



Crl.MP.(MD).No.5222 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 30.07.2024

ORDER PRONOUNCED ON : 09.08.2024

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.M.P.(MD) No.5222 of 2024
in Crl.O.P.(MD) No.20715 of 2023

Jalal Jamal Jummah Mosque,
Represented by its President,
Haji Mohammed Meersa,
S/o.Mohammed Musthafa,
Periyapattinam,
Ramanathapuram District,
Ramanathapuram - 623 523.

.... Petitioner

Versus

1. Ramjan Beevi
2. The Superintendent of Police,
Superintendent of Police,
Ramanathapuram District.
3. The Inspector of Police,
Thiruppullani Police Station,
Ramanathapuram District.

4. Abbas Khan

.... Respondents



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Prayer: The Criminal Miscellaneous Petition is filed under Section 482 of Cr.P.C. to recall the order passed in Crl.O.P.(MD) No.20715 of 2023 on 29.02.2024 and consequently, permit the Petitioner to adduce advancement of his arguments in the main direction petition.

For Petitioner : Mr.R.Anand

For Respondents : Mr.Henri Tiphagne for R-1

ORDER

Mr.R.Anand, learned Counsel for the recall Petitioner (Jalal Jamal Jummah Mosque) appeared through virtual mode and his junior Mr.S.Rajkumar, was present in the chamber to assist him.

2. Mr.Henri Tiphagne, learned Counsel for the First Respondent in Crl.MP.(MD) No.5222 of 2024 and the Petitioner in Crl.O.P.(MD) No. 20715 of 2023 (Ramjan Beevi) appeared through virtual mode and his Junior Mr.N.M.Shajahan, was present in the Chamber to assist him.



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3. As per the submission of Mr.R.Anand, learned Counsel for the Petitioner, the order of this Court in Crl.O.P.(MD) No.20715 of 2023, dated 29.02.2024, had caused prejudice to the Petitioner (Jalal Jamal Jummah Mosque) in recall petition.

4. It is the case of the Mosque (Jalal Jamal Jummah Mosque) that one Jabbar and Seeni executed a Gift Deed in favour of the Petitioner/Mosque on 26.05.1964. As per the Gift Deed dated 26.05.1964, an extent of 5 acres and 58 cents in Survey No.72, Periyapattinam Village, Keelakkarai Taluk, Ramanathapuram District, was gifted to the Mosque. On 20.03.1979, though a Document was registered in Document No.885/1979, the Mosque had gifted 3 acres of its property so as to enable the Government to put up a Government Hospital. Accordingly, the Hospital was constructed and it is still in S.No.72. After letting in 3 acres, the remaining area 2 acres 58 cents belongs to the Petitioner-Mosque. An issue had cropped up with regard to the enjoyment of the Petitioner in the said Survey Number, as it has been found that some third parties are also claiming their right in S.No.72



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hindering the enjoyment of the Petitioner-Mosque. The Mosque was constrained to seek for the recourse by surveying the property by sending a representation dated 14.07.2022 to the Revenue Officials. Following the same, the Mosque filed a Writ Petition in W.P.(MD) No.18351 of 2022 to measure the entire 10 acres 58 cents available in S.No.72. Accordingly, the Writ Petition was disposed of directing the Tahsildar, Keelakarai Taluk, to conduct survey. In the said order, it was observed that if any encroachment is found in the Government property, it is left to the Government to evict them. If there is an encroachment in the property belonging to the Mosque, the Mosque has to approach the Civil Court to remove the encroachment. In the light of the order passed in W.P.(MD) No.18351 of 2022, dated 28.09.2022, the Executive Magistrate, Keelakarai, conducted the survey on 15.11.2022 with the assistance of his Officers and Staff and made a report.

5. It is the contention of the learned Counsel for the Petitioner in recall petition (Jalal Jamal Jummah Mosque) that after the Revenue Authorities had measured the property, the Petitioner (Ramjan Beevi) in Crl.O.P. had filed Crl.O.P.(MD) No.20715 of 2023 seeking direction for



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police protection for her life and to fence the boundaries under her enjoyment. In the Crl.O.P.(MD) No.20715 of 2023, the Mosque was shown as the third Respondent. She produced the Survey Report of the Tahsildar dated 30.01.2023, which had been filed by her in the typed set of papers in Crl.O.P.(MD) No.20715 of 2023. Only after service of the copy on the learned Counsel for the third Respondent, the third Respondent (Jalal Jamal Jummah Mosque) came to know that the report was prepared by the Tahsildar dated 30.01.2023. Neither the Petitioner nor the other office bearers of the Mosque, had been informed about the existence of such report. There were so many wrongs, incorrect and misleading references in the said report. As per the report, the Government School, the Government Hospital and the Mosque had put up compound wall within their boundaries. The report also states that adjacent to the Mosque and the Government Hospital, there is a vacant land. Even though it belongs to the Mosque and the Hospital, it has been in use by the Mosque and the Hospital vice-versa.

