutes some criminal offences and thereby, the order passed by the third respondent is liable to be set aside.

7.The learned Additional Public Prosecutor appearing for the official respondents would contend that the matter was elaborately



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enquired by the police and it was closed by advising the parties to approach the civil Court, since matter is civil dispute.

8.Heard both sides and perused the materials available in the records.

9.On perusal of records reveals that the petitioner herself admitted that the private respondents trespassed into the property and encroached the premises. For that, she approached the police and police also enquired the matter and thereafter, as per undertaking given by the fifth respondent, some time was granted and thereafter, the fifth respondent refused to vacate the premises. Again the petitioner approached the police and they enquired the matter and closed the same, since it is civil dispute.

10.On careful reading of the complaint reveals that it is pure civil in nature and the reliefs are available to the petitioner under provisions of Specific Relief Act. Therefore, the third respondent, after thorough enquiry, correctly closed the case and the petitioner has to seek remedy through civil Court. Even if any criminal offences made out, then the



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petitioner can approach the learned Judicial Magistrate for taking action according to law. There is no infirmity or illegality in the order passed by the third respondent and hence, this petition has no merits and deserves to be dismissed. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Sivagangai District,
Sivagangai.
- 2.The Inspector of Police,
Natchiyarpuram Police Station,
Natchiyarpuram,
Sivagangai District.
- 3.The Sub Inspector of Police,
Natchiyarpuram Police station,
Natchiyarpuram,
Sivagangai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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