



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WMP Nos.26434 & 26436 of 2024
in WP.No.23978 of 2023

WMP No.26434 of 2024

S.Chinnasamy

... Petitioner

-Vs-

1.Senthil

2.The Superintendent of Police
Office of the Superintendent of Police
Tiruppur Post & District.

3.The Inspector of Police
Kunnathur Police Station
Kunnathur Post
Uthukuli Taluk
Tiruppur District.

... Respondents

Prayer in WMP No.2634 of 2024 : Petition filed under Article 226 of the Constitution of India , to recall the order dated 16.08.2023 passed in W.P.No.23978 of 2023, by this Court.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Mr.D.Veerasekaran
for R1

Mr.V.J.Priyadharsana
Government Advocate (Crl.Side)
for R2 & R3

WP No.23978 of 2023



Senthil

... Petitioner

-Vs-

1.The Superintendent of Police
Office of the Superintendent of Police
Tiruppur Post & District.

2.The Inspector of Police
Kunnathur Police Station
Kunnathur Post
Uthukuli Taluk
Tiruppur District.

3.S.Chinnasamy

... Respondents

Prayer in WP.No.23978 of 2023 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondent Nos.1 and 2 to provide police protection for fencing the petitioner's property situated in Old Survey No.168 and R.S.No.27/2A2 to an extent of 0.30 acre, Chinna Goundan Valasu Village, Uthukuli Taluk, Tiruppur District based on the representation dated 13.04.2024.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.V.J.Priyadharsana
Government Advocate (Crl.Side)
for R1 & R2

Mr.R.Bharath Kumar for R3

ORDER



WMP.No.26434 of 2024, has been filed to recall the order passed by this Court in W.P.No.23978 of 2023 dated 16.08.2023.

2.For the sake of convenience, the parties shall be identified as per their rank in the main writ petition.

3.The writ petition was filed seeking for police protection for fencing the property belonging to the petitioner in Old Survey No.168 and R.S.No.27/2A2 to an extent of 0.30 acres at Chinna Goundan Valasu Village, Uthukuli Taluk, Tiruppur District.

4.The writ petition was filed on the ground that the writ petitioner had purchased the property from one Saraswathi by virtue of a registered Sale Deed dated 25.01.2008 registered as Document No.352 of 2008. The further case of the writ petitioner was that the said Saraswathi got the property by way of a partition among her family members through the partition deed dated 18.09.2007 registered as Document No.4486 of 2007.

5.The grievance that was expressed by the writ petitioner was that the adjacent land owner was creating problems relating to the boundaries in Old Survey No.168 and R.S.No.27/2A2 to an extent of 0.30 acres. In view of the same, the writ petitioner made an application for survey of the land to the Assistant Director,



Survey and Land Reforms, Tiruppur on 31.10.2022. A survey was conducted and the boundaries were fixed. At the time of survey, the adjacent land owners were also present and they had also subscribed their signature in the letter prepared by the revenue officials. Since the problem continued from the adjacent land owners, complaint was lodged before the police seeking for police protection in order to fence the land. The complaint was not acted upon and therefore, the writ petition was filed before this Court seeking for police protection to fence the property of the petitioner in old Survey No.168 and R.S.No.27/2A2.

6.The writ petition was disposed of at the admission stage by an order dated 16.08.2023. This Court directed the police to conduct an enquiry and to take a decision regarding the grant of police protection to fence the property. The writ petitioner filed Contempt Petition No.2091 of 2024, on the ground that the order passed in the writ petition was not complied with. When the matter came up for hearing on 02.8.2024 in the contempt petition, this Court passed the following order:

When the matter was taken up for hearing, the learned Government Advocate submitted all the relevant documents. On going through the same, it is seen that a survey was conducted by the Surveyor on the directions issued by the Tahsildar and the boundaries were identified and boundary stones were also laid. Thereafter, patta was given in favour of the petitioner for S.No.27/2A2. The petitioner wants to fence his property based on this patta that was granted in his favour. That is now sought to be prevented by the adjacent owner. Till the patta stands in the name of



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the petitioner and the same has not been set aside or modified in the manner known to law or where there is no order of injunction ordered by any competent Civil Court, the petitioner cannot be prevented from fencing his property as per the measurement shown in the patta. Therefore, in the absence of any such contingencies, police protection must be granted to the petitioner to fence the property.

Post this case under the caption for 'Reporting Compliance' on 16.08.2024 at 2.15 p.m.

