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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.38673 of 2024

--

D.Vijayalakshmi, W/o N.Devaraj .. Petitioner-in-person

Vs.

State of Tamil Nadu, represented by:

1. The Secretary, Home Department,
   Secretariat,
   Chennai-600 009.

2. The Director General of Police,
   Dr.Radhakrishnan Salai,
   Mylapore, Chennai-600 004.

3. The Commissioner of Police,
   Coimbatore City,
   Coimbatore-641 018.

4. The Joint Director and Head of Zone,
   Central Bureau of Investigation,
   III Floor, E.V.K.Sampath Building,
   College Road, Chennai-600 006.

5. The Inspector of Police (Law and Order),
   (Crime No.1226/2017),
   B.3, Police Station, Variety Hall Road,
   Coimbatore-641 001.

6. N.Bikash Ch bera, S/o Narayan Bera

7. N.Tutun Bera, S/o Narayan Bera

.. Respondents

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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to transfer the further investigation in Crime Number 1226 of 2017 on the file of the fifth respondent to the fourth respondent and in turn, direct him to form a special investigation team to conduct further investigation as per the order dated 06.02.2023 and 06.07.2024 passed by the Additional Mahila Court of Coimbatore in Crl.M.P.No.9129 of 2022 and Crl.M.P.No.20463 of 2024.

For petitioner : Mrs.D.Vijayalakshmi
For respondents: Mr.S.Sugendran, Addl.P.P. for RR-1 to 3 and 5
Mr.K.Srinivasan, Spl.P.P. for CBI Cases for R-4
No appearance for RR-6 and 7 (notice served)

ORDER

The petitioner-in-person has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to transfer the further investigation in Crime Number 1226 of 2017 on the file of the fifth respondent to the fourth respondent and in turn, direct him to form a special investigation team to conduct further investigation as per the order dated 06.02.2023 and 06.07.2024 passed by the Additional Mahila Court of Coimbatore in Crl.M.P.No.9129 of 2022 and Crl.M.P.No.20463 of 2024.

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2. Heard the petitioner-in-person and the learned Additional Public Prosecutor appearing for the respondents 1 to 3 and 5 and Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the fourth respondent and inspite of notice having been served, there is no appearance for the sixth and seventh respondents.

3. The case of the petitioner, in brief, is as follows:

(a) The petitioner and her son are the owners of the property bearing Door No.288-291, M.N.G.Street, Gandhi Park, Coimbatore-641 001, by virtue of the Will executed by the petitioner's brother Mr.Gopalsamy and the petitioner is in possession of the said property along with tenants till 13.03.2010. The said Gopalsamy filed an Execution Petition in E.P.No.16 of 2004 in R.C.O.P.No.96 of 1983 against one of the tenant Mrs.Karpagavalli to execute the orders passed in R.C.O.P.NO.96 of 1983 and during the pending proceedings, the said Gopalsamy died on 13.03.2005. After his demise, the petitioner became the absolute owner of the said property as per the Will executed by Mr.Gopalsamy and all of them were in possession along with the tenants till 13.03.2010.

(b) Mrs.Nagammal and Mr.Ragunathan who are wife and son of the said Gopalsamy, were later impleaded as legal heirs in the said E.P.No.16 of 2004. Under the guise of the order passed by the Execution Court, the said

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Mrs.Nagammal and Mr.Ragunathan illegally trespassed the petitioner's property with the help of the Advocate Commissioner and the Police Officers on 13.03.2010 and the petitioner was illegally dispossessed from the property and the entire property was demolished the entire property without following due process of law.

(c) The petitioner and others filed a suit for declaration and delivery of possession in O.S.No.269 of 2010 and O.S.No.455 of 2010 before the II Additional Sub-Court of Coimbatore and during the pending proceedings, Mrs.Nagammal and Mr.Ragunathan had suppressed the suit and given sale deed to the 6th and 7th respondents and sale agreement to one Bhuvaneshwari and Shankar Maiti and they were subsequently impleaded in the respective suits.

(d) The 6th and 7th respondents illegally created fake TSLR (Revenue Record) and the petitioner had filed a complaint before the fifth respondent by narrating the entire issue and after the directions of the Court in Crl.O.P.No.18625 of 2017 against the 6th and 7th respondents under Sections 420, 468 and 471 IPC. The cause of action in the FIR is mentioned as 13.03.2010.

(e) The 5th respondent failed to investigate the complaint and prolonged the investigation for two years and therefore, the petitioner filed a petition under Section 482 Cr.P.C. to transfer the investigation to CBI and this Court in

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Crl.O.P.No.24517 of 2019, directed the fifth respondent to file final report within three months and thereafter, the accused had filed anticipatory bail application before this Court in Crl.O.P.No.26332 of 2019 and this Court granted bail to the 6th and 7th respondents with certain conditions and later the conditions had been relaxed in Crl.M.P.No.2642 of 2020 and thus, it is clear that the fifth respondent is collusive with the sixth and seventh respondents.

