

(2015) 07 MAD CK 0159

In the Madras High Court

Case No : Writ Petition No. 4661 of 2014 and M.P. No. 1 of 2014

S. Kannan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2015) 07 MAD CK 0159

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; R. Lakshmi Narayanan, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T.S. Sivagnanam, J—The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus, to direct the respondents 1 to 3 to protect the life and property of the petitioner and his family after restoring his possession over an extent of 48 cents comprised in S. No. 987/3A, Athiyamankottai Village, Dharmapuri District, which is alleged to have been disturbed by the respondents 6 to 10 with the aided assistance of the respondents 4 and 5, who are Police officers and to direct payment of compensation of Rs. 25 lakhs for violation of the fundamental right to life and property under enshrined Article 21 of the Constitution of India, by taking into consideration of his representation dated 16.12.2013.

2. Heard Mr. N. Manokaran, learned counsel appearing for the petitioner, Mr. R. Lakshmi Narayanan, learned Additional Government Pleader appearing for the respondents 1 to 3, Mr. G. Arul Murugan, learned counsel appearing for the respondents 4 & 5 and Mr. R. Subramanian for Mr. I. Abrar Mohammed Abdullah, learned counsel appearing for the respondents 6 to 10 and with the consent of the learned counsels, the Writ Petitioner itself is taken up disposal.

3. The dispute is between the petitioner and the respondents 6 to 10 over a property measuring an extent of 48 cents comprised in Survey No. 987/3A, Athiyamankottai Village, Dharmapuri District. Though the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 6 to 10 have elaborately traversed through the civil litigation between the parties to justify their respective stand, this Court does not propose to adjudicate the civil rights of the parties over the property in question in the light of the judgment of the Civil Court, which have been rendered inter se. This Court proposes to consider only as to whether the respondents 4 and 5 exceeded in their jurisdiction while discharging their duties in their official capacity as Inspector of Police and rendered any assistance for the alleged illegal act of the respondents 6 to 10?

4. To consider this issue a brief prelude is essential. The seventh respondent purchased the land measuring an extent of 98 cents in the said survey number vide sale deed dated 13.09.1993, executed by one Mr. Dhanabalan, the power of attorney agent of the land owners. Out of the 98 cents, the seventh respondent sold a portion of the property to one Ms. Lakshmi vide sale deed dated 05.11.1998. It is stated that the seventh respondent retained the remaining extent being 48 cents, the property in dispute. The petitioner is said to have purchased the same property vide sale deed dated 18.06.2007, executed by Mr. Krishnan one of the sons of the original owner. The petitioner as well as seventh respondent and another, filed Suits before the Civil Court. The Suit filed by the seventh respondent was for declaration and permanent injunction and the Suit was filed by the petitioner was for bare injunction. By judgment dated 23.09.2005, the Suit filed by the seventh respondent was decreed and the Suit filed by the petitioner was dismissed. The judgment and decree have become final as there was no appeal preferred by the petitioner. Thereafter, another Suit was filed by the petitioner against the seventh respondent in O.S. No. 237 of 2013, for declaration and permanent injunction and the Trial Court initially granted an order of interim injunction in I.A. No. 896 of 2013, which was subsequently vacated.

5. The petitioner would state that based on the complaint given to the fourth respondent an enquiry was conducted and it is stated that the fourth respondent advised both parties to agitate their rights before the Civil Court. Based on the another complaint given by the seventh respondent, the fifth respondent Inspector of Police, Anti Land Grabbing Special wing, Dharmapuri, directed the petitioner and his mother to appear for an enquiry and they were taken to the Police Station on 29.11.2013. It is stated that on 01.12.2013, their house was ransacked and the property was demolished using heavy machinery. The petitioner's wife said to have lodged a complaint on 02.12.2013. In the meantime, the petitioner and his aged mother were remanded to Judicial custody and after being enlarged on bail, the petitioner lodged a complaint on 31.12.2013, and it appears that the complaint given by the petitioner's wife as well as the complaint given by the petitioner, were referred as "mistake of fact"

against which proceedings have been initiated by the petitioner and his wife by filing private complaints, which are now pending consideration. The petitioner would state that the damage to the property and to themselves were at the behest of the respondents 6 to 10, who had the active support of the respondents 4 & 5, as a result of which no action was taken against the assailants. The petitioner would therefore state that the respondents 4 to 10 colluded together and have taken forcible possession of the property without following any procedure prescribed by law.

