



W.P(MD)No.17135 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.09.2024

Delivered on : 19.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.17135 of 2024

V.Gurusamy

...Petitioner

Vs.

- 1.The Superintendent of Police,
O/o. The Superintendent of Police,
Tenkasi, Tenkasi District.
- 2.The Deputy Superintendent of Police,
O/o.The Deputy Superintendent of Police,
Puliyangudi, Tenkasi District.
- 3.The Inspector of Police,
Vasuthevanallur Police Station,
Vasuthevanallur, Tenkasi District.

4.S.Subbaiah

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 to 3 to provide adequate police protection to fence the petitioner's property in SF.No.408/1 and SF.No.408/2 situated at Thirumapuram Village, Sivagiri Taluk, Tenkasi District with the help of the



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other District Honest Assistant Director of Survey on the basis of revenue record in the presence of District Revenue Officer, Tenkasi District.

For Petitioner : Mr.K.Baalasundaram, Senior Counsel,
for M/s.KBN Law Office.

For Respondents : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor,
for R1 to R3.

: Mr.V.Meenakshi Sundaram, for R4.

ORDER

The Writ Petition has been filed seeking direction to provide adequate police protection to fence the petitioner's property in SF.No.408/1 and SF.No.408/2 situated at Thirumapuram Village, Sivagiri Taluk, Tenkasi District with the help of the Assistant Director of Survey on the basis of revenue records in the presence of District Revenue Officer, Tenkasi District.

2.The case of the petitioner is that the properties in SF.No.408/1 and 408/2 and various other properties at Thirumapuram Village, Sivagiri Taluk, are the self acquired properties of his parents and they have settled the above properties in favour of the petitioner vide settlement deed, dated



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30.04.2007; that the property in SF.No.408/1 is having 1.82 acres in which, he is having 110 coconut trees and he is irrigating the above coconut trees from the Well situated in SF.No.408/2; that the Government plan marked water channel is situated on the northern side of the Well, which is running from west to east; that the fourth respondent, who is the maternal uncle of the petitioner is having ancestral property in SF.No.413 situated on the north of said channel; that the fourth respondent has filed a suit claiming declaration and injunction with regard to the property in SF.No.413 as against the petitioner and his family members and Thiruvaduthurai Aathinam in O.S.No.230 of 2004 on the file of the District Munsif, Sivagiri; that the said suit was partly decreed favouring the fourth respondent with regard to SF.No.413; that the petitioner has preferred an appeal in A.S.No.65 of 2010 on the file of the Sub Court, Sankarankovil and the said appeal came to be allowed with the finding that there is no Well situated in SF.No.413 and the well is available only in SF.No.408/2 and that the fourth respondent has preferred a second appeal in SA(MD)No.1213 of 2011 and the same is pending on the file of this Court.



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3. The petitioner's further case is that in the civil suit in O.S.No.230 of 2004, an Advocate Commissioner was appointed to note down the physical features and at that time, the revenue officials have filed a rough sketch as if the petitioner's Well is situated within SF.No.413 and 407; that since the report is against the revenue records, the petitioner filed his objections and after thorough enquiry, the report given by the revenue officials has been scrapped by the District Munsif; that the petitioner has raised the complaint against the revenue records for filing false report before the Court and on that basis, inspection cell officer has enquired and recommended to initiate action as against the erring officials vide his report, dated 27.06.2012; that since there was no action taken against the erring officials, the petitioner has filed a writ petition in W.P(MD) No.14271 of 2014, seeking direction to act upon the enquiry report submitted by the District Collector; that this Court has passed an order directing the respondents therein to take appropriate action against the erring officials based on the reports, dated 27.06.2012 and punish the erring officials; that since there was no action even after the above order passed by this Court, the petitioner has filed a contempt petition and the



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same is pending; that in the meanwhile, on 10.05.2024, the fourth respondent with some henchmen had trespassed into the property in SF.No. 408/1 and 408/2 and cut down 40 years old 25 coconut trees and taken away the uprooted trees illegally; that the petitioner has lodged a complaint immediately and though the complaint discloses cognizable offence, the third respondent has refused to register the case for the reasons best known to him; that the petitioner even before the said occurrence, sent representation to the higher police officials on 05.02.2024, seeking police protection to fence his property as per revenue records; that though the petitioner has appeared before the third respondent, there was no action and that therefore, the petitioner with no other option has approached this Court seeking police protection.

4. The fourth respondent has filed a counter affidavit denying the petitioner's affidavit allegations and taken a stand that the petitioner has suppressed many material facts and pending litigations.

