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WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WP.No.27404 of 2023

and

WMP.No.26857 of 2023

and

CrI.OP.No.1658 of 2024

WP.No.27404 of 2023

Suresh Guntur

Vs.

... Petitioner

1. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner officer
Building, EVK Sampath Road,
Vepery, Chennai-600 007.
2. The Assistant Commissioner of Police,
Sakthi Muthalamman Koil Street,
Chinna Neelankarai,
Chennai-600 115.
3. The Inspector of Police (L&O)
J8, Neelankarai Police Station,
Chennai-600 115.



WP.No.27404 of 2023 & Crl.OP.No.1658 of 2024

4. The Tahsildar,
Officer of Tahsildar,
TNHB Sholinganallur,
Chennai-119.

5. S.Sathya Narayanan

6. Latha Rajan alias Latharasan

... Respondents

Crl.OP.No.1658 of 2024

Suresh Guntur

... Petitioner

/vs/

1. The Deputy Commissioner of Police,
Adyar, Chennai-600 020.

2. The Assistant Commissioner of Police,
Sakthi Muthalamman Koil Street,
Chinna Neelankarai,
Chennai-600 115.

3. The Inspector of Police (L&O),
J8, Neelankarai Police Station,
Chennai-600 115.

... Respondents

PRAYER in WP.No.27404 of 2023: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the 1st and 2nd respondents to take appropriate action to protect the life and property of the petitioner pertaining to Plot No.3 in Sri Babuji Nagar, Comprised in Survey No.34/7, Injambakkam Village, Sholinganallur Taluk, Chennai District from the illegal actions of the 5th respondent by misusing the alleged survey conducted by the 4th



WP.No.27404 of 2023 & Crl.OP.No.1658 of 2024

respondent in contravention of the order passed by this Hon'ble Court in W.P.No.14368 of 2023.

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Prayer in Crl.OP.No.1658 of 2024: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to transfer the investigation in FIR No.341 of 2023 on the file of the 3rd respondent to the Central Crime Branch or any other competent investigation agency.

WP.No.27404 of 2023

For Petitioner : Mr.P.K.Rajagopal
for Mr.R.Chandrasudan

For Respondents : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)
for R1 to R4

: Mr.R.Muralidharan
for R5 and R6

Crl.OP.No.1658 of 2024

For Petitioner : Mr.P.K.Rajagopal
for Mr.R.Chandrasudan

For Respondents : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)

COMMON ORDER

Suresh Guntur is the petitioner in Crl.OP.No.1658 of 2024 seeking transfer of Investigation in FIR.No.341 of 2023 on the file of the 3rd respondent to any other competent authority. He has also filed



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

WP.No.27404 of 2023 seeking direction to the 1st and 2nd respondents to take appropriate action to protect his life and property situated in Plot No.3. Sri Babuji Nagar, Injambakkam Village, Sholinganallur Taluk.

2. The sum and substance in these two petitions, one filed under Section 482 of Cr.P.C and another under Article 226 of Constitution of India is that the petitioner is the owner of Plot No.3 comprised in Survey No.34/7 of Injambakkam Village totally, measuring an extent of 2632.5 sq ft and the superstructure upon. The said land was trespassed by one Sathyanarayanan and his henchman claiming as power agent of one Latha Rajan who in fact the owner of neighbouring plot bearing No.4.

3. It is further contended in the complaint that under the garb of measuring the property, the portion of the superstructure constructed by the petitioner herein been demolished by the said Latha Rajan through her hench men. It is contended that inspite of lodging complaint , which has been registered in Cr.No.341 of 2023 dated 13.09.2023, no action taken by the respondent police to restore the possession and protect the body and person of the petitioner. Hence the writ petition for issuing mandamus.



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

4. The petition under Section 482 of Cr.P.C is filed for transfer of investigation since the complaint not acted upon.

5. With the identical set of facts, writ petition filed for providing protection and taking appropriate action with direction to 1st and 2nd respondents for appropriate action, Criminal Original Petition is filed under Section 482 of Cr.P.C to transfer of investigation in Cr.No.341 of 2023 to CCB or any another agency.

6. When both the matters came up for consideration, this Court ordered to serve notice to the private respondents and also to get instructions from the respondent police.

7. The learned Government Advocate(CrI.Side) appearing for the respondent police on instructions from the Investigating Officer submits that there is a boundary dispute between the petitioner herein and his neighbouring land owner Latha Rajan. Pursuant to that, the property was measured as per direction of the High Court in WP.No.14368 of 2023. The survey of the land done per her title deed and it was found that the petitioner had put up a portion of his construction in the piece of land



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

owned by Latha Rajan. After ascertaining that the petitioner has put the superstructure in their land, the agent of Latha Rajan has demolished the portion of the building owned by the petitioner. In this connection, the petitioner has lodged complaint and FIR.No.341 of 2023 been registered and it is under investigation.

