

A. Mohan Petitioner Vs. The Inspector General of Police West Zone Coimbatore and Others

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Court : Chennai

Decided On : Oct-21-2016

Judge : P.N. Prakash

Appeal No. : W.P.No. 21787 of 2015 & M.P.Nos. 1 & 2 of 2015

Appellant : A. Mohan Petitioner

Respondent : The Inspector General of Police West Zone Coimbatore and Others

Judgement :

(Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents 1 and 2 to prevent the respondents 3 and 4 from interfering with the civil dispute by misusing their official position to help the 5th respondent to take forcible possession of the property measuring 10.22 acres bearing R.S.No.62/2, Padaval Kalvai Village, Bhavani Taluk, Erode District, in violation of the order dated 28.01.2015 made in W.P.No.34022 of 2014 by considering the petitioner's representation dated 17.07.2015.)

1. This petition has been filed seeking a writ of mandamus, directing the respondents 1 and 2 to prevent the respondents 3 and 4 from interfering with the civil dispute by misusing their official position to help the 5th respondent to take forcible possession of the property measuring 10.22 acres bearing R.S.No.62/2,

Padaval Kalvai Village, Bhavani Taluk, Erode District, in violation of the order dated 28.01.2015 made in W.P.No.34022 of 2014 by considering the petitioner's representation dated 17.07.2015.

2. For the sake of convenience, the parties will be referred to by their name.

3. The petitioner - A.Mohan is the father of one Arunkumar. A family partition was effected on 26.08.1996 between Mohan and Arunkumar, under which Arunkumar was allotted 10.26 acres of land in R.S.No.62/2 Padaval Kalvai Village. It appears that Arunkumar had mortgaged 10.22 acres of the said property with State Bank of India, Bhavani Branch and raised loan. He was not able to discharge his liability to the Bank and therefore, the Bank initiated recovery proceedings before the Debts Recovery Tribunal, Madurai and the property was brought to sale.

[a]Arunkumar filed W.P.Nos.9137 and 9138 of 2012 before this Court challenging the recovery proceedings, which were dismissed on 02.04.2013 by a Division Bench of this Court. The property was purchased by one C.Balu in the auction and Sale Certificate was issued in his favour on 26.03.2010. C.Balu sold the property to Rajaguru Spinning Mills (P) Ltd. represented by its Managing Partner, S.Balu on 30.04.2010.

[b]C.Balu and Rajaguru Spinning Mills (P) Ltd filed a joint application before the Debts Recovery Tribunal, Madurai for appointment of an Advocate Commissioner to initiate eviction proceedings, for securing possession of the property. The said petition was allowed by the Debts Recovery Tribunal, Madurai on 28.10.2013, challenging which Arunkumar filed CRP PD (MD) No.1980 of 2013, in which, a Division Bench of this Court passed the following order:

"6. But subsequently, on yet another objection raised by the auction purchaser, the Recovery Officer restored the original order appointing the Advocate Commissioner by an order dated 28.10.2013. Contending that this order has been passed behind his back, the borrower who is untiring in his efforts in setting at naught all the recovery proceedings has come up with the above Civil Revision Petition. We do not think that anything more is required to dismiss the claim of the petitioner than the facts narrated earlier. The petitioner/borrower, has lost at every

stage. As a matter of fact, the ex-parte decree passed against him has come to stay. His applications for setting aside the ex-parte decree and for condonation of delay were dismissed on 05.02.2010 and the auction sale itself stands confirmed. The applications for setting aside the auction sale were dismissed on 04.03.2011. This order was confirmed by the Debts Recovery Appellate Tribunal on 14.03.2012. That order was confirmed by this Court in W.P(MD)Nos.9137 and 9138 of 2012 on 02.04.2013. Therefore, the sale in favour of the second respondent herein stands now confirmed.

7. There is a decree against the petitioner which has attained finality. The auction sale in favour of the second respondent has now been confirmed upto this Court. In the light of this, the appointment of the Advocate Commissioner for handing over possession cannot be found fault with on the specious plea that there was violation of natural justice. The petitioner has lost all his rights over the property today. Several times, some reprieves were granted to the petitioner by virtue of conditional orders of stay by this Court. The conditional orders were not complied with and the petitioner now has to ultimately feel the heat under his feet. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

[c]On 09.07.2014, in the presence of the Advocate Commissioner, physical possession of the property was handed over to Rajaguru Spinning Mills (P) Ltd. represented by S.Balu and a possession certificate was also issued. [d]On 10.03.2015, Arunkumar died in a road accident. Under such circumstances, Mohan, the father of Arunkumar has filed the present writ petition for the aforestated relief.

