

(2002) 02 MAD CK 0163

Madras High Court

Case No: Criminal Original Petition No. 19788 of 1999 and Criminal M.P. No"s. 9655 of 1999 and 474 of 2001

Vijay Raj Jain

APPELLANT

Vs

The Secretary, Home
Department and Others

RESPONDENT

Date of Decision: Feb. 11, 2002

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 147, 379, 452, 506(ii)
- Specific Relief Act, 1963 - Section 6

Hon'ble Judges: M. Karpagavinayagam, J

Bench: Single Bench

Advocate: K. Venkataraman, for the Appellant; Gomathinayagam, Public Prosecutor for the Respondents No 1 to 5, Mr. M. Ravindran, S.C for Mr. K. Viswanathan, for Respondents No. 6 and 7, Mr. K. Jegannathan, for Respondents No. 8 and 9, Mr. G.M. Ramasubramanian, for the Respondent

Judgement

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M. Karpagavinayagam, J.

Having failed in all his efforts to make the police machinery awake to take appropriate action against the forcible dispossession from the rented premises by the landlord with the mighty musclemen .the disgusted tenant"" petitioner has approached this Court through this petition u/s 482 Cr.P.C. fervently praying to undo the injustice done to him.

2. The facts of the case needs narration, which is given below:

"(a) Vijay Raj Jain, the petitioner herein, is a tenant in shop No. 106, Kamaraj Street, Villupuram for the past 40 years doing Pawn Broker's business. Originally, the rent was collected by the landlord one Purushotham Chettiar. After his death and his heirs, one Balaji, the 6th respondent herein, another has been collecting the rent from him.

(b) Earlier, eviction was ordered against the tenant, the petitioner herein, on the ground of owner's occupation in the petition filed by Balaji and accordingly, he was evicted. Since the landlord did not occupy the premises within the stipulated time, the High court ordered redelivery of the premises to the petitioner. Accordingly, the petitioner took delivery of the possession of the rental premises in the year 1996 and was in continuous possession of the premises by running his Pawn Broker's Shop as tenant under Balaji, 6th respondent.

(c) In September 1999, the petitioner sought permission from the 6th respondent Balaji, to carry out minor alteration for the purpose of safety of his business. Several letters were sent and the same were returned.

(d) On 2.11.1999, the petitioner was making minor alterations with the help of workers by putting up the plywood in the shop. At that time, Balaji, the 6th respondent. Suresh, the 7th respondent along with some political men and other rowdy elements trespassed into the rented premises, threatened the workers and drove them out and forcibly dispossessed the petitioner. Thereafter, the premises was locked and the key was taken away by the respondents 6 and 7.

(e) Immediately on the same day, a complaint was given by the petitioner to the Inspector of Police, the 5th respondent. To the shock of the petitioner, he refused to receive the same. Therefore, he sent the complaint through R.P. A.D. to the Inspector of Police (5th respondent), the Deputy Superintendent of Police. To the surprise of the petitioner, the registered post sent to the Inspector of Police was returned with an endorsement "refused". However, the registered post sent to the Deputy Superintendent of Police and the Superintendent of Police were received by them. But, no action was taken.

(f) Having waited for a week hoping that action would be taken and ultimately having realised that no action would be taken since the 5th respondent police is backing the 6th respondent and others, the petitioner, on 9.11.1999, filed the present petition in Crl. O.P. No. 19788 of 1999 before this Court seeking direction to the respondents 1 to 5, namely, the Government and the police officials to give protection to the petitioner as a tenant and, to register his complaint dated 2.11.1999. This was admitted by this Court on 11.11.1999. The Government Advocate took notice on behalf of the respondents 1 to 5.

(g) On coming to know of the issuance of notice in the application u/s 482 Cr.P.C. Balaji and Suresh, the respondents 6 and 7 hurriedly sold the premises on 27.12.1999 to Rajendran and Ghulam Mohamed, the respondents 8 and 9, the local

political bigwigs with whose help the petitioner was dispossessed. Thereafter, on 31.3.2000 they also swiftly sold the same to Dhagala Ram the 10th respondent.

(h) Meanwhile, the complaint dated 2.11.1999 sent to the Superintendent of Police through R.P.A.D. was forwarded to the Inspector of Police, the 5th respondent for taking action on the said complaint. Under those circumstances, the 5th respondent, the Inspector of Police was constrained to register the same in Crime No. 1273 of 1999 against Balaji and others in regard to the forcible dispossession on 2.11.1999.