(f) The fifth respondent did not file final report within the time fixed by the Court and hence, thereafter, the petitioner filed an application under Section 11 of the Contempt of Courts Act. During the pendency of the proceedings, the fifth respondent had filed a closure report before the Magistrate Court and the petition filed under Section 11 of the Contempt of Courts Act, stood closed.

(g) The petitioner had filed a protest petition before the Magistrate Court to set aside the closure report filed by the fifth respondent and the Additional Mahila Court, by order dated 06.02.2023 in Crl.M.P.No.9129 of 2022, had rejected the closure report filed by the fifth respondent and the fifth respondent was directed to further investigate in Crime No.1226 of 2017.

(h) The 6th and 7th respondents were in bail and they are causing obstruction in the further investigation by the fifth respondent and hence, the petitioner had filed a petition before this Court in Crl.O.P.No.26332 of 2019 seeking to set aside the order issued by this Court, dated 17.10.2019 and to take

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the accused on custody. This Court, by order dated 20.12.2023 in Crl.M.P.No.14845 of 2023, had imposed certain conditions to the accused and the Magistrate Court was directed to monitor the investigation in Crime No.1226 of 2017.

(i) The petitioner had filed a petition before the Additional Mahila Court in Crl.M.P.No.20463 of 2024 to transfer the investigation from the file of the fifth respondent to some other investigation officer coming under the jurisdiction of the Additional Mahila Court and this Court, in the order dated 06.07.2024, directed the fifth respondent to file charge-sheet expeditiously and the fifth respondent was further directed to file status report for each and every month.

(j) The investigation was not properly conducted by the fifth respondent inspite of the direction of the Additional Mahila Court and hence, the petitioner-in-person had filed the present Writ Petition to transfer the investigation in Crime No.1226 of 2017 from the fifth respondent to the fourth respondent.

4. The petitioner-in-person contended as follows:

(i) The fifth respondent did not investigate the case properly in true letter and spirit and have failed to perform their statutory duty to investigate the crime in accordance with law.

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(ii) The investigation is tainted with animosity at the behest of the Police Officers, since they were involved in illegal dis-possession and demolition of the petitioner's property without following the due process of law.

(iii) The fifth respondent purposefully left loop-holes to facilitate the accused to have an easy escape in future trial and the petitioner's family is deprived of fair investigation which would result in frustration of the petitioner's right to have a fair trial.

(iv) The investigation was purposely delayed by the fifth respondent to facilitate safe passage to the accused in future trial. The investigating officer (IO) had deliberately kept certain lacunae at the behest of influential accused. Inspite of seriousness in the matter, due to dilly-dally tactics adopted by the Police, the petitioner and her family being victims, had lost faith in the investigating agency which caused the petitioner to file too many petitions before the Court and made several representations. Since no cognizance was taken by the higher Police authorities, as well as by the State, the petitioner invoked the Writ Jurisdiction of this Court for transfer of the investigation.

(v) The fifth respondent, in order to save the influential persons/accused, purposefully the proceedings had been delayed, and the Constitutional right of the petitioner to have a fair and impartial investigation had been jeopardized.

(vi) The cause of action had taken place on 13.03.2010 and the FIR had

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been registered only on 02.11.2017 and that too, even after the intervention of this Court in Crl.O.P.No.18625 of 2017 and the fifth respondent failed to file the FIR against the person(s) involved in illegal dis-possession and demolition of the property even though the cause of action in the FIR as 13.03.2010.

(vii) The fifth respondent failed to comply with the order of the Additional Court in Crl.M.P.No.9129 of 2022 and Crl.M.P.No.20463 of 2024 in true spirit and adopting dilly-dally tactics by allowing the accused and other Police Officers to escape from the clutches of law.

(viii) Article 21 of the Constitution of India protects the persons of their lives and personal liberty, except according to the procedures established by law and the said Article not only took within its fold unforeseen rights of the accused, but also the rights of the victim.

(ix) The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation. The Court must ensure the powers when the principle of fair investigation is tried to be tinkered, or from the facts, it emerges that the investigation is lingering or shabby or carried in the manner other than finding of truth.

(x) The accused comes before this Court the petition for anticipatory bail only after the direction of the Court by directing the fifth respondent to file final report within three months from the date of the order. This is evident to show

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that the fifth respondent was collusive and hand-in-glove with the accused and allowing them to get anticipatory bail before the Court.