6. It is the contention of the learned Counsel for the Petitioner in the



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recall petition (Jalal Jamal Jummah Mosque) that the Tahsildar's report is not correct and it is in favour of the Petitioner in Crl.O.P.(MD) No.20715 of 2023, dated 29.02.2024. This Court had exercised the power of the Civil Court by declaring title to the property of the Petitioner in Crl.O.P.(MD) No.20715 of 2023 (Ramjan Beevi). It is the submission of the learned Counsel for the Petitioner in the recall petition (Jalal Jamal Jummah Mosque) that there is no compound wall for the Mosque, whereas the Tahsildar's report claims that the Mosque had protected the property by putting up a compound wall. The Tahsildar's report claims that the Mosque is in enjoyment of 2 acres and 58 cents in S.No.72. There are other portions which occupied by inhabitants by putting up their construction. The ultimate portion of the Tahsildar's report contradicts that there is encroachment available in the land. Therefore, the report of the Tahsildar is inconsistent, based on which, no final order can be passed.

7. It is the further submission of the learned Counsel for the Petitioner in recall petition (Jalal Jamal Jummah Mosque) that the Petitioner in Crl.O.P.(MD) No.20715 of 2023 filed another Crl.O.P. earlier in Crl.O.P.



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(MD) No.16554 of 2021 for the same relief, which was dismissed on 28.10.2021 by the learned Judge of this Court by observing as follows:-

" 4. Since already representation made by the Petitioner has been closed with a direction to the Petitioner and the private Respondent to measure the property that must be complied with. Without complying the above said direction and advise, the Petitioner has filed a petition seeking police protection. Since the dispute is with regard to the fixing of boundary stones, the Petitioner cannot claim any right regarding the police protection.

5. Let the Petitioner comply the advise given by the second Respondent herein in the above said enquiry. After measuring the same fix the boundary stones. If any trouble arises the Petitioner can workout his remedy through proper proceedings. I find no merits in this petition. "

Therefore, the first respondent herein is barred by law from agitating the same right before this Court once again. She has suppressed the fact, after dismissal of the earlier petition.

8. Also, the learned Counsel appearing for the third Respondent in Crl.O.P.(MD).No.20715 of 2023 (Jalal Jamal Jummah Mosque) did not



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have time to discuss with the office bearers of the Mosque regarding the Tahsildar's report, as he was taken by surprise that the Petitioner in Crl.O.P. (MD).No.20715 of 2023 (Ramjan Beevi) had enclosed the Tahsildar's report in the petition in Crl.O.P.(MD).No.20715 of 2023 in the typed set of papers and this Court had passed orders on 29.02.2024 without affording an opportunity of hearing to the third Respondent (Jalal Jamal Jummah Mosque) through their Counsel. Therefore, the order passed by this Court in Crl.O.P.(MD).No.20715 of 2023, dated 29.02.2024 is to be recalled.

9. There are disputes between the Petitioner in Crl.O.P.(MD).No. 20715 of 2023 (Ramjan Beevi) and the Mosque authorities (Jalal Jamal Jummah Mosque). The dispute has to be agitated only before the Civil Court to establish their rights. She can seek direction to fence her property, instead she had approached the Court by filing a petition under Section 482 Cr.P.C. and get a favourable order. The order passed by this Court is without jurisdiction. Only Civil Court can go into the question of title by granting an order directing the police authorities to provide police protection to the Petitioner in Crl.O.P.(MD).No.20715 of 2023. This Court



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had granted her title to the property. Therefore, Mr.R.Anand, learned Counsel for the Petitioner in recall petition (Jalal Jamal Jummah Mosque) seeks to recall the order passed in Crl.O.P.(MD).No.20715 of 2023, dated 29.02.2024.

10. In support of his contentions, Mr.R.Anand, learned Counsel for the Petitioner in recall petition (Jalal Jamal Jummah Mosque) relied on the reported ruling of the Hon'ble Supreme Court:

(i) ***(2006) 4 Supreme Court Cases 501*** in the case of ***P.R.Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others***. The relevant portion of the judgment is extracted hereunder:-

"19. A writ for "police protection" so-called, has only a limited scope, as when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil Court, or at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order."



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(ii) **(2011) 14 Supreme Court Cases 770** in the case of ***State of***

Punjab Vs. Davinder Pal Singh Bhullar and Others. The relevant portion

of the judgment is extracted hereunder:-

"46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 CrPC would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing that it was not at fault."