(i) On knowing this hurried sale and the attempt of the 10th respondent to demolish the building, the petitioner on 17.4.2000 filed a suit in O.S.No. 171 of 2000 on the file of the Prl. District Munsif's Court, Villupuram against the respondents 6 to 10 u/s 6 of the Specific Relief Act for restoration of possession. He also filed a petition in I.A.No.761 of 2000 seeking for interim injunction restraining the 10th respondent from making an attempt to demolish the shop and reconstruct the premises, pending suit.

(j) After giving opportunity to all the parties concerned and conducting full-fledged enquiry, the civil court passed order on 4.8.2000 finding that the tenant/plaintiff would be entitled to the interim injunction restraining the 10th respondent and others from demolition and reconstruction, as he was forcibly dispossessed on 2.11.1999 by the landlord with the help of others.

(k) Despite the order of injunction, the 10th respondent proceeded with the demolition and construction. Therefore, the petitioner filed a contempt application before the Civil Court and the same is pending.

(l) At that stage, the petitioner filed an application before this court in Crl. MP. No.474 of 2001 in the main Criminal Original Petition making allegation against the Inspector of Police, the 5th respondent that he was aiding and siding the respondents 6 to 9 in their illegal acts from the beginning and seeking for transfer of investigation in Crime No. 1273 of 1999 from the 5th respondent to the CB CID.

(m) When the main matter was taken up for enquiry before this Court on 29.1.2001, the learned Government Advocate appearing on behalf of the 5th respondent/Inspector of Police reported to this court that the case in Crime No. 1273/99 has already been referred as "mistake of fact"". Though the learned Government Advocate took notice on 11.11.1999, 5th respondent did not choose to file any counter till the said date. Admittedly, referred notice was not served on the complainant/petitioner. It was admitted that no order was passed by the Magistrate on the said report. Hence, by the order of this Court dated 29.1.2001 finding that the action of the Inspector of Police was not prompt and impartial, this court directed the Deputy Superintendent of Police to take up the investigation and continue the same by giving protection to the tenant for his possession of property in question, if he was found to be dispossessed.

(n) At that stage, this court directed the petitioner to implead the landlord also. Thereafter, on 3.2.2001, the petitioner filed an application in Crl.M.P. No.760 of 2001 to implead the respondents 6 to 10 as parties.

(o) An affidavit was filed by the 5th respondent only on 9.2.2001, stating that he conducted initial investigation and referred the case as "mistake of fact" and thereafter, the investigation was taken up by the Deputy Superintendent of Police by reopening the matter on 6.2.2001. It was further admitted in the affidavit that it was reopened by the Deputy Superintendent of Police, who thereafter found out through the examination of the witnesses" that the petitioner was forcibly dispossessed on 2.11.1999 by Balaji, the landlord and other respondents. Therefore, on 12.2.2001, this Court ordered directing the Superintendent of Police to implement the order dated 29.1.2001. Accordingly, on 16.2.2001, it was reported to this court that in pursuance of the order of this Court, the key was handed over by the 10th Respondent to the Superintendent of Police. On the basis of the said statement, by the order dated 16.2.2001, the Superintendent of Police was directed to keep the key of the premises until further orders by modifying the order dated 29.1.2001 and posted the main matter for disposal and all the parties concerned were directed to file their respective counter-affidavits.

(p) Accordingly, the counter-affidavits were filed by the 10th respondent on 16.2.2001, the respondents 8 and 9 on 25.2.2001 and the respondent 6 and 7 on 2.3.2001 stating that the tenant was not dispossessed, but possession was voluntarily surrendered by him.

(q) It was represented by the Additional Public Prosecutor that the Deputy Superintendent of Police finished the investigation and found that the allegation made in the complaint dated 2.11.1999 was true and that therefore, he filed a charge-sheet on 19.7.2001 against Balaji and others under Sections 147,452,506 (ii) and 379 P.C.

(r) The Deputy superintendent of Police has also filed the copy of the charge-sheet before this Court and informed that the charge-sheet filed before the lower Court has been taken on file."

3. At this stage, the matter was taken up for final disposal and the counsel for the parties were heard at length.

4. The submission by the counsel for the petitioner/tenant is as follows:-

"The petitioner is a tenant. In September, he sent letters to the landlord requesting permission to effect minor alterations in the premises, since all the letters were returned, he was about to make alteration on 2.11.1999. On that day, Balaji, the landlord and other rowdies came and forcibly dispossessed the petitioner and locked the premises and went away. He gave a complaint on the same day to the Inspector of Police, but he refused to receive same. Then, he sent a registered post.

