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Crl.M.P.No.16063 of 2023

Crl.M.P.No.16063 of 2023
in Crl.O.P.No.16116 of 2020

A.D.JAGADISH CHANDIRA, J.

The present petition has been filed by an octogenarian Ettiyammal/ *de facto* complainant, wife of Govindasamy for cancellation of anticipatory bail granted to respondents 1 to 3 by this court by order dated 29.10.2020 in Crl.O.P.No.16116 of 2020.

2. The case of the petitioner/ *de facto* complainant is as follows :-

2.1 One Selvaperumal owned ancestral property situated in Mylapore village with Survey No. 46, measuring an extent of 4 acres 52 cents, and Patta No. 72 was also in his name. Out of which, 2 Acres 26 Cents was sold by Selvaperumal in favour of Murugappa Reddy vide Doc. No. 1451/1921 dated 05.05.1921 with the Sub Registrar Office, Thiruvallur. Murugappa Reddy had only son namely Raja Reddy, who got married to one Thullukanammal. They had only son namely Sundar Reddy. After the death of Raja Reddy, his wife Thullukanammal subdivided the property and obtained Patta No. 80 for the aforesaid land in S.No.46/2 measuring to an extent of 2.26 Acre. She was in possession and enjoyment of the said property absolutely. When Sundar Reddy



was minor, his mother Thulukanammal had sold the property to one Govindaswamy, vide Document No. 931 of 1967, with the SRO. Uthukkottai on 25.07.1967, due to family debts. After the death of Govindaswamy, his wife Ettiyammal became the absolute owner of the property.

2.2. Later, the said Sundar Reddy attained majority and after having knowledge about the sale made by his mother Thulukkanammal in favour of one Govindaswamy, accepted the same. The sale was not challenged by him during his lifetime. The said Sundar Reddy left behind his Children Elumalai, Shanmugam, Jagadha and Pushpa.

2.3. After the death of Sundar Reddy, his son Elumalai, executed a settlement deed in favour of his sons namely Nataraj, Naveenkumar and Dilli Babu vide Doc. No. 2162/2013 dated 13.09.2013 with the SRO, Uthukottai. Thereafter, the aforesaid Elumalai approached the Revenue officials and obtained a legal heir Certificate by incorporating the names of Jagatha, Pushpa, Elumalai, Vadivelu and Kalyani as legal heirs of late Sundar Reddy.

2.4. Thereafter, Jagadha, Vadivelu and Kalyani executed a release deed in favour of the Elumalai and Pushpa vide Doc. No. 2473/2013 dated 18.10.2013 with the SRO, Uthukottai. Thereafter, the said Elumalai and Pushpa had executed a power of attorney in favour of one Soundararajan vide



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Doc. No. 2474/2013 dated 18.10.2013 with the SRO, Uthukottai. After that Elumalai cancelled the settlement deed by way of registering the deed of cancellation vide Doc.No. 2477/2013 dated 21.10. 2013 with the SRO, Uthukottai.

2.5. The said Elumalai had approached the revenue officials and filed an application before the Tahsildar, Uthukottai. Thereafter, the Tahsildar, Uthukottai conducted a detailed enquiry and passed an order ப.க.எண்/160/12014/ஆ1, cancelling the Patta No.58 granted in the favour of Govindaswamy and Transferred the Joint PattaNo.58 in the name of Jagadha, Pushpa, Elumalai, Vadivel, Kalyani.

2.6. The power agent Soundararajan executed a sale agreement in favour of one Enjal vide Doc. No. 495/2014 dated 28.02.2014 with the SRO, Uthukottai. Thereafter, the said Pushpa Cancelled the Power of Attorney by way of registering the Deed of Cancellation vide Doc. No.619/2014 dated 11.03.2014 with the SRO, Uthukottai. Thereafter, the said Pushpa executed a release deed in favour of Elumalai vide Doc. No. 751/2014 dated 24.03.2014 with the SRO, Uthukottai.