4. Heard Mr.N.Manokaran, learned counsel for Mohan, Mr.C.Emalias, learned Additional Public Prosecutor for the State and Mr.V.Vijay Shankar, learned counsel for Rajaguru Spinning Mills (P) Ltd, represented by S.Balu.

5. Mr.N.Manokaran, learned counsel for Mohan contended that S.Balu of Rajaguru Spinning Mills (P) Ltd. is a land grabber and therefore, he is attempting to dispossess Mohan from the property with the connivance of Mr.P.Janakiraman, Deputy Superintendent of Police, Bhavani Sub Division [R3] and Mr.K.Subbiah,

Inspector of Police, Ammapettai Police Station [R4]. It is his further contention that Rajaguru Spinning Mills (P) Ltd. represented by S.Balu filed W.P.No.34022 of 2014, in which, Mohan was shown as second respondent and a prayer for police protection was sought, which was negatived by this Court by order dated 28.10.2013. Rajaguru Spinning Mills (P) Ltd. gave complaints dated 27.09.2014 and 03.03.2015 to the police and filed CrI.O.P.No.9931 of 2015 for a direction to the police to register an FIR against Mohan. In CrI.O.P.No.9931 of 2015, this Court had passed the following order on 01.06.2015:

"3. The learned Additional Public Prosecutor submitted that the said complaint of the petitioner was enquired and closed by the 3rd respondent police on 30.04.2015 and also submitted that a copy of the closure report is furnished to the learned counsel for the petitioner across the bar.

In view of the above, this petition is closed, with liberty to the petitioner to work out their remedies in the manner known to law."

6. It was contented by N.Manokaran that, despite the two orders passed by this Court, as aforesaid, with the change of guard in the Police Department, S.Balu is once again attempting to take forcible possession of the property with the connivance of the police. Mr.N.Manokaran, learned counsel, placed strong reliance on the judgment of this Court in R.Mala v. The Secretary, A2943 Alanthur PAC Bank, Thiruppalai Branch, Oomachikulam, Madurai and two others [2007-3-LW-68], wherein, this Court has deprecated the action of the police in interfering with the civil disputes.

7. Per contra, the learned Additional Public Prosecutor submitted that the Superintendent of Police conducted enquiry on the allegations made by Mohan and it was found that the allegations were baseless. Admittedly, the property was mortgaged by Arunkumar, S/o Mohan with State Bank of India and for non-payment of the loan amount, the property was brought to sale by the Bank through the Debts Recovery Tribunal via which C.Balu purchased the property and sold it to Rajaguru Spinning Mills

(P) Ltd. and possession was handed over by the Advocate Commissioner on 09.07.2014 itself to Rajaguru Spinning Mills (P) Ltd. and therefore, there is no question of the police acting in collusion with S.Balu of Rajaguru Spinning Mills (P) Ltd., to dispossess Mohan.

8. Mr.V.Vijay Shankar, learned counsel, submitted that Rajaguru Spinning Mills (P) Ltd. had taken possession of the property as early as 09.07.2014 and it is Mohan who is attempting to dispossess S.Balu.

9. This Court gave its anxious consideration to the rival submissions.

10. Admittedly, the property was mortgaged by Arunkumar with State Bank of India and for the default in repayment of the loan, the property was brought to sale through the Debts Recovery Tribunal, Madurai. The challenges that were made by Arunkumar before this Court twice were negated. A Division Bench of this Court, in CRP PD (MD) No.1980 of 2013, had even dismissed the plea of Arunkumar to set aside the order of the Debts Recovery Tribunal appointing an Advocate Commissioner for taking possession of the property. The relevant portion of the observations of the Division Bench of this Court has been extracted above, which clearly shows that the judgment debtor has been doing everything possible within his means to prevent the successful bidder from enjoying the fruits of the purchase.

11. In the light of the categorical submission made by Mr.V.Vijay Shankar that his clients have been in possession and enjoyment of the property since the time it was handed over to them by the Tahsildar and the Advocate Commissioner, as could be seen from the Possession Certificate dated 09.07.2014, there is no question of them threatening to dispossess Mohan from the property and as such, Mohan's prayer for police protection as if the property is in his possession, cannot be countenanced.

In the result, this petition is dismissed as devoid of merits and the interim order granted in M.P.No.1 of 2015 stands vacated. Consequently, the Vacate Stay Petition in M.P.No.2 of 2015 stands allowed. No costs.