



Cont.P.No.2123 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	25.03.2024
Pronounced on	:	29.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Cont.P.No.2123 of 2023
and
Sub Applications(OS).No.921 of 2023

N.Jeyalakshmi

...Petitioner

Vs.

1.Thiru.Sravan Kumar Jatavath,
The District Collector,
Kallakurichi District,
Kallakurichi.

2.J.Yogajothi,
The Executive Magistrate/Revenue Divisional Officer,
Thrukoilur,
Kallakurichi District.

3.Mr.Kannan,
The Tahsildar (Revenue),
Thrukoilur,
Kallakurichi District.

4.Faizel Mohammed

5.Mohammed Alikhan



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6.M.Babu

The Inspector of Police,
Thrukoilur Police Station,
Thrukoilur.

7.S.Abdulla

8.Rahman Khan

... Respondents

PRAYER: Contempt petition filed under Section 11 and 12 of the Contempt of Courts Act, 1971 praying to punish the respondents for disobedience of the order dated 02.06.2023 passed by this Court in W.M.P.No.15401 of 2023 in W.P.No.15950 of 2023.

For Petitioner : Mr.M.Vijaya Kumar

For Respondents : Mr.D.Gopal, Govt. Advocate (for R1-3)
Mr.G.Anandraj (for R4)
Mr.N.A.Nassir Hussain (for R5 & 8)
Mr.S.Balaji,
Government Advocate, Crl. Side (for R6)
Mr.S.Haja Mohideen Gisthi (for R7)

ORDER

This Contempt Petition is filed for punishing the respondents for disobedience of the order dated 02.06.2023 passed by this Court in W.M.P.No.15401 of 2023 in W.P.No.15950 of 2023.

2.When the Writ Petition in W.P.No.15950 of 2023 was taken up for hearing on 02.06.2023, this Court passed the following order,



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“2.It is the submission of the learned counsel for the petitioner that the petitioner is a tenant in respect of the agricultural land in S.No.124/1 and S.No.124/2 at Thi.Keeranur Village, Thirukoilur Taluk, Kallakurichi District. There is a dispute with the rival claimants namely respondents 4 to 8. The respondents 4 to 8 are claiming that the property belong to Jamad and cause disturbance to the possession and enjoyment of the petitioner.

3. When the matter was referred to the second respondent, the second respondent passed an impugned order dated 10.05.2023 in A3-816-2023 determining the title to the property which is beyond the scope of Section 145 Cr.P.C proceedings. When it was found that the petitioner has lease documents in her favour, it goes without saying that the petitioner is in possession of the property. Without protecting the possession of the petitioner, deciding title like in a civil suit, is inappropriate and illegal. Therefore, this petition.

4. The learned Government Advocate (Crl.side) submitted that the disputed property belongs to Wakf. He seeks time to get instructions.

5. Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.side) takes notice for the respondents 1 to 3.

6. Issue notice the respondents 4 to 8 returnable by three weeks.

7. Post the matter after three weeks.



8. Section 145(4) Cr.P.C mandates that “the Magistrate shall, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute has to hear the party who is in possession”. However, the impugned order reads that the second respondent proceeded to decide the title of the property in favour of Thirukoilur Masjid. It is beyond the scope of Section 145 Cr.P.C proceeding. When it is admitted that the petitioner's father-in-law was a sub-tenant and the petitioner claims tenancy with the aid of a lease deed, as rightly pointed out by the petitioner that there is a presumption that the petitioner is in possession of the property. Thus, there shall be an order of interim stay of all further proceedings in pursuance to the impugned order dated 10.05.2023 in A3- 816-2023 passed by the second respondent, till then.

9. In the meanwhile, the petitioner is directed to implead the Thirukoilur Masjid as respondent in this case.”

3. This Contempt Petition is filed, alleging that despite the order of stay of all further proceedings in pursuance of the impugned order dated 10.05.2023 in A3- 816-2023 passed by the 2nd respondent, the respondents 4, 5, 7 and 8 continued with illegal construction and that was not prevented by respondents 1 to 3 and 6. It amounts to contempt and therefore, this petition is filed.



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4.Learned counsel for the petitioner further submitted that, the order passed by this Court in W.P.No.15950 of 2023 on 02.06.2023 was known to the Sub Inspector who represented the 6th respondent, for the reason that he was present in the Court at the time of hearing. He had also communicated the order to all the respondents. He produced photos and videos to show the alleged illegal construction, after 02.06.2023.

5.In reply, learned Government Advocate appearing for the respondents 1, 2, 3 and 6 submitted that W.P.No.15950 of 2023 was finally disposed on 17.07.2023. This Court set aside the order passed by 2nd respondent in A3-816-2023 dated 10.05.2023, under Section 145 Cr.P.C and remanded the matter back to the 2nd respondent to conduct enquiry by hearing all the interested parties and pass orders in accordance with Section 145 Cr.P.C.