2.7. After that the power agent Soundararajan cancelled the Sale agreement by way of registering the deed of cancellation vide Doc. No.2492/2014 dated 19.09.2014 with the SRO, Uthukottai. Thereafter, the said



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Elumalai cancelled the Power of Attorney by way of registering the Deed of Cancellation vide Doc. No.2493/2014 dated 19.09.2014 with the SRO, Uthukottai. Eventually, the said Soundararajan was nominated as the power agent of Elumalai vide Doc. No. 2494/2014 dated 19.09.2014 with the SRO, Uthukottai.

2.8. After that the power agent Soundararajan sold half of the property in favour of one Rajeshkumar vide Doc. No.2499/2014 dated 19.09.2014 with the SRO, Uthukottai. On the same day, the power agent Soundararajan sold half of the property in favour of one Sivarajbabu vide Doc. No. 2500/2014 dated 19.09.2014 with the SRO, Uthukottai.

2.9. The petitioner came to know that revenue records have been changed in the name of Jagadha, Pushpa, Elumalai, Vadivel, Kalyani during the year 2014. Thereafter, the petitioner approached the Sub Collector, Thiruvallur and filed an application for cancelling the Joint Patta No.58. Hence, the Sub Collector, Thiruvallur conducted a detailed enquiry and passed an order டி.க.எண். 1376/2015/அ5, dated 23.07.2015 cancelling the Joint Patta No.58 granted in the favour of Jagadha, Pushpa, Elumalai, Vadivel and Kalyani and transferred the Patta No.776 and brought back in the name of original owner Govindaswamy.

2.10. In the meantime, the said Sivarajbabu obtained Patta No.



731 in S.No.46/2A and Rajeshkumar obtained Patta No.732 in S.No.46/2B during the year 2015. Eventually, Elumalai approached the DRO, Thiruvallur and filed a review petition in respect of Patta No.776 which was issued by the Sub Collector, Thiruvallur. Hence, the DRO Thiruvallur conducted a detailed enquiry and rejected the review petition and confirmed the earlier order passed by the Sub Collector Thiruvallur during the year 2015.

2.11. The above said Rajeshkumar executed a power of attorney in favour of his father Ganesan vide Doc. No.897/2019 dated 02.04.2019 with the SRO, Uthukottai. On the same day, the said Sivarajbabu had also executed a Power of Attorney in favour of his father Ganesan vide Doc.No.898/2019 dated 02.04.2019 with the SRO, Uthukottai.

2.12. Thereby, the Petitioner lodged a complaint on 31.08.2020 and a case was registered in DCB (ALGSC) Crime No.19 of 2020 U/s.420, 465, 468, 471 IPC r/w.34 IPC by one Mr.Hayathsherif Sub/Inspector of police, ALGSC, Thiruvallur against 8 accused persons namely A1/Elumalai, A2/Jagatha, A3/Pushpa, A4/Vadivelu, A5/Kalyani, A6/Sivarajbabu, A7/Rajeshkumar, A8/Ganesan.

3. It is the contention of the petitioner that respondents 1 to 3, who are arrayed as accused 6, 7 and 8, had approached this Court in



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Doctors by profession and they have been cheated by the vendors and they undertook to deposit the original title deeds relating to the property (petitioner's property) to the credit of crime number and they will not encumber the property till the disposal of the case and thereby, this Court, by an order dated 29.10.2020, had granted anticipatory bail to them directing them to report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter, on every Monday at 10.30 a.m., until further orders. It is the further contention of the petitioner/*de facto* complainant that since respondents 1 to 3 have not complied with the conditions imposed by this Court, the petitioner has filed this present petition seeking to cancel the anticipatory bail.

4. Taking note of the submissions made by the learned counsel for the petitioner that respondents 1 to 3 have not deposited the original title deed as per the undertaking given by them, this Court, by an order dated 31.10.2023, had called for a Report from the learned Judicial Magistrate No.II, Thiruvallur and from the Report dated 10.11.2023, it was found that respondents 1 to 3 have deposited the original title deeds before the Court concerned, however, it was reported by the respondent Police that they have not complied with the condition of reporting before the respondent Police as directed by this Court.