11. The order passed by this Court in Crl.O.P.(MD).No.20715 of 2023 attracts the observations in paragraph No. 46 of the said judgment that the order pronounced is without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was



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obtained by abuse of the process of Court which would really amount to its being without jurisdiction. In such an eventuality, the order becomes a nullity and the provisions of Section 362 Cr.P.C would not operate. The said observation applies to the facts of this case, as Ramjan Beevi is not a Petitioner or the Respondent in the Writ Petition filed by the Jalal Jamal Jummah Mosque. She had relied on the report of the Tahsildar based on the order passed in the Writ Petition. By suppressing the earlier order passed by the very same Court in Crl.O.P.(MD) No.16554 of 2021, dated 28.10.2021, the conduct of Ramjan Beevi approaching this Court by filing Crl.O.P. (MD).No.20715 of 2023 is abuse of the Court and it attracts the principles of res-judicata. Not only that, there are civil disputes regarding enjoyment and title to the property in S.No.72 pending before the learned Sub Judge, Ramanathapuram in O.S.No.226 of 2021 and before the learned Principal District Judge, Ramanathapuram, in O.S.No.54 of 2020 with regard to the title and possession of the properties in S.No.72 of Periyapattinam Village. Therefore, the Petitioner in Crl.O.P.(MD).No.20715 of 2023 having filed a petition under Section 482 Cr.P.C and having obtained an order dated 29.02.2024, is against the rulings of the Division Bench of this Court in



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2014 (2) CTC 622 in the case of ***E.Sundaresan (deceased) Vs. Tamil Nadu***

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Wakf Board and Others. The relevant portion of the judgment is extracted as follows:-

"20. The Court must be very careful in involving Police in property disputes/matters, if not, Police would involve themselves in settling property issues, right to property and behave like a Civil Court. This is not good for a country based on Rule of Law."

12. It is the contention of the learned Counsel for the Petitioner in the petition to recall in Crl.MP.(MD) No.5222 of 2024 in Crl.O.P.(MD).No.20715 of 2023 that the order passed by this Court is without jurisdiction and therefore, the same is to be recalled.

13. Mr.Henri Tiphagne, learned Counsel for the first Respondent in Crl.MP.(MD) No.5222 of 2024 and the Petitioner in Crl.O.P.(MD).No. 20715 of 2023 (Ramjan Beevi), submitted his reply to the submissions of Mr.R.Anand, learned Counsel for the Petitioner in recall petition. As per his submission, the petition to recall itself is not maintainable. The Petitioner in Crl.O.P.(MD).No.20715 of 2023 had filed typed set of papers containing



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the Tahsildar's report. Not only the Tahsildar's report, but, also the earlier order passed by this Court in the petition filed by the Petitioner (Ramjan Beevi) in Crl.O.P.(MD) No.16554 of 2021, dated 28.10.2021, is enclosed therewith.

14. Mr.Henri Tiphagne, learned Counsel for the Petitioner in Crl.O.P.(MD).No.20715 of 2023 (Ramjan Beevi) relied on the very same order in Crl.O.P.(MD) No.16554 of 2021, in which the learned Judge of this Court had observed as follows while disposing of the Crl.O.P.:-

" 4. Since already representation made by the Petitioner has been closed with a direction to the Petitioner and the private Respondent to measure the property that must be complied with. Without complying the above said direction and advise, the Petitioner has filed a petition seeking police protection. Since the dispute is with regard to the fixing of boundary stones, the Petitioner cannot claim any right regarding the police protection.

5. Let the Petitioner comply the advise given by the second Respondent herein in the above said enquiry. After measuring the same fix the boundary stones. If any trouble arises the Petitioner can workout his remedy through proper proceedings. I find no merits in this petition. "



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15. The order was passed on 28.10.2021. Subsequently, the Mosque (Jalal Jamal Jummah Mosque) filed a Writ Petition in W.P.(MD) No.18351 of 2022 under Article 226 of the Constitution of India seeking direction to conduct survey and demarcate the entire land of 10 acres and 58 cents comprised in S.No.72, Periyapattinam, Keelakarai Taluk, Ramanathapuram District, and fix the boundaries stone in the Petitioner's land consisting an extent of 2 acres and 58 cents as per Document No.885/1979, dated 20.03.1979. Based on the representation of the Petitioner (Jalal Jamal Jummah Mosque) dated 14.07.2022, after hearing the parties, the learned Judge of this Court had passed an order in Writ Petition dated 29.02.2024, wherein it was observed as follows:-

"6. This Court already directed the learned Special Government Pleader to get instructions regarding the said land, which has been gifted by the Petitioner Mosque to the Government and the remaining land of the Mosque. According to him, 3 acres of land has been gifted to the Government and in S.No.72/1A2A, there is a Public Health Centre and that land will be measured to put up a compound wall. Regarding the rest of the land, the Petitioner Mosque has to take steps to remove the encroachment by approaching the competent civil Court.



