

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.05.2007

CORAM

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

W.P.No.1775 of 2007

Senbagasundari

.. Petitioner

-VS.-

1. The Superintendent of Police
Vellore District
2. The Inspector of Police
Arakonam Taluk
Nemeli Police Station,
Vellore District

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to offer police protection to the petitioner to enjoy the property situate at Survey No.33/1, 50/1B & 55/1C1 measuring 0.70 cents, 1.55 cents, 1 acre respectively, in Pinnavaram Village, Arakonam Taluk, Vellore District.

For Petitioner : Mr. V.Raghavachari

राष्ट्रसेव जयते
O R D E R

The short facts that are necessary for the disposal of the above writ petition are as follows:-

The petitioner claims to be the owner of the property at Survey No.33/1, 50/1B & 55/1C1 measuring 0.70 cents, 1.55 cents, 1 acre respectively, in Pinnavaram Village, Arakonam Taluk, Vellore District. Pursuant to an agreement of sale entered into between the petitioner and one Kothandapillai in respect of the said property, a suit for specific performance came to be filed by Kothandapillai, but the suit was dismissed and the first appeal was allowed, but ultimately the second appeal in S.A.No.1208 of 2006 filed by the petitioner was allowed by this Court by judgement dated 07.12.2006. By the said judgement, the relief of specific performance was refused. According to the petitioner, after obtaining the decree in her favour she entered into the property to carry on the agricultural operations, but the unsuccessful plaintiff threatened her with dire consequences and hence the

petitioner approached the second respondent on 23.12.2006 and lodged a complaint and sought for police protection, but according to the petitioner, the police protection was not provided. In such circumstances, the above writ petition has been filed.

2. The contention of the petitioner is that after the filing of the suit, whatever relationship that might have been enjoyed between the plaintiff in the suit and the petitioner herein got disrupted automatically and under such circumstances, it is the duty of the State Police to offer protection enabling the petitioner to enjoy the property effectively.

3. I have heard Mr.V.Raghavachari learned counsel for the petitioner.

4. Mr. V.Raghavachari, learned counsel for the petitioner relying upon the following decisions:-

- (i) 1989 TNLJ 311 (John V. John Vs. Goolamally Estates, Madras - 1)
- (ii) 1996 (1) SCC 415 (P. Veerappa Vs. M A Mohammed Amanulla)
- (iii) 1999 (1) CTC 339 (Raja A., Vs. Ingnsasi)
- (iv) 2000 (9) SCC 339 (R. Kanthimathi Vs. Beatrice Xavier)
- (v) 2002 (2) SCC 583 (Shashi Kapila Vs. R.P. Ashwin)
- (vi) 2005 WLR 112 (A. Thayal Nayagi Vs. Union of India & Others)
- (vii) 1969 (II) MLKJ 1 (A.S.V. Varadachariar Vs. The Commissioner of Police, Egmore, Madras and others)

submitted that when the agreement of sale was entered into between the petitioner and Kothandapillai the old relationship of landlord and tenant came to an end and the said Kothandapillai cannot remain in possession of the property.

5. In this writ petition it is not proper for this Court to decide the question as to whether the relationship of landlord and tenant is snapped by entering into of sale agreement and what is the nature and character of the possession of Kothandapillai in respect of the property in question. It is suffice to find out whether *prima facie* the petitioner is in physical possession of the property in question or not. In the judgement dated 07.12.2006 rendered in S.A.No.1208 of 2006 in paragraph 10 it is observed that admittedly, the plaintiff was in possession of the property and cultivating the same by paying waram. In paragraph 13 it is observed as follows:-

"Having failed to pay the waram as found in the agreement also, this Court is of the view that it was a breach of the Clause as found in the agreement. Having breached such a clause, which is found in the agreement and which casts a duty on him and that too, when the plaintiff is in possession of the property, it can be well stated that it is not a fit case which would warrant for granting the relief of specific performance, a discretionary one"

Thus it is seen that this Court has rendered a finding that the plaintiff in the suit namely Kothandapillai is in possession of the property in question.