7.Pursuant to the above order, police protection was given and the fencing was done, Recording the same, the contempt petition was closed by this Court on 19.08.2024. While closing the contempt petition, the learned counsel for the 3rd respondent submitted that he has filed a petition for recall and that there is some urgency in hearing the petition. Therefore, this Court granted liberty to the 3rd respondent to move the recall petition. Accordingly, the recall petition was listed for hearing today.

8.Heard Mr.R.Bharath Kumar, learned counsel for the petitioner, Mr.D.Veerasekaran, learned counsel for R1 and Mr.V.J.Priyadharsana, learned Government Advocate (Crl.Side) for R2 & R3.

9.On going through the entire materials placed before this Court, it can be seen that a total extent of 16.88 acres of land in various survey numbers was owned by Karuppanna Gounder and Kalianna Gounder. They partitioned the lands among



themselves through a partition deed dated 10.09.1966. Karuppanna Gounder was allotted the 'A' Schedule property measuring an extent of 8.443 acres and Kalianna Gounder was allotted "B" Schedule property measuring an equal extent of 8.443 acres.

10. After the demise of Karuppanna Gounder, the property was inherited by his son and two daughters. The son Subbanna Gounder died in the year 2001 leaving behind the 3rd respondent and the mother of the writ petitioner. Thereafter, there was one more partition that took place between the 3rd respondent, the mother of the writ petitioner and two other aunts on 18.09.2007. This partition deed was registered as Document No.4486 of 2007. By virtue of this partition, "A" Schedule property was allotted to the 3rd respondent and "B" Schedule property was allotted to the writ petitioner's mother. "C" Schedule property was jointly allotted to the other two aunts. Thereafter, the revenue records were also mutated and the parties started enjoying their respective properties that were allotted in the partition deed.

11. The writ petitioner's mother filed a suit in O.S.No.325 of 2022, before the Sub Court, Avinashi against the 3rd respondent seeking for the relief of partition and permanent injunction. The suit property in this suit is Survey No.170D measuring an extent of 2.41 acres and this suit is pending.

12. The writ petitioner's mother sold her share to an extent of 0.30 acres in



Survey No.27/2 to the writ petitioner, who is none other than her son through a registered Sale Deed dated 25.01.2008. After the purchase of the property, writ petitioner also mutated the revenue records in his favour. At that time, R.S.No.27/2 was subdivided as 27/2A2 & 27/2C.

13.The 3rd respondent had also entered into a partition with his daughter and son in the year 2022. In this partition, the "A" Schedule property was allotted in favour of the 3rd respondent which is R.S.No.27/2 measuring an extent of 1.10 acres.

14.The real dispute is with respect to the usage of the road cart track to approach Survey No.27/2. That is where there were regular disputes between the writ petitioner and the 3rd respondent. At one stage, the writ petitioner took steps to modify the FMB sketch and according to the 3rd respondent, the total extent of 413 feet which is shown as a cart track was changed as 315 feet. Thereafter, the writ petitioner along with his mother filed a suit in O.S.No.33 of 2023, on the file of the District Munsif, Uthukuli. In this suit, they sought for the relief of declaration to declare that they are entitled for the 2nd item of suit property as cart track to reach their property which was shown as the 1st item of suit property. In short, they were claiming a right of easement by necessity. They also sought for the relief of declaration to declare the partition deed dated 23.12.2022, which was entered into between the 3rd respondent and his children as null and void and not binding on them. They also sought for the relief of permanent injunction restraining the 3rd



respondent and two others from disturbing the peaceful possession and enjoyment of the 2nd item of the suit property which is nothing but the road cart track over which there is a dispute.

15.It is also seen from records that the 3rd respondent has made an objection before the Tahsildar, Uthukuli as against the modification of the FMB sketch and on receipt of the objection, the Tahsildar, Uthukuli through proceedings dated 10.03.2023 has informed that the parties should approach the District Revenue Officer by way of an appeal.

16.It is under these circumstances, the writ petitioner gave the complaint seeking for police protection for fencing his property situated in Old Survey No.168 and R.S.No.27/2A2 to an extent of 0.30 acres.

17.The learned counsel for the writ petitioner submitted that the petitioner had not suppressed any facts in this case and that the subject matter of property in the two pending suits has nothing to do with the property which was sought to be fenced by the writ petitioner. The learned counsel further submitted that already the survey was conducted by the concerned authority and the boundaries were fixed and this was done in the presence of the 3rd respondent's son and therefore, there is absolutely no reason to recall the order passed by this Court. The learned counsel further submitted that the fencing has already taken place and therefore, nothing



survives to be decided in this petition.