5. The case of the fourth respondent is that in the second appeal in S.A(MD)No.1213 of 2011, this Court has appointed a senior member of the



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bar as Advocate Commissioner in C.M.P.No.1938 of 2017, dated 27.02.2017; that the Advocate Commissioner has filed his report with the report of the survey authorities before this Court; that though the petitioner has averred about the orders passed in W.P(MD)No.14271 of 2014, he wantonly suppressed the pendency of the writ appeals; that the writ petition has been filed to frustrate the process of survey and report filed by the survey authorities to the Advocate Commissioner; that the petitioner in the meanwhile made an attempt to get an electricity connection for the Well in dispute by filing a writ petition in W.P(MD)No.1319 of 2015; that the fourth respondent got himself impleaded in the said writ petition and this Court has passed an order, dated 10.03.2024, disposed the writ petition with liberty to the petitioner to submit a fresh representation to the respondents therein on the outcome of the second appeal, which is pending before this Court in S.A(MD)No.1213 of 2011; that the petitioner has made another attempt byway of threatening litigation to the Government officials and filing the writ petition in W.P(MD)No.14271 of 2014 before this Court and obtained interim orders on 14.03.2022 and subsequently, he filed contempt petition in Cont.P(MD)No.780 of 2023; that the fourth respondent, after coming to know about the said proceedings, has filed the



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third writ appeal in W.A(MD)No.463 of 2024 and obtained an interim order; that the Government has also preferred a writ appeal in W.A(MD)No.1598 of 2023 as against the order in W.P(MD)No.14271 of 2014; that though the petitioner is having full knowledge about the above proceedings, has purposely suppressed the same in the writ petition; that the learned Magistrate, Sivagiri in R.C.S.No.15 of 2018 has passed an order, dated 19.11.2020, specifically recording that the Well in dispute between the parties are not within the S.No.408/2 and that since the petitioner has suppressed the material facts and other legal proceedings and filing of the writ petition with the averments bringing choosy facts would amount to abuse of process of Court, the writ petition is liable to be dismissed.

6. It is not in dispute that the fourth respondent has filed a suit in O.S.No.230 of 2004, claiming the relief of declaration with regard to the two items of the suit properties and for consequential permanent injunction. The learned District Munsif, Sivagiri, after trial, has passed a judgment and decree dated 23.07.2010 granting the reliefs of declaration and consequential permanent injunction in respect of the first item of the



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suit property and dismissed the suit in respect of the second item of the suit property. The petitioner has preferred an appeal in A.S.No.65 of 2010 on the file of the Sub Court, Sankarankovil and the appeal was allowed and the judgment and decree passed by the trial Court in respect of the first item of the suit property came to be set aside vide judgment and decree, dated 07.07.2011. Challenging the allowing of the appeal, the fourth respondent has filed the second appeal in S.A(MD)No.1213 of 2011 and the same is pending on the file of this Court.

7. As rightly contended by the learned counsel for the fourth respondent, the petitioner in the affidavit filed in support of the writ petition has referred about the appointment of Commissioner and filing of the report by the Advocate Commissioner and by the Revenue Officials before the District Munsif Court during the pendency of the suit in O.S.No. 230 of 2004.

8.The petitioner has further stated in the affidavit that since the revenue officials have filed a rough sketch as if the Well in dispute is situated in S.No.413 and 407, he has filed his objections and after enquiry,



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the revenue officials' report has been scrapped by the learned District Munsif in I.A.No.179 of 2007 vide order, dated 12.09.2007.

9. It is evident from the records that the fourth respondent has filed a petition in C.M.P.No.1938 of 2017 in SA(MD)No.1313 of 2011 for appointment of Advocate Commissioner and this Court vide order, dated 27.02.2017, has appointed Mr.A.Arumugam as Advocate Commissioner, directing him to inspect the lands in Survey Nos.407, 408 and 413 situated in Thirumalapuram, Sivagiri Taluk, with the help of Assistant Director of Survey and Settlement, Tirunelveli and the relevant portion of the order is extracted hereunder :

“ 9.Having regard to the submissions made by the learned counsel on either side, I appoint Mr.A.Arumugam, Advocate, No. 30, Law Chambers, Madurai Bench of Madras High Court, to inspect the lands in Survey Nos.407, 408, 413 situated in Thirumalapuram, Sivagiri Taluk, Tirunelveli District to note down the physical features and also to locate and fix the boundaries of Survey Nos.407, 408 and 413 with the assistance of the Assistant Director of Survey and Settlement, Tirunelveli, with the records and plans available with the Assistant Director of Survey and Settlement Office, Tirunelveli and also to fix the location of the Well in detail and file a report with the Surveyor's sketch. It is



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open to the parties to give memo of instructions to the Advocate Commissioner and it is open to the Advocate Commissioner to take a decision on the memo of instructions to be given by the parties.

10. ...

11.

12.The Assistant Director of Survey and Settlement, Tirunelveli, is directed to assist the Advocate Commissioner in executing the warrant of commission. The Assistant Director of Survey and Settlement, Tirunelveli, is also directed to produce all the relevant records which are required by the Advocate Commissioner while executing the warrant of commission. The Advocate Commissioner is directed to file his report along with the Surveyor's sketch within a period of four weeks. .”