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5. It was also reported by the learned Government Advocate (Criminal Side) that the investigation was completed and the final report was filed. This Court had called for a copy of the final report from the respondent and on perusal of the final report, it was found that the final report had been filed without enquiring or arresting the main accused, who had committed the offence or without taking into consideration the role of the officials in the Sub Registrar Office in the offence, who seem to have intentionally permitted the subsequent sale deeds without perusal of parent title deed. This Court, on 04.01.2024, sensing that the investigation has not been properly conducted to protect the perpetrators of the crime, had directed Mr.Kanthan, the Deputy Superintendent of Police, Anti-Land Grabbing Special Wing, Thiruvallur to be present before this Court on 10.01.2024.

6. When the matter was taken up on 10.01.2024, Mr.Kanthan, the Deputy Superintendent of Police, Anti-Land Grabbing Special Wing, Thiruvallur, was present before this Court in person. The learned Government Advocate (Criminal Side), on instructions from the Deputy Superintendent of Police, submitted that there were some lapses in the investigation and though the final report had already been filed through e-filing on 17.10.2023, it had not



been taken on file and cognizance had not been taken and further submitted that if this Court permits the final report would be taken back and further investigation would be conducted by him and a final report would be filed afresh after conducting further investigation within the time frame fixed by this Court. Thereby, this Court had directed Mr.Kanthan, the Deputy Superintendent of Police, Anti-Land Grabbing Special Wing, Thiruvallur, to proceed with the further investigation and probe into the involvement of the officials of the Sub-Registrar Office.

7. Pursuant to the undertaking given by the Deputy Superintendent of Police, Anti-Land Grabbing Special Wing, Thiruvallur, he has filed a Status Report, wherein, it is stated that respondents 1 to 3 had not signed before the fourth respondent Police and that they had filed a quash petition in CrI.O.P.No.3080 of 2021 before this Court and it was disposed on 21.09.2022. It was also stated that as per the order of this Court dated 10.01.2021, the Deputy Superintendent of Police, had taken up further investigation and he had also probed into the involvement of the officials in the Sub-Registrar Office and had also obtained particulars in respect of the officials involved in registering the documents connected with the case.



8. It is also submitted that Notice under Section 160 Cr.P.C was issued on 13.01.2024 to Nataraj, Naveenkumar and Thiruvengadam, who had signed in the documents as witnesses relating to S.No.46/2 and their statements were also recorded on 19.01.2024. It is also submitted that further investigation is going on and A1, Elumalai was arrested on 29.01.2024 and sent to judicial custody and the First Information Report has also been altered to one under Sections 420, 465, 467, 468, 471 IPC r/w.34 IPC. Further, pursuant to the notice under Section 41 A Cr.P.C issued to A2, A3 and A5, who are ladies, they appeared on 18.01.2024 and since A4 was reported to be dead, notice has been issued to her daughter-in-law named Reshma.

9. Further, a letter requesting Genuinity Certificate pertaining to Patta Nos.58, 731 & 732 was sent to Tahsildar, Uthukottai for 2013 and 2015 regarding the subject property. It is also stated that the third respondent/A8 in this case had appeared before the fourth respondent and had lodged a complaint against Ekambaram for threatening him and the said complaint was received by the respondent and made entry in the CSR on 29.01.2024. It is also stated that on 01.02.2024, the third respondent was informed to appear before the fourth respondent Police, but he did not appear for enquiry.



10. Mr.M.Fazulul Haq, learned counsel appearing for Mr.Sudharsan, learned counsel for respondents 1 to 3 submitted that respondents 1 to 3 are Doctors and they had purchased the property unknowingly from one Elumalai through his Power of Attorney named Soundararajan. He further submitted that respondents 1 to 3 had initially appeared before the respondent Police for enquiry, however, since it was Covid period and due to miscommunication, their appearance before the respondent Police was not properly recorded. Further, since it was the peak of the Covid period, they were also attending to other patients who were affected by Covid and thereby, they did not appear before the respondent Police. He also submitted that respondents 1 to 3 have not absconded and they are professional Doctors practising in Pattabiram and they are ready and willing to appear for enquiry at any time.