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18.Per contra, the learned counsel for the 3rd respondent submitted that the writ petitioner has obtained an order from this Court by suppressing material facts and as a result of the fencing of the property, the 3rd respondent has now been prevented from entering into his property. Therefore, the learned counsel submitted that the parties must be relegated to the Civil Court in order to workout their remedy and the order passed in the writ petition must be recalled.

19.The learned counsel for the petitioner by bringing to the notice of this Court the schedule of property in both the suits, attempted to portray a case as if, the dispute in the suits has nothing to do with the property belonging to the writ petitioner and that in any case, the 3rd respondent has no right over that property.

20.It should be borne in mind that the subject matter of the writ petition was the fencing of the property in Old Survey No.168 and R.S.No.27/2A2. While fencing this property, necessarily, the issue with regard to the extent of the property which is already in dispute between the petitioner and the 3rd respondent with respect to the road cart track assumes a lot of significance. If the writ petitioner had mentioned in his affidavit about the existing dispute between the petitioner and the 3rd respondent before the competent Civil Court, this Court would have certainly issued notice to the 3rd respondent before passing orders in the writ petition.



Unfortunately, the writ petitioner has not made a single averment in the writ petition about the existing dispute between the writ petitioner and the 3rd respondent with respect to the access of the road cart track. The writ petitioner had projected a case as if, it was a simple issue of an adjacent land owner disturbing the possession and therefore, this Court went by the patta issued in favour of the writ petitioner and gave certain directions. If this Court had been made aware about all the above said facts, this Court would not have ordered for police protection in this case and the parties would have been relegated to the Civil Court where the suits are pending.

21. In the light of the above discussion, this Court finds that the writ petitioner had effectively concealed the pendency of the two suits and existing dispute between the parties with respect to the road cart track. Thereby, the writ petitioner has grabbed an order from this Court by keeping this Court in dark regarding the pending dispute. The 3rd respondent was never heard by this Court while passing the order in the writ petition and the police has given protection for fencing the property. This has now resulted in the 3rd respondent being stopped from accessing his property.

22. The writ petitioner has approached this Court with unclean hands and had mislead this Court to pass an order in the writ petition. Normally, while exercising jurisdiction under Article 226 of the Constitution of India, this Court will be slow in ordering police protection when it touches upon immovable properties. This Court



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went by the averments made in the affidavit filed in support of the writ petition without realizing that there is something more than what meets the eye with respect to the pending dispute between the petitioner and the 3rd respondent. Therefore, the order that has been passed in the writ petition and which has now been taken advantage by the 3rd respondent has to be necessarily recalled by this Court. The parties must be relegated back to the Civil Court to workout their remedy. It will not suffice to merely recall the order passed in the writ petition since the 3rd respondent has suffered a damage pursuant to the order. Therefore, the parties will have to be put back to their original position. Hence, there shall be a direction to remove the fencing that has been put up by the petitioner and the respondent police is directed to give protection for undertaking this process. The original position shall be restored and the parties will agitate their rights before the Civil Court where the case is pending. This process shall be completed within a period of one week from today.

23.Considering the conduct of the writ petitioner and the fact that the writ petitioner approached this Court by concealing material facts, this Court is also inclined to impose a cost of Rs.25,000/- [Rupees twenty five thousand only] against the writ petitioner payable to the Tamil Nadu State Legal Services Authority, High Court Campus, Chennai-600 104. This cost shall be paid within a period of four weeks from today.



24. In the result, WMP No.26434 of 2024, is allowed with the above directions.

W.P.No. 23978 of 2023, stands dismissed. Consequently, WMP.No.26436 of 2024. is closed. No costs.

25. Post this case under the caption 'for reporting compliance' on the payment of cost on **19.09.2024**.

21.08.2024

Internet: Yes
Index: Yes/No
KP

Note: Issue order copy on **23.08.2024**



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To

- 1.The Superintendent of Police
Office of the Superintendent of Police
Tiruppur Post & District.
- 2.The Inspector of Police
Kunnathur Police Station
Kunnathur Post
Uthukuli Taluk
Tiruppur District.
- 3.The Public Prosecutor
High Court, Madras.



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N.ANAND VENKATESH. J.,
KP

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