6.After that, a fresh enquiry was conducted and fresh order was passed after hearing all the parties on 15.11.2023. It was ordered that, due to pendency of Civil Dispute in O.S.No.234 of 2023 before the District Munsif Court, Tirukoilur, with regard to the title, possession of the property in dispute, both A and B parties were restrained from entering into the disputed property. The possession of disputed property was handed over to the Sub Inspector of Police



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(Law and Order), Thirukoilur Police Station, Thirukoilur. He was appointed as receiver to maintain the disputed property. There is no illegal construction made by the respondents, as claimed by the petitioner.

7.Learned counsel for the 5th and 8th respondents submitted that the disputed property is a Wakf property all along and Wakf is in possession of the property. In December 2023, a small prayer hall with 3 feet wall with hut roof measuring about 1100 sq.ft was put up after obtaining due approval from the Wakf Board. As per the orders of this Court in W.P.No.15950 of 2023, the property was locked and under the control of the police authorities from 08.06.2023. Petitioner filed suit in O.S.No.234 of 2023 on the file of the District Munsif, Thirukovilur against these respondents and other managing committee members and Wakf Board. When the possession of the property was under the control of police authorities from 08.06.2023, it cannot be said that private respondents have put up construction. The allegations are falsely made, only with an intention to harass the private respondents.

8.Learned counsel for the 6th respondent submitted that 6th respondent was not aware of the Court order dated 02.06.2023 till 08.06.2023. The order was sent on 08.06.2023, 6th respondent locked the disputed premises and



prevented any illegal entry. Therefore, he stated that the High Court order was duly complied.

9.Learned counsel for the 7th respondent submitted that Waqf Board has not taken any steps with regard to this case and the issue is now pending before the competent Civil Court. Wakf Act provides power to Wakf Board to ensure that the Wakf under its superintendence is properly maintained, controlled and administered. 7th respondent is unnecessarily implicated in this case.

10.Considered the rival submissions and perused the records.

11.The main grievance of the petitioner is that after the orders passed in W.P.No.15950 of 2023, the private respondents 4, 5 and 7 had continued with illegal construction in the disputed properties. The photographs and videos produced by the petitioner, only shows that some persons are doing some work in the poles erected. There is no evidence of further construction activities. The order in W.P.No.15950 of 2023 was passed only after hearing the petitioners and respondents 1 to 3 herein. The order was passed without hearing the Respondents 4 to 8. Therefore, this Court ordered notice to respondents 4 to 8, with order of stay of all further proceedings in pursuant of the impugned order



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in A3-816-2023 dated 10.05.2023, passed by the 2nd respondent. The order only stayed further proceedings in pursuance of the impugned order in A3-816-2023 dated 10.05.2023. There is no restraint order passed against the respondents 4 to 8 that they should not indulge in any construction activities. When the order was passed on 02.06.2023, respondents 4 to 8 were not aware of the order of stay granted in W.P.No.15950 of 2023. Therefore, even assuming that there was any construction made from 02.06.2023 to 08.06.2023 till the police took charge of possession of the property, the construction, if any made, cannot be considered as construction made in violation of the Order passed in W.P.No.15950 of 2023 on 02.06.2023. Though the petitioner said that stay order was communicated to respondents immediately, the copy of the intimation along with postal track show that order was intimated to private respondents only on 14.06.2023. Therefore, the claim that despite informing the respondents about the stay order granted on 02.06.2023, the private respondents continued to make illegal construction, is not correct.

12.This Court also finds from a complaint sent by the petitioner on 12.03.2023 to the Sub Inspector of Police (Law and Order), Thirukoilur Police Station that the private respondents had put up a shed even on 27.02.2023 prior to filing of the Writ Petition in W.P.No.15950 of 2023. Whether this shed was



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put up as claimed by the petitioner herself on 27.02.2023 or between 02.06.2023 to 08.06.2023, is a matter to be decided on the basis of oral and documentary evidence. Already a Civil Suit in O.S.No234 of 2023 is pending on the file of the District Munsif, Thirukovilur with regard to title and possession of the property. Pending issue between the parties can be resolved only by a competent Civil Court.

13.From the facts and circumstances of the case, this Court is of the view that, there is no cause made out for initiating action against the respondents for committing contempt of the Court's order.

14.Accordingly, this Contempt Petition is dismissed. Consequently, the connected Sub Application is closed. Parties are directed to bear their own costs.

29.04.2024

Index:Yes/No
Speaking/Non speaking order
gd



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G.CHANDRASEKHARAN.J.,

gd

To

- 1.The District Collector,
Kallakurichi District,
Kallakurichi.
- 2.The Executive Magistrate/Revenue Divisional Officer,
Thrukoilur,
Kallakurichi District.
- 3.The Tahsildar (Revenue),
Thrukoilur,
Kallakurichi District.
- 4.The Inspector of Police,
Thrukoilur Police Station,
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Pre-Delivery Order in
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