(xi) The closure report filed by the fifth respondent unambiguously shows that the fifth respondent failed to un-earth the heinous crime of illegal dis-possession and demolition of the suit property without following due process of law.

(xii) The fair trial and fair investigation are part of the Constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and therefore, the minimum requirement of rule of law is that the investigation must be fair, transparent and judicious. The fifth respondent cannot be permitted to conduct the investigation in a tainted and biased manner so as to take away the victims entitlement for fair investigation.

(xiii) The Supreme Court in the case of Amar Nath Chaubey Vs. Union of India and others, reported in AIR Online 2020 SC 898, held that the Police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure and investigation is the exclusive privilege and prerogative of the Police, which cannot be interfered with. But, if the Police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the Court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the Police. Once the

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conscience of the Court is satisfied from the materials on record, and that the Police had not investigated properly or apparently is remiss in the investigation, the Court has a bounden Constitutional obligation to ensure that the investigation is conducted in accordance with law and if the Court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the Police.

(xiv) Further, the Apex Court in the case of Dharam Pal Vs. State of Haryana and others, reported in 2016 (4) SCC 160, ruled that though extraordinary powers have to be exercised sparingly, however, if the situation warrants to do a complete justice, the Court should step in. The powers of the Constitutional Court are unlimited and investigation can be transferred even after commencement of the trial.

(xv) Moreover, the Supreme Court in Neetu Kumar Nagaich Vs. State of Rajasthan, reported in 2020 (16) SCC 777 held that the Judiciary's pivotal role in safeguarding the fundamental rights through vigilant oversight of the investigative processes. By mandating a de-novo investigation, the Court not only addressed the immediate miscarriage of justice, but also reinforced the imperative for law enforcement agencies to conduct thorough, unbiased and

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technologically adept investigations. This judgment of the Apex Court fortifies the Constitutional mandate that fair investigation is intrinsic to the right of life and personal liberty, ensuring that individuals are not denied justice, but due to procedural inadequacies or systemic inefficiencies.

(xvi) The in-action of the fifth respondent is in violation of the fundamental, Constitution rights and rights to women senior citizen which caused mental agony, harassment and financial loss.

(xvii) Hence, for all the foregoing reasons, the petitioner has filed the present Writ Petition as party-in-person for the relief stated surpa.

5. This Court perused the materials available on record including the interim report, signed on 10.01.2025 issued by the Police Inspector, B.3.V.H.Road (L & O) Police Station, Coimbatore City, addressed to the petitioner-Vijayalakshmi, and the said report shall form part of this order, from which, it is clear that the investigation in this case is going on.

6. Hence, the investigating officer(s) shall proceed with the investigation in the manner known to law and appropriate charge-sheet, if necessary, shall be filed before the Court.

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7. The said interim report dated 10.01.2025 shall form part of this order and also the proceedings dated 06.07.2024 in C.M.P.No.20463 of 2024, issued by the Judicial Magistrate (in-charge), Additional Mahila Court, Coimbatore, in relation to the follow-up action, shall also form part of this order.

8. At this juncture, the learned Additional Public Prosecutor submitted the case was closed as civil in nature and therefore, the petitioner has filed the protest petition before the Jurisdictional Magistrate and based on the direction, the case was registered and as per the direction of this Court, and every month progress of the investigation, has also been sent to the petitioner.

9. But however, till date, the charge-sheet has not yet been filed.

10. Hence, for the reasons stated above, since the investigation is in progress and report has also been sent to the petitioner periodically, there is no reason to transfer the investigation at this stage.

11. Therefore, the respondents 1 to 5 are directed to complete the investigation and file the charge-sheet before the concerned Court. The said charge-sheet shall be filed within 5 months from today. The fifth respondent

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shall conduct fair investigation and file charge-sheet in accordance with law.

12. The petitioner-D.Vijayalakshmi is directed to extend their fullest co-operation to the investigating officer(s) in order to complete the investigation as directed above.

13. With the above observations/directions, this petition is disposed of. There shall be no order as to costs.

20.01.2025

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To

1. The Secretary, Home Department,
   Secretariat,
   Chennai-600 009.

2. The Director General of Police,
   Dr.Radhakrishnan Salai,
   Mylapore, Chennai-600 004.

3. The Commissioner of Police,
   Coimbatore City,
   Coimbatore-641 018.

4. The Joint Director and Head of Zone,
   Central Bureau of Investigation,

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5. The Inspector of Police (Law and Order),
(Crime No.1226/2017),
B.3, Police Station, Variety Hall Road,
Coimbatore-641 001.

6. The Public Prosecutor, High Court, Madras.

7. The Special Public Prosecutor for CBI cases, High Court, Madras.

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