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7. Considering the above said submissions, this Court is of the view that the encroachment is not in the land gifted to the Government for construction of Hospital and the encroachment is only in the land belongs to the Mosque, but the Petitioner Mosque submits that let the authorities measure the said lands to resolve the issue. Hence, the second Respondent is directed to measure the lands and after measurement, if it is found that the said encroachment is in the Government land, it is left open to the Government to evict them, in accordance with law and if it is found that the encroachment is in the Mosque land, it is the duty of the Petitioner Mosque to evict the private individuals, by following due process of law. The Superintendent of Police, Ramanathapuram District is directed to give suitable police protection for measuring the lands. The said exercise shall be completed by the second Respondent within a period of three months from the date of receipt of a copy of this order."

16. Accordingly, the Tahsildar, Keelakarai Taluk, along with his team of officers, had visited the property in S.No.72 and conducted survey after issuing notice to all the parties in enjoyment of the property in S.No. 72 in Periyapattinam Village. Therefore, the Petitioner in Crl.O.P.(MD) No. 16554 of 2021, Ramjan Beevi, also was issued notice and she had participated and cooperated for the survey. After completing the survey as



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per the order passed by this Court in W.P.(MD) No.18351 of 2022, the Tahsildar, Keelakarai Taluk, in proceedings Na.Ka.A4/7111/2022, dated 30.01.2023, had clearly given the details of the enjoyment of the property and the name of the parties in enjoyment of the property with all details. In the concluding portion of the report, the Tahsildar, had clearly stated that the Mosque is having property comprising of 2 acres and 58 cents. The Mosque has donated 3 acres to the Hospital and the Hospital as well as the Mosque have put up compound wall within their properties, leaving out remaining portion of 3 acres by the Hospital and 2 acres and 10 cents under the Mosque. The remaining portion is let out free for each other's enjoyment by the Hospital as well the Mosque authorities. Only based on this report, this Court had passed the order. There is no infirmity in the order passed by this Court. Also, the learned Counsel for the Petitioner in Crl.O.P.(MD).No.20715 of 2023 (Ramjan Beevi) pointed out that this Court had passed an interim order based on the Tahsildar's report and waited for the response for the Respondents in Crl.O.P.(MD).No.20715 of 2023, particularly, 3rd and 4th Respondents. The Mosque as well as the private individuals had made their objections, only later on 29.02.2024. Therefore,



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there is no infirmity. The Ruling cited by the learned Counsel for the Petitioner in the recall petition (Jalal Jamal Jummah Mosque) (1) **(2006) 4 Supreme Court Cases 501 [P.R.Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others]** (2) **(2011) 14 Supreme Court Cases 770 [State of Punjab Vs. Davinder Pal Singh Bhullar and Others]** and (3) **2014 (2) CTC 622 [E.Sundaresan (deceased) Vs. Tamil Nadu Wakf Board and Others]** will not apply to the facts of the case on hand.

17. The properties are Natham lands. As per the claim of the Petitioner in the recall petition (Jalal Jamal Jummah Mosque), the property in S.No.72 of an extent of 5 acres and 58 cents, was donated by two individuals through a Gift Deed dated 26.05.1964, one Jabbar and Seeni, out of which, the Mosque has gifted 3 acres through Gift Deed dated 20.03.1979, vide document registered as Document No.885/1979 for the Hospital and the Government Hospital is functioning from that date. Therefore, what remains with the Mosque is only 2 acres and 58 cents out of 5 acres and 58 cents in S.No.72. The learned Counsel for the Petitioner in Crl.O.P.(MD).No.20715 of 2023 (Ramjan Beevi) has also pointed that



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the learned Judge of this Court while disposing of the Writ Petition, had observed as follows:-

5. Moreover, residential houses have been constructed in S.Nos.72/2B3, 2B4, 2B5, 2B6, 2B7 and in S.No.72/2A1A and the Petitioner Mosque on receiving HIBA from Jappar and Seeni ought to have taken steps to protect their properties and in view of the fact that the issue revolves around civil overtures, the Petitioner Mosque has every legal right to institute a suit, get declaration and then file execution petition to remove the encroachment from their land. Further, the Revenue authorities have got no power to deal with these issues and the petitioner Mosque has to approach the competent civil Court.

6. This Court already directed the learned Special Government Pleader to get instructions regarding the said land, which has been gifted by the petitioner Mosque to the Government and the remaining land of the Mosque. According to him, 3 acres of land has been gifted to the Government and in S.No.72/1A2A, there is a Public Health Centre and that land will be measured to put up a compound wall. Regarding the rest of the land, the petitioner Mosque has to take steps to remove the encroachment by approaching the competent civil Court.

