



W.P(MD)No.14635 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :24.07.2023

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THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P(MD)No.14635 of 2021

Revathy

... Petitioner

-Vs-

1. The District Collector
Thanjavur District
Thanjavur.
2. The Divisional Executive Magistrate/
Sub Collector
Pattukottai, Thanjavur District.
3. The Inspector of Police
Athirampattinam Police Station,
Thanjavur District.
4. Tajudeen
5. Saifudeen
6. Nizamudeen
(R5 and R6 impleaded vide court order
dated 29.09.2021)

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents 1 to 3 to remove the fence erected by the 4th respondent in contravention of the order passed by the 2nd respondent in



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Na.Ka.No.4243/2019/A3 dated 31.01.2020 in respect of land survey Nos.348/1, 348/2, 347/1, 354/2, 354/3, 355/8A and 355/8D situated at Thambaramkottai North Revenue Village, Pattukkottai Taluk, Thanjavur District

For Petitioner	: Mr.M.Ramu
For R1 to R3	: Mr. R.M.Anbunithi Additional Public Prosecutor
For R5 & R6	:

ORDER

This Writ Petition has been filed to direct the respondents 1 to 3 to remove the fence erected by the 4th respondent in contravention of the order passed by the 2nd respondent in Na.Ka.No.4243/2019/A3 dated 31.01.2020 in respect of land survey Nos.348/1, 348/2, 347/1, 354/2, 354/3, 355/8A and 355/8D situated at Thambaramkottai North Revenue Village, Pattukkottai Taluk, Thanjavur District

2. According to the petitioner she owned a property and there was dispute between the parties. Already the second respondent has passed order under Section 145 of Cr.P.C and there after the case came up before this Court and this Court vide order dated 24.09.2020 in CrI.O.P(MD) Nos.8646 and 8123 of 2020 and W.P(MD) No.8329 of 2020 had directed the petitioner to approach the Civil Court.



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Thereafter the fourth respondent in contravention to the order passed by the second respondent created fence over the property while pending civil suit before the District Munsif Court, Pattukottai in O.S. No.41 of 2021. Hence the fence has to be removed. Therefore the petitioner has sent representation dated 05.06.2021 to the respondents 1 to 3 but there is no response, hence the present petition has been filed.

3. The learned counsel appearing for the petitioner contended that already civil suit is pending before the civil Court and during the pendency of the said suit, the respondents 4 to 6 have put up fence unlawfully, thereby she has sent representation to the respondents 1 to 3 dated 05.06.2021, but no steps have been taken so far. Already the second respondent passed order under Section 145 of Cr.P.C with regard to plucking of coconut but in that order there is no reference about the fencing. Taking advantage of the order the respondents 4 to 6 have put up fence over the property unlawfully, hence the fence has to be removed by the order of this Court.

4. The learned Additional Public Prosecutor appearing for the respondents 1 to 3 would contend that already the matter is pending before the civil Court and the representation of the petitioner dated



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05.06.2021 was considered by the respondents and the same was closed with a direction to seek remedy before the Civil Court.

5. Heard both sides and perused the materials available on record.

6. On a perusal of the record it is observed that already proceedings under Section 145 of Cr.P.C was initiated by the second respondent and there was an order regarding plucking of coconut. Therefore the petitioner has filed a suit in O.S. No.41 of 2021 before the District Munsif Court, Pattukottai. While pending suit, the respondents 4 to 6 alleged to to have put up fence over the property, whereas, the Civil Court has seized the matter and the title is also disputed. The competent forum is the Civil Court which has to decide the rights of the parties. The fourth respondent alleged to have put up fence during the pendency of the suit and they have bound by the outcome of the result of civil court under the doctrine of *lis pendens*. Therefore during the pendency of the civil suit this Court need not pass any further orders with regard to removing of the fencing, since it civil in nature. However, the petitioner is at liberty to approach the trial Court for seeking appropriate remedy in accordance with law for the above said erection of fencing.



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7. At this juncture the learned counsel for the petitioner contended that the official respondents are also interfering with the possession of the petitioner and also helping the respondents 4 to 6. On perusal of the representation it is seen that there is no averments as against the police officials and the allegations are vague. If at all the petitioner is aggrieved by the act of the police officials she can seek appropriate remedy by filing appropriate petition before the concerned jurisdictional Magistrate Court.

8. With the above observation, this Writ Petition stands disposed of. No costs.

24.07.2023

Index : Yes/No
Internet : Yes/No
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P.DHANABAL, J.

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