8. The learned counsel appearing for the 6th respondent submitted that on 05.05.2023, this Court in WP.No.14368 of 2023 filed by the petitioner Suresh Guntur directed the respondents to conduct survey and complete the same within a period of six weeks from the date of receipt of the order copy. Accordingly, the Tahsildar after issuing notice conducted survey and submitted the report. From the report, the 6th respondent came to know that her land been encroached by the petitioner by putting up super structure. Therefore, on her land superstructure alone was removed, since it was an illegal construction of the land of the sixth respondent by encroachment. Therefore, there is no illegality or criminality in the act of the 6th respondent.



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

9. The learned counsel appearing for the petitioner submits that there is a civil dispute pending between the parties and there is no finality reached so far. While so, based on the disputed survey which was later set aside by this Court, the portion of the superstructure been demolished illegally by the 6th respondent with the help of 5th respondent and her henchmen.

10. On considering the submissions, this Court directed the petitioner herein to file an affidavit to the effect that protection sought in the writ petition No.27404 of 2023 to be provided subject to the outcome of the civil suits if he lose the civil suit will remove the superstructure which he has put up in the disputed portion of land at his costs.

11. Pursuant to this direction, the petitioner has filed affidavit which reads as below:

" 3. I hereby unequivocally undertake before this Hon'ble Court as follows:



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

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“ a) that I shall reconstruct only that portion of the building which was illegally demolished by the private respondents herein on 13.09.2023 which portion is marked in red in the photograph annexed hereto and reconstruct the part of the compound wall marked red in the second photograph annexed herewith and that I shall not do anything more than that;

b) that I shall so reconstruct the demolished portion of the building and the part of the compound wall subject to the outcome of the suit for permanent injunction filed by the respondent No.5 herein in O.S.No.3 of 2024 on the file of the Principal District Munsif, Alandur which now stands transferred to the file of the District Munsif, Sholinganallur;

c) I further undertake to not press/withdraw the criminal action which I have initiated in this regard in Cr.No.341 of 2023 on the file of the Inspector of Police, Neelangarai Police Station, Chennai-600 115.



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

d) I crave leave of this Hon'ble Court that I will take

such civil actions in order to protect my rights, title and possession over the property pursuant to the liberty granted to me by the order of this Hon'ble Court passed in WP.No.29299 of 2023” .

12. The learned counsel for the 6th respondent submitted that the permission for the petitioner to put up the superstructure in the disputed area shall be subject to the outcome of the civil suit and the said permission now granted be under protest and shall not in any way prejudice the right and interest of 6th respondent or take adverse to the 6th respondent in the civil proceedings.

13. This Court records the above said submissions and dispose of the writ petition in WP.No.27404 of 2023 directing the 1st and 2nd respondents to give police protection to the petitioner herein to reconstruct the demolished portion of the building and such reconstruction shall not exceed the portion of the land over and above what already been occupied by the petitioner herein. The two photographs earmarking the area in which the petitioner proposed to put



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

up construction shall form part of the representation to the police while seeking protection.

14. The respondents 5 and 6 and their henchmen shall not disturb the construction of the petitioner herein to the extent which was already demolished.

15. Criminal Original petition in CrI.OP.No.1658 of 2024 is filed to transfer the investigation of Cr.No.341 of 2023 on the file of the 3rd respondent. Since the parties have now arrived at a temporary arrangement of allowing the petitioner to re-construct the demolished portion, they can work out their remedy before the Civil Court without resorting to criminal action.

16. Hence, Court is of the view that there shall not be any further investigation in Cr.No.341 of 2023. As a result, the transfer of investigation also does not arise. For smooth implementation of compromise entered between the parties, this Court is of the view that FIR in 343 of 2023 to be quashed.



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

17. Also the learned counsel appearing for the petitioner submits that since the 5th and 6th respondents agreed to allow the petitioner to reconstruct the demolished portion, the petitioner is ready to withdraw his complaint in Cr.No.343 of 2023.

18. Recording the said statement, Criminal Original Petition is disposed of in terms of the affidavit filed by the petitioner dated 27.06.2024. On receipt of representation from the petitioner herein, the 1st respondent police shall close the complaint in FIR.No.341 of 2023 as withdrawn.

19. In the result, this writ petition is disposed of in terms of the affidavit filed by the petitioner dated 27.06.2024. No order to costs. Consequently, the connected miscellaneous petition is closed. Criminal Original Petition is disposed of.

09.07.2024

Vv



WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

To

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1. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner officer
Building, EVK Sampath Road,
Vepery, Chennai-600 007.
2. The Assistant Commissioner of Police,
Sakthi Muthalamman Koil Street,
Chinna Neelankarai,
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3. The Inspector of Police (L&O)
J8, Neelankarai Police Station,
Chennai-600 115.
4. The Tahsildar,
Officer of Tahsildar,
TNHB Sholinganallur,
Chennai-119.
5. The Public Prosecutor,
High Court of Madras,
Chennai.



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WP.No.27404 of 2023 & CrI.OP.No.1658 of 2024

Dr.G.JAYACHANDRAN,J.

Vv

**WP.No.27404 of 2023
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