Till date, the Petitioner in the recall petition had not approached the Civil



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Court to remove the encroachment, and instead of approaching the Civil Court, the Mosque had filed Writ Petition in W.P.(MD) No.18351 of 2022 seeking for issuance of a Writ of Mandamus against the Revenue Officials to measure the entire S.No.72. It is to be noted that the entire S.No.72, Periyapattinam Village, Keelakarai Taluk, is Natham land. What had been donated to the Mosque by two individuals as per the Gift Deed dated 26.05.1964, is only 5 acres and 58 cents, whereas the Writ Petition has been filed seeking to measure the entire S.No.72, which is beyond the possession and enjoyment of the Mosque. Also, the learned Counsel for the Petitioner in Crl.O.P.(MD).No.20715 of 2023 (Ramjan Beevi) submitted that the observation of the Hon'ble Supreme Court in the case of ***P.R.Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others*** reported in ***(2006) 4 Supreme Court Cases 501*** is applicable to the Petitioner in the recall petition. The observation of the learned Judge of this Court while disposing of the Writ Petition in W.P.(MD) No.18351 of 2022 is applicable to the Petitioner only. The order of this Court in Crl.O.P.(MD).No.20715 of 2023 is not without jurisdiction. After the Tahsildar had measured the property in S.No.72, it was demarcated indicating that there is



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no encroachment in the property remaining with the Mosque. 2 acres and 58 cents is still with the Mosque only. The Mosque had protected its property by putting up compound wall in 2 acres and 10 cents leaving out 48 cents for use by the Hospital authorities. Similarly, the Hospital which was donated 3 acres by the Mosque, had put up compound wall of the property in the Hospital, leaving out some extent out of 3 acres for use by the Mosque authorities and both are enjoying each other's property. There is no dispute regarding that part of the enjoyment. After having measured S.No.72 in its entirety of 10 acres, the Mosque cannot object to the Petitioner in the Crl.O.P.(MD).No.20715 of 2023 seeking police protection to put up fence in her property. If the submission of the learned Counsel for the Petitioner in the recall Petition (Jalal Jamal Jummah Mosque) is to be accepted, then instead of filing the Writ Petition in W.P.(MD) No.18351 of 2022, the Jalal Jamal Jummah Mosque ought to have filed a Civil Suit before competent Civil Court. Till date, even though it was pointed out in the Writ Petition by the learned Judge of this Court, the Mosque had not filed any suit to establish their title or to remove encroachment. Therefore, it cannot be a petition to recall the order passed in Crl.O.P.(MD).No.20715



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of 2023. Further, the learned Counsel for the Petitioner in Crl.O.P. (MD).No.20715 of 2023 (Ramjan Beevi) submitted that the attempt of the Petitioner herein to recall the order, is without any basis.

18. The only point raised is that Ramjan Beevi is not a party to the Writ Petition in W.P.(MD) No.18351 of 2022. That cannot be a ground to object to recall the order passed in Crl.O.P.(MD).No.20715 of 2023. The submission of the learned Counsel for the Petitioner in the recall petition in Crl.MP.(MD) No.5222 of 2024 is that, filing of Crl.O.P.(MD) No.20715 of 2023 attracts res-judicata, since the earlier Crl.O.P. filed by the Petitioner in in Crl.O.P.(MD) No.16554 of 2021 and the order passed therein, dated 28.10.2021 is not applicable to the criminal cases. If that principle is applied, then in any case, a petition under Section 482 of Cr.P.C. cannot be filed before the Madurai Bench or the High Court including bail petitions. For this, Mr.Henri Tiphagne, learned Counsel for the Petitioner in Crl.O.P. (MD) No.20715 of 2023 relied on the ruling of the Delhi High Court in ***O.M.P. (T) (Comm.) 1/2020, dated 17.01.2023***, in the case of ***Daya Engg. Works (Sleeper) Ltd. Vs. Union of India and Anr.*** The learned Counsel for



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the Petitioner in Crl.O.P.(MD) No.20715 of 2023 (Ramjan Beevi) submitted that the ruling of the Delhi High Court is based on the ruling of the Hon'ble Supreme Court, which are extracted as follows:-

- (1) Budhia Swain V. Gopinath Deb, (1999) 4 SCC 396,***
- (2) A.R.Antulay v. R.S.Nayak (1988) 2 SCC 602,***
- (3) Ram Prakash Agarwal vs. Gopi Krishnan,*
(2013) 11 SCC 296, and**
- (4) My Palace Mutually Aided Coop. Society v. B.Mahesh*
2022 SCC OnLine SC 1063.**

In the final portion of the order, it is observed by the Delhi High Court, as follows:-

"15. In any case, it is an established position of law that settled things cannot be permitted to be unsettled at the behest of a person who has not been careful enough with regard to his rights and claim.