6. In the complaint dated 23.12.2006 which is found at page 10 of the typed set of papers, it is stated as follows:-

“மேற்படி நிலத்தில் பயிர் செய்ய என் கணவா் ஏற்பாடு செய்ய சென்றபோது என்னையம் என் கணவரையம் அடிக்க வந்தார்கள் ”

But contrary to that, in the complaint dated 30.12.2006 sent to the first respondent herein, it is stated as follows:-

“ஐ கோர்ட்டில் தீர்ப்பின்படி நான் நிலத்தில் பயிர் செய்யவும் கரும்ப மக்குளை வெட்டவும், இதைப்பற்றி போலீஸ் பந்தோபஸ் த்தில் கேட்டு நெமிலி காவல் துறை ஆய்வாளருக்கு போலீஸ் காவல் கேட்டு கம்ப்லெண்டு கொடுத்தேன். ”

In the complaint dated 23.12.2006 the petitioner has stated that when she and her husband were making arrangements to cultivate the lands, the other party attempted to attack them whereas in the complaint dated 30.12.2006 it is stated that as per the judgement of the High Court when the petitioner tried to cultivate and harvest the sugar-cane crop standing in the land, she sought for police protection. It is not understandable as to how between 23.12.2006 and 30.12.2006 the sugar-cane crop came to be raised and that too was ripe for harvesting.

7. When admittedly Kothandapillai is in possession of the property in question, the petitioner cannot seek police protection to dispossess him. It is settled law that only when a person is in lawful possession of his property and some third party attempts to dispossess the legal owner by force, the legal owner in lawful physical possession can seek police protection to protect such possession. This is not such a case. Neither it is a case where the petitioner was either dispossessed from her physical possession nor attempted to be dispossessed. Therefore, the petitioner is not entitled to seek any police protection.

8. The petitioner by filing the above writ petition is seeking to abuse the process of this Court. The above writ petition deserves to be dismissed with costs, but having seen the petitioner an illiterate lady who was present in Court, this Court is not inclined to impose costs.

9. For the reasons stated above, the above writ petition fails and the same is dismissed. But, however there will be no order as to costs.

srk

Sd/
Asst.Registrar

/true copy/

To

1. The Superintendent of Police
Vellore District

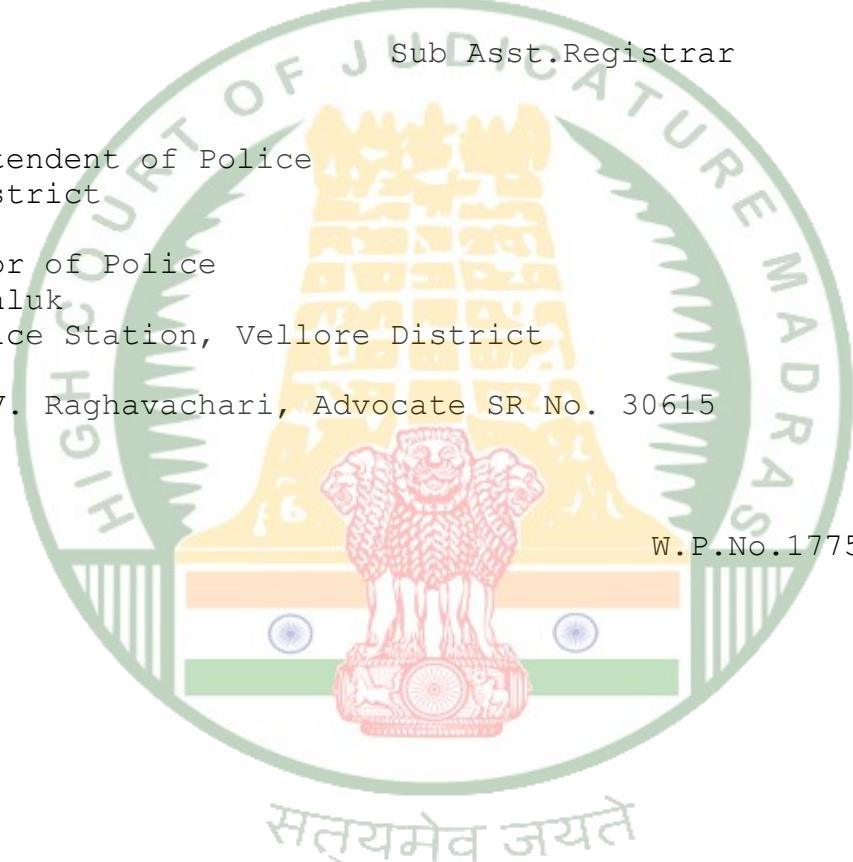
2. The Inspector of Police
Arakonam Taluk
Nemeli Police Station, Vellore District

+ 1 cc to Mr. V. Raghavachari, Advocate SR No. 30615

Sub Asst.Registrar

Order in
W.P.No.1775 of 2007

PPV(CO)
SR/23.5.2007



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