11. The learned counsel for respondents 1 to 3 further submitted that the third respondent on behalf of his sons (1st and 2nd respondents herein) had earlier filed a Suit in O.S.No.245 of 2020 before the 1st Additional District Court, Tiruvallur seeking to declare that they were the owners of the property and the same was dismissed for default on 11.10.2022 and they have filed an application in I.A.No.5 of 2023 before the trial Court for restoring the suit and it is pending. However, finding that they have been cheated by the said



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Elumalai, respondents 1 to 3 have filed an Affidavit of Undertaking before this Court undertaking that they are ready to give up the property to the *de facto* complainant and also they will not pursue with the Suit in O.S.No.245 of 2020.



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12. The learned counsel further submitted that in the Affidavit, respondents 1 to 3 have also reiterated that they are ready to give up the claim against the de facto complainant in respect of the property purchased by them vide Doc. Nos. 2499 & 2500 /2014 dated 19.09.2014 registered in the office of the Sub Registrar Office, Uthukottai. He also submitted that respondents 1 to 3, Doctors by profession, who ought to have been treated as witnesses, have now, been arrayed as accused and he prayed that necessary orders may be passed. He further submitted that respondents 1 to 3 are ready to cooperate with the further investigation and also prayed that the petition seeking cancellation of bail may be dismissed.

13. Learned Government Advocate (Criminal Side) submitted that the present investigating officer, Mr.Kanthan, the Deputy Superintendent of Police, Anti-Land Grabbing Special Wing, Thiruvallur, finding that there are some lapses in the investigation, is continuing with further investigation. He further submitted that proper investigation would be done and further, subject to respondents 1 to 3 withdrawing the Suit, the Deputy Superintendent of Police, after due enquiry, is ready to proceed in accordance with law to take steps to treat respondents 1 to 3 as witnesses in this case and the Deputy



Superintendent of Police also undertakes that suitable and proper action would be taken to recover the money which A1 is stated to have cheated respondents 1 to 3.

14. Heard the learned counsel appearing for both the petitioner and respondents 1 to 3 and the learned Government Advocate (Criminal Side) appearing for the 4th respondent and perused the Status Report filed by the Deputy Superintendent of Police, Anti-Land Grabbing Special Wing, Thiruvallur.

15. Though the present Criminal Miscellaneous Petition has been filed seeking to cancel the anticipatory bail, during the course of hearing, this Court, finding that a proper investigation has not been done had issued certain directions. In *Babubhai vs. State of Gujarat & Others* reported in **2011 (1) SCC (CRI) 336**, the Hon'ble Apex Court had held that the fair investigation is a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Thus, the Investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. It was emphasized that where non-interference of the Court would ultimately result in failure of justice, the Court must interfere and in the interest of justice choose an independent



agency to ensure a fresh investigation.

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16. In *Devendra Nath Singh vs. State of Bihar and others* reported in *2022 Livelaw (SC) 835*, the Hon'ble Apex Court had held that in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 Cr.P.C could be exercised to direct further investigation, if the High Court is satisfied that such a course of action is necessary to secure the ends of justice.

17. In this case, as stated above, though the petitioner has filed this petition seeking to cancel the anticipatory bail granted to respondents 1 to 3, this Court does not find any circumstance warranting the cancellation of bail however, in order to ensure that the right of the de facto complainant is protected, directs the Deputy Superintendent of Police, Anti-Land Grabbing Special Wing, Thiruvallur, to conduct further investigation in Crime No.19 of 2020 and file the final report. During the course of the investigation, if respondents 1 to 3 are themselves found to be victims, suitable and appropriate steps may be taken.



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18. In view of the above, the Criminal Miscellaneous Petition stands closed. The Affidavit of Undertaking filed by respondents 1 to 3 shall form part of the record.

05.02.2024

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A.D.JAGADISH CHANDIRA, J.

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05.02.2024