16. Therefore, in the instant case, the Order sought to be recalled being passed on merits and no exceptional circumstances as outlined hereinabove being met, no case is made out to entertain the aforesaid application."

Therefore, he seeks dismissal of the present Crl.M.P.(MD).No.5222 of 2024 has no merits.



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Point for Consideration:-

Whether the order passed in Crl.O.P.(MD) No.20715 of 2023, dated 29.02.2024 is to be recalled?

19. The submission of Mr.R.Anand, learned Counsel appearing for the Petitioner (Jalal Jamal Jummah Mosque) cannot be accepted. The Writ Petition in W.P.(MD) No.18351 of 2022 was permitted with the direction as sought by the Mosque in the Writ Petition seeking mandamus to measure the entire S.No.72 of Periyapattinam Village in Keelakarai Taluk, which itself is unwarranted, when the Mosque is clear about its enjoyment, when the Mosque was granted 5 acres and 58 cents by Gift Deed dated 26.05.1964. The Mosque seeking mandamus for the entire 10 acres in S.No. 72 is beyond its enjoyment. The learned Judge while allowing the Writ Petition filed by the Mosque had observed in the order that what had been sought by the Petitioner/Mosque in the Writ Petition in W.P.(MD) No. 18351 of 2022, revolves around civil overtures. The Petitioner-Mosque has every legal right to institute a suit to get declaration and then file an



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Execution Petition to remove the encroachment from their land. The Revenue Authorities have got no power to deal with the issues and the Petitioner/Mosque has to approach only the competent Civil Court. In the face of this particular observation in paragraph No.5 of the order of the learned Judge of this Court in W.P.(MD) No.18351 of 2022, dated 28.09.2022, the Mosque had not approached the Civil Court, instead, the Mosque has filed a mischievous petition to recall the order passed in Crl.O.P. What had been argued by the learned Counsel for the Petitioner in the recall Petition, squarely applies to this case by approaching the High Court under Article 226 of the Constitution of India to establish his declaration of title.

20. The learned Judge of this Court had granted Writ of Mandamus by directing the Tahsildar, Keelakarai Taluk, to conduct survey in S.No.72 of Periyapattinam Village, Keelakarai Taluk, for the entire extent of 10 acres, which is beyond the enjoyment of the Mosque. The Court has to draw adverse inference from the conduct of the Mosque that the Mosque has not



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approached the civil Court, instead, the Mosque has approached the High Court to establish its title for 2 acres and 58 cents. The Tahsildar, Keelakarai Taluk had conducted survey of the entire extent in S.No.72 Periyapattinam Village, Keelakarai Taluk, Ramanathapuram District, and filed a report. When the Tahsildar conducted the enquiry on the directions of the High Court, there cannot be any false records. The report of the Tahsildar is objected by the Petitioner in the recall petition, which is found unacceptable, and if the Tahsildar had committed grave error, it is for the Petitioner to approach the same Writ Court for contempt of the orders of the High Court in W.P.(MD) No.18351 of 2022. Till date, the Petitioner in recall petition (Jalal Jamal Jummah Mosque) had not done so. As rightly observed by the learned Judge of this Court in W.P.(MD) No.18351 of 2022, the subject raised in the Writ Petition revolves around civil overtures. The Petitioner/Mosque has every legal right to first institute a suit to get declaration and then file an Execution Petition to remove the encroachment from their land. Till the date of filing of this recall petition, the Petitioner/Mosque has not undertaken such steps. What is applicable to the Mosque is applicable to the Petitioner in Crl.O.P.(MD) No.20715 of 2023



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(Ramjan Beevi). The entire S.No.72 of Periyapattinam Village was surveyed by the Tahsildar, Keelakarai Taluk, as per the order in W.P.(MD) No.18351 of 2022. There is clarification regarding enjoyment of the property. Therefore, the Petitioner in Crl.O.P.(MD) No.20715 of 2023 was also issued notice, as she is in enjoyment of part of S.No.72. She can make use of the report to fence her property and nothing wrong in it.