10. It is also not in dispute that in pursuance of the directions of this Court, the learned Advocate Commissioner has filed his report along with two plans and copy of the report issued by the surveyor with his plans.

11. As rightly contended by the learned counsel for the fourth respondent, the petitioner in his affidavit filed in support of the petition has nowhere whispered about the appointment of Advocate Commissioner and filing of the Commissioner's report along with surveyor's report in the second appeal proceedings before this Court.



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12. Moreover, the petitioner in the affidavit has simply stated that this Court in W.P(MD)No.14271 of 2014, has directed the respondents to take appropriate action against the erring officials based on the reports, dated 27.02.2017 and punish the erring officials and since direction was not complied with, he filed the contempt petition and the same is pending. But according to the private respondents, since he was not a party to the writ petition, he has filed a third party appeal in W.A(MD)No.463 of 2024 and obtained interim orders and that the Government has also preferred writ appeal in W.A(MD)No.1598 of 2023, challenging the order passed in W.P. (MD)No.14271 of 2014 and the same are pending.

13. It is not the case of the petitioner that he is not aware of the writ appeal and granting of the interim order by this Court in the writ appeal. As rightly contended by the learned counsel for the fourth respondent, it can easily be inferred that the petitioner has wantonly suppressed the above factual aspects in the affidavit filed in support of the writ petition.

14. Even according to the petitioner, the main dispute is as to whether the Well in dispute is situated within the lands in S.No.408/2



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owned by the petitioner or in S.No.408/2 and 413 as claimed by the other side.

15. As already pointed out, taking note of the main dispute between the parties, the learned Judge of this Court in the second appeal has appointed an Advocate Commissioner to inspect the lands in Survey Nos.407, 408, 413 situated in Thirumalapuram, Sivagiri Taluk, Tirunelveli District and to locate and fix the boundaries of Survey Nos.407, 408 and 413 with the assistance of the Assistant Director of Survey and Settlement, Tirunelveli, and also to fix the location of the Well in detail and to file a report with the Surveyor's sketch and that in pursuance of the directions, the learned Advocate Commissioner has also filed a report as directed by this Court.

16. The learned Senior Counsel appearing for the petitioner would rely on the decision of this Court in ***S.Ashokan and others vs. State rep.by the Commissioner of Police, The Greater Chennai, Vepery, Chennai and others*** reported in ***2015 (2) L.W 999***, wherein the learned Judge of this Court has specifically held that when the rights of the parties have not been



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determined by the Civil Court, police protection cannot be sought for and the relevant passage is extracted hereunder :

“ 30. Therefore, when the rights have not been determined by the Civil Court, police protection cannot be sought for. In this case, rights regarding possession and title were already decided by this Court in Second Appeal and confirmed by the Apex Court and the petitioners are found to be the lawful owners and also found to be in possession of the property. Therefore, they are entitled to approach this Court for protection of rights declaring the decree or an order passed by the Civil Court.”

17. In the above decision's case, rights of the parties with regard to the title and possession were already decided by the High Court in second appeal, which was confirmed by the Hon'ble Supreme Court and that the Courts have found that the petitioners were in possession of the property and in that scenario, police was directed to give police protection to the petitioners to enjoy the property. In the case on hand, as already pointed out, the second appeal is pending and as such, it cannot be stated that the rights of the parties have already been determined.



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18. It is settled law that a party, who invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution is supposed to be truthful, frank and open and he would disclose all material facts without any reservation, even if they are against him. The petitioner cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress or not to disclose other facts.

19. It is pertinent to note that the very basis of the writ jurisdiction rests in disclosure of true and complete facts and if material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The Supreme Court as well as the High Courts have univocally held that suppression of material facts and not coming with clean hands disentitles the petitioners of discretionary relief under Article 226/227 of the Constitution.

20. In the case on hand, as already pointed out, the petitioner has suppressed very many material facts and has not come with clean hands. Viewing from any angle, this Court has no hesitation to held that the



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petitioner is not entitled to get the relief claimed. Hence, this Court concludes that the writ petition is devoid of merits and the same is liable to be dismissed.

21. In the result, the Writ Petition is dismissed. No costs.

19.10.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

- 1.The Superintendent of Police,
O/o. The Superintendent of Police,
Tenkasi, Tenkasi District.
- 2.The Deputy Superintendent of Police,
O/o.The Deputy Superintendent of Police,
Puliyangudi, Tenkasi District.
- 3.The Inspector of Police,
Vasuthevanallur Police Station,
Vasuthevanallur, Tenkasi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J

das

Pre-delivery order made in
W.P.(MD)No.17135 of 2024

Dated : 19.10.2024