6. The learned counsel appearing for the petitioner made elaborate reference to the Revenue records and the discrepancy in the deposition of witnesses before the Civil Court to show that the petitioner is lawfully entitled to the property in question and the action of the respondents 4 to 10 is wholly illegal and therefore, the petitioner should be put back in possession of the property and be paid compensation for violation of fundamental rights to life and property. The learned counsel appearing for the petitioner in support of his contention placed reliance on the decision of this Court in the case of *R. Mala vs. The Secretary, A. 2943 Alanthur PAC Bank & Ors.*, reported in 2007-3-LW-68.

7. The learned counsel appearing for the respondents 6 to 10 submitted that the petitioner is a "land grabber" and knowing fully well that the seventh respondent's title has been declared by the Civil Court and a decree of permanent injunction has been granted on 23.09.2005, the petitioner with an intention to grab the property obtained a sale deed in respect of the same property from Krishnan, one of the sons of the original owner, who executed a sale deed dated 18.06.2007, based on which the petitioner attempted to obtain patta for the property and to enter upon the property. It is submitted that the conduct of the petitioner will clearly establish that he has attempted to usurp the property of the seventh respondent, who had purchased the same during 1993. It is further submitted that the petitioner now pleads an inconsistent case when his specific stand in the Suit that he was the lessee of the property. It is submitted that inspite of the factual situation being thus, the petitioner obtained a patta on 06.08.2013 and the same is illegal, since the title of the property has been declared in favour of the seventh respondent by the Civil Court. Further, it is submitted that the prayer sought for in the Writ Petition cannot be granted, more so, when the petitioner has been unsuccessful before the Civil Court.

8. The third respondent, the Superintendent of Police, Dharmapuri has filed a counter affidavit wherein he has elaborately stated about the Civil litigation between the parties and the out come of the Criminal case. So far as the allegation with regard to the forcible dispossession and ransacking as alleged by the petitioner, it is stated that the seventh respondent being the rightful owner, has levelled her own land using JCB with labours and the same is not illegal. Further in the counter affidavit, the third respondent stated that the investigation was done on correct lines and there is no error in the manner in which the complaints were investigated. Further, it is submitted that there was no offence

of dacoity, mischief, trespass or assault and they are exaggerated stories as made by the petitioner.

9. The fourth respondent the Inspector of Police, who has been impleaded in his personal capacity, has filed a counter affidavit stating that he was on casual leave on 01.12.2013 and therefore, he did not investigate the complaint in Crime No. 326 of 2013 and it was done by one Mr. Jagannathan, who was the Special Sub-Inspector. Therefore, it is stated that the allegations against the fourth respondent are false. The fifth respondent who is the Inspector of Anti Land Grabbing Special Cell, has also been impleaded in his personal capacity and he has referred to the civil litigation between the parties and has stated that the seventh respondent is the real owner of the disputed 48 cents and the petitioner has no right over the property. It is further stated that the fifth respondent has carefully enquired into the matter, perused the connected records and stated that the petitioner knowingly with an intention to cheat the seventh respondent with the other accused, Mr. Kannan, Ms. Muniyammal and Mr. Krishnan, executed a forged sale deed in his favour registered as document No. 1665 of 2007 and the sale deed has been created without any right or claim, as the civil suit ended in favour of the seventh respondent. It is further stated that the petitioner trespassed into the property on 29.11.2013 and therefore, the seventh respondent preferred a complaint and on receiving the complaint, the third respondent has instructed to register a case in the Anti-Land Grabbing Special Cell, Dharmapuri and the petitioner and his mother were arrested on 29.11.2013 and remanded to Judicial custody. Further, it is submitted that Mr. Krishnan, who is aged about 78 years, was arrested and released on 14.02.2013 itself. Therefore, the stand taken by the fifth respondent is that Mr. Krishnan created a document without any right or title over the property and the same is forged using the same as genuine the petitioner has attempted to grab the property.