21. As rightly pointed out by the learned Counsel for the Petitioner in Crl.O.P.(MD) No.20715 of 2023 (Ramjan Beevi), the order passed by this Court was not passed on the same day. This Court had passed an interim order and subsequently, only on 29.02.2024, the final order had been passed. Therefore, there was enough time for the learned Counsel for the third Respondent in Crl.O.P.(MD) No.20715 of 2023, who has raised objections. The submission of the learned Counsel for the Petitioner in the recall petition cannot at all be accepted, in the light of the discussion in the order in Crl.O.P.(MD) No.20715 of 2023. In the open Court, Mr.A.Mohan, was available as Counsel for the third Respondent. After the report of the Tahsildar was read in the open Court, this Court had raised query to the



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learned Counsel for the third Respondent that the report is very clear that there is no encroachment in 2 acres and 58 cents in the enjoyment of the Mosque and 3 acres, which was granted to the Hospital by the Mosque, and there cannot be any objection when the Petitioner in Crl.O.P.(MD) No. 20715 of 2023 seeks to fence her property.

22. As rightly pointed out by the learned Counsel for the Petitioner (Ramjan Beevi) in Crl.O.P.(MD) No.20715 of 2023, the Revenue Authorities had perused the records with the Revenue Department as well as with the persons, who had been in enjoyment of the respective properties in S.No.72. As per the Tahsildar's report, S.No.72 of Periyapattinam Village is a Natham land. As far as Tamil Nadu State is concerned, in villages, for the common benefit of the villagers, the land is earmarked as Natham, which the Government has no claim in it. That it is for the benefit of the common people in the village to put up their residence or to use it as their Cattle Shed or for any other use for the common villagers. Based on enjoyment of Natham land patta is granted regarding enjoyment and possession. Therefore, regarding those things, the Court cannot pass any



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order under Article 226 of the Constitution of India or under Section 482 of Cr.P.C.. By invoking Article 226 of the Constitution, the Mosque had filed Writ Petition in W.P.(MD) No.18351 of 2022 and based on the order passed in the Writ Petition, the Tahsildar had measured the property in the entire 10 acres in Natham Survey No.72, whereas the Mosque is entitled to 5 acres and 58 cents only. Out of this 5 acres and 58 cents, 3 acres had already been donated to the Hospital by the Mosque. What remains is 2 acres 58 cents. That part of 2 acres and 58 cents, there is no encroachment as per the Tahsildar's report. Now the Mosque cannot have any objection regarding the enjoyment of the property by other residents, who have been there for generations. It is for the Mosque to establish their title to other property other than 5 acres and 58 cents by filing a suit. As per the order passed in the Writ Petition, the Mosque is only entitled to 5 acres and 58 cents in S.No.72. Now as per the Tahsildar's report, the persons in enjoyment of Natham land had been granted Natham patta, for which the Mosque cannot file a Writ Petition to remove the encroachment. The Mosque has to approach the competent Civil Court only. After the Tahsildar's report, when the entire S.No.72 before sub-division had been



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measured with the team of Surveyors by the Tahsildar and the report is made available to the Court, the Petitioner/Mosque in the recall petition in Crl.MP.(MD) No.5222 of 2024 cannot seek recall of the order just because it is inconvenient to them. The argument of the learned Counsel for the Petitioner by relying on the ruling of the Hon'ble Supreme Court in ***P.R.Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others (supra)***, ***State of Punjab Vs. Davinder Pal Singh Bhullar and Others (supra)*** and the ruling of this Court in ***E.Sundaresan (deceased) Vs. Tamil Nadu Wakf Board and Others (supra)*** will not be helpful to the Petitioner' case.

23. The ruling of the Division Bench of this Court in ***E.Sundaresan (deceased) Vs. Tamil Nadu Wakf Board and Others*** reported in **2014 (2) CTC 622** in paragraph Nos.20 and 21, are not applicable to the facts of the case on hand. After getting clarification from the report of the Tahsildar regarding enjoyment of the Natham land by the respective owner of the properties based on the Patta, the Petitioner having been issued Natham patta, is seeking to fence her property with the help of the Police protection,



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which cannot be denied by this Court, in the light of the report of the Tahsildar and in the light of the observations of the Writ Court by the learned Judge of this Court stating what had been raised by the Mosque in the Writ Petition revolves around title to the property and dispute to the civil overtures. Therefore, this petition is found to be misconceived and the same is to be dismissed with heavy costs.

24. In the course of arguments, the learned Counsel for the Petitioner in the recall petition, made observation that the suits are pending before the Sub-Judge, Ramanathapuram in O.S.No.226 of 2021 and before the Principal District Judge, Ramanathapuram, in O.S.No.54 of 2020 and this Court had raised query with the learned Counsel for the Petitioner in the recall petition, whether the Mosque is a party to the civil suit in O.S.No. 226 of 2021 and whether Ramjan Beevi is a party in those suits, the learned Counsel submitted that O.S.No.226 of 2021 is filed by Hameedu Vanjoor against 5 other individuals and O.S.No.54 of 2020 is filed by Seeni Mohamed Thasthakir on behalf of the Jammath, wherein also Ramjan Beevi is not a party.



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25. The only objection for grant of an order for police protection by this Court in Crl.O.P.(MD) No.20715 of 2023 is that Ramjan Beevi, the Petitioner in Crl.O.P.(MD) No.20715 of 2023 was not a writ Petitioner in W.P.(MD) No.18351 of 2022 and that cannot be a ground to re-call the order. As observed in the ruling *(2006) 4 Supreme Court Cases 501* (supra) in the case of *P.R.Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others*, the Police protection is only with limited scope. The protection of right cannot be extended to cases where rights have not been determined. Here, the parties are claiming their ownership based on the enjoyment of Natham lands, which is different from the observation in the above judgment. The parties. who are in enjoyment of the Natham lands had been granted Natham patta by the Revenue Authorities. Till date, the Mosque had not approached the Civil Court in spite of the observations by the Writ Court pointing out that the Mosque is within its right to seek declaration of title by approaching the Civil Court. Therefore, the principles enunciated in the said judgments, apply to the



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Petitioner herein also. The Petitioner in Crl.O.P.(MD) No.20715 of 2023 had made use of the report of the Tahsildar, which had clarified the enjoyment of the respective owners in possession of the respective Natham land. When the Petitioner in Crl.O.P.(MD) No.20715 of 2023 is not a party in the suit mentioned by the learned Counsel for the Petitioner in the recall petition, it shows that she has not encroached any property and she is not a party in a Writ Petition also. Therefore, she is not an encroacher. If she had been an encroacher, the Mosque has to approach the competent civil Court as per the observations made in the order passed in the said Writ Petition. If she is an encroacher in the Government property, only the Government has the power to evict her. As per the report of the Tahsildar, the entire S.No. 72 is an extent of 10 acres in Periyapattinam Village, which is Natham land, which is meant for the enjoyment of the villagers, for which, the Mosque cannot have any objection. What is claimed by the Mosque is on the basis of the Gift Deed by two individuals in the year 1964 for an extent of 5 acres and 58 cents. Out of 5 acres and 58 cents, the Mosque admits that it had donated 3 acres for construction of a Government Hospital. As per the report of the Tahsildar, 3 acres donated by the Mosque is in enjoyment



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of the Hospital, which is protected by the compound wall. What remains with the Mosque is only 2 acres and 58 cents. Out of 2 acres and 58 cents, the Mosque had put up compound wall in 2 acres and 10 cents leaving 48 cents for common use between the Hospital and the Mosque. When the report of the Tahsildar is very clear, this Court, on clear application of mind, had passed orders on the petition filed by the Petitioner Ramjan Beevi.

26. As pointed out by the learned Counsel for the Petitioner (Ramjan Beevi) in Crl.O.P.(MD) No.20715 of 2023, Ramjan Beevi had been issued with summons by the Tahsildar for the entire exercise of measuring S.No. 72 of Periyapattinam Village. Therefore, she need not file a separate application after her petition was dismissed in Crl.O.P.(MD) No.16554 of 2021, dated 28.10.2021. She had been granted clarification by the order passed in the Writ Petition (W.P.(MD) No.18351 of 2022). Based on that, she is within her power to approach this Court to protect her property by putting up a fence, for which, the Mosque cannot claim that the order is without jurisdiction. When the Mosque has not approached the Civil Court



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to declare its title, as pointed out by the Writ Court in paragraph No.5 of the Writ Order, the same applies to the Petitioner (Ramjan Beevi) in Crl.O.P. (MD) No.20715 of 2023. Regarding Natham lands, the persons, who had been in enjoyment through their ancestors, are granted Patta under the Natham Patta Scheme by the Revenue Authorities, for which, the Mosque cannot have any objection. It is a clear case of the Mosque in the Writ Petition that the Mosque was granted 5 acres and 58 cents by way of Gift in the year 1964. Out of 5 acres and 58 cents, 3 acres were donated by the Mosque to the Government of Tamil Nadu to build a Hospital. Beyond this 5 acres and 58 cents, the Mosque cannot have any objection. The attempt of the Mosque to disturb other persons in possession of Natham land, is high-handed and condemnable. Therefore, heavy costs of Rs.1,00,000/- (Rupees One Lakh Only) is now imposed on the Jalal Jamal Jummah Mosque to be paid to the Petitioner (Ramjan Beevi) in Crl.O.P.(MD) No.20715 of 2023.

27. In the result, this Petition is dismissed with heavy costs as stated above.

09.08.2024

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1. The Superintendent of Police,
Superintendent of Police,
Ramanathapuram District.
2. The Inspector of Police,
Thiruppullani Police Station,
Ramanathapuram District.



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SATHI KUMAR SUKUMARA KURUP, J.

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