10. After hearing the learned counsels appearing for the parties and perusing the materials placed on record, it is clear that the official respondents namely, the respondent Police have made a roving enquire into the title of the said property. The scope of investigation of the crime ought to have been restricted to whether there was a case of land grabbing? The petitioner claims right over the property based on a registered document. There is no record to show that the said registered instrument in favour of the petitioner has been annulled in the manner known to law. The question as to whether Mr. Krishnan and others could have executed the sale deed dated 18.06.2007, in favour of the petitioner obviously would not fall within the jurisdiction of the Inspector of Police, Anti Land Grabbing Special Unit. Thus prima facie it appears that the fifth respondent Police has overstepped in the matter of investigating the complaint lodged by the seventh respondent. However, this Court is not inclined to make any other observations in this regard, since the complaints filed by the petitioner has been referred as "mistake of fact" and the petitioner has resorted to other remedies available to him under the provisions of the Code of Criminal Procedure. Therefore, the petitioner has to necessarily work out his rights in those

proceedings. At this stage, it has to be pointed out that the Hon''ble First Bench of this Court in the case of R. Thamaraiselvan Vs. Government of Tamil Nadu and Others(2015) 2 CTC 1 : (2015) 1 LW 673 : (2015) 1 LW(Cri) 145 : (2015) WritLR 105 , has quashed G.O.Ms. No. 423, dated 28.07.2011, forming 36 Anti Land Grabbing Special Cells in Tamil Nadu to deal with the land grabbing cases and G.O.Ms. No. 451, dated 11.08.2011, constituted Special Courts to do with these cases as the orders offend Articles 14 and 21 of the Constitution of India. Further, it has been held that the Government order does not disclose any principles or guidelines, based on which the Special Cells constituted to deal with land grabbing cases would select class of offence, cases or class of cases. Further, it is submitted that under G.O.Ms. No. 423, Land Grabbing" or "Land Grabber" is not defined and in the absence of any Special Act or legislation, unrestricted power/discretion has been vested with Anti Land Grabbing Cells to pick and choose persons, who are said to have indulged in those kind of offence and possibility of misuse cannot be ruled out. Further, it was pointed out that the discretion vested with the Police Personnel attached to Anti Land Grabbing Special Cells, was also frowned upon. In the light of the decision of the Hon''ble First Bench of this Court, the question of exercising powers under the said Government Order does not arise and the matter requires to be dealt with in terms of the procedure under Cr.P.C.

11. In the preceding paragraph, this Court, after taking note of the manner in which the fifth respondent Police has dealt with the complaint of the seventh respondent, and it was pointed out that there has been a roving enquiry into a civil claim, which obviously would not be within the realm and jurisdiction of a Police Officer investigating a crime. In fact, the counter affidavit seeks to grant a seal of approval to the title of the seventh respondent which is uncalled for and without jurisdiction. It is for the seventh respondent to take advantage of the decree of the Civil Court passed in her favour declaring her title.

12. All that, the fifth respondent Police should have considered is whether there was an attempt to forcibly take away the land from the seventh respondent. In the counter affidavit filed by the fifth respondent, it is admitted that the fifth respondent levelled the land on her own volition. The counter affidavit is silent as to who erected the superstructure and the circumstances under which the buildings standing on the land, was raised to the ground. Hence, this Court is of the view that the manner in which the fifth respondent dealt with the complaint given by the seventh respondent and whether there was any overreach has to be independently considered. This has to be necessarily done by a Superior Officer above the rank of Superintendent of Police and such officer should not have dealt with the case on hand.

13. Insofar as the relief sought for by the petitioner to restore his possession, the same cannot be granted by a Writ Court and accordingly such prayer is rejected.

14. The prayer for payment of compensation cannot be considered at this

juncture, more so, in a Writ Petition, when private complaints were filed by the petitioner is pending consideration. Therefore, at this stage of the matter, no order can be passed for grant of compensation, but it is left open to the petitioner to work out his rights in the manner known to law after the conclusion of the criminal proceedings initiated by him.

15. In the result, the Writ Petition is disposed of, by directing the respondents 3 to 5 to place the entire files and records concerning complaint given by the seventh respondent, before the Inspector General of Police of the concerned area, who shall nominate an Officer above the rank of Superintendent of Police to examine as to whether the manner of investigation done by the fifth respondent Police on the complaint given by the seventh respondent was in accordance with law; whether there was any overreach; and whether there was any excess or action taken beyond the jurisdiction of the fifth respondent Police. The Officer, so appointed, shall conduct a thorough investigation and submit a report to the second respondent for appropriate action. Copy of such report shall be furnished to the petitioner and the seventh respondent. No costs. Consequently, connected miscellaneous petition is closed.