The same was also returned as "Refused", complaints were sent to the Superintendent of Police and the Deputy Superintendent of Police. There was no action. Hence, he approached this Court. Since the property was sold to third party, the petitioner filed a suit and got interim injunction against the 10th respondent from demolition of the premises holding that the tenant was forcibly dispossessed. Due to the wanton inaction of the police, the petitioner was dispossessed. Therefore, this Court has got inherent powers to restore the possession when there are materials to establish that the petitioner was forcibly ejected from the premises with the help of the police and rowdy elements".

5. The gist of the contentions of the respondents 6 to 10 as found in the affidavits separately filed by them is this:-

"The possession was voluntarily handed over to the respondents 6 and 7 by the petitioner in September 1999 and the same was purchased by the respondents 8 and 9 on 27.12.1999 and subsequently, the said property was sold to the 10th respondent on 31.3.2000 and the issue of dispossession and restoration is pending in the Civil Court ♦ and as such, the issue can be decided only by the said Court and not by the High Court u/s 482 Cr.P.C."

6. I have carefully considered the submissions made by the counsel for the respective parties.

7. Though Mr.G.M. Ramasubramaniam, the learned counsel /for the 10th respondent, on the strength of the various decisions of this Court as well as the Supreme Court, would initially contend that this Court has no powers to deal with this issue, ultimately, he would concede in view of the observation made by the Supreme Court in *Pepsi Foods Ltd. and another v. Special Judicial Magistrate. and others.* (1998) S.C.C. (Cri.) 1400, and [Dalichand and Another Vs. C. Santosh Agarwal and Others,](#) that this court has got powers either u/s 482 Cr.P.C. or under Article 227 of the Constitution of India to pass such orders to secure the ends of justice, and however, would state that in this case, no injustice has been done, as the possession was handed over by the respondents 8 and 9 to the 10th respondent on the basis of the voluntary surrender of possession by the petitioner to the respondents 6 and 7 and as such, the petitioner is not entitled to the relief sought for in the petition."

8. In the light of the above settled position of law, let us now deal with the fourth aspects of the fact situation arising out of the contentions urged by the respective parties.

9. The first aspect would be with reference to the occurrence involving the forcible dispossession of the tenant by the landlord with his henchmen on 2.11.1999.

(i) According to the petitioner, he being a tenant, was forcibly dispossessed on 2.11.1999 by the landlords-respondents 6 and 7 with the help of other respondents with rowdies and he was driven out from the premises which was locked and keys

were taken away by them.

(ii) According to the respondents 6 to 10, the alleged dispossession on 2.11.1999 was not true and in September, 1999, the petitioner surrendered possession voluntarily to the respondents 6 and 7 and thereafter, the said premises was sold to the respondents 8 and 9, who in turn sold the same to the 10th respondent and since then the 10th respondent has been enjoying the premises.

(iii) In regard to this aspect, the evidence was let in before the civil court by both the parties, while conducting enquiry in I.A. No.761 of 2000 in O.S.No. 171 of 2000. The civil Court passed final orders granting the interim relief in favour of the petitioner in its order dated 4.8.2000.

(iv) It is seen from the said order, a full-fledged enquiry was conducted In the enquiry, on behalf of the petitioner, 19 documents were marked and on behalf of the defendant/10th respondent, two documents were marked and two documents were marked as Court exhibits. On the basis of the evidence let in, the civil court would specifically hold in the said order dated 4.8.2000 finding *prima facie* that the petitioner was in possession of the premises as a tenant up to 2.11.1999 and on that date, he was forcibly dispossessed by the respondents/defendants.

Thus, it is clear that after thorough enquiry, the Civil Court gave a *prima facie* finding that the petitioner was dispossessed by the respondents/defendants on 2.11.1999.

(v) It is the case of the petitioner that immediately after dispossession, he approached the Inspector of Police, 5th respondent and gave a complaint and since the Inspector of Police refused to receive the same, he sent the complaints through RPAD to Inspector of Police, Deputy Superintendent of Police and Superintendent of Police on the same date. Curiously the registered post sent to the Inspector of Police, 5th respondent was returned as "Refused". Though the other registered posts sent to the Deputy Superintendent of Police and the Superintendent of police were received by them, there was no action taken. Therefore, the petitioner rushed to this court and filed the present petition on 9.11.1999, seeking for the protection of his possession as tenant and for consequential orders

(vi) Even according to the 5th respondent, the Inspector of Police, he received the complaint from the 6th respondent on 2.11.1999 against the petitioner and the same was treated as a local petition in No.210 of 1999. Though he stated that he did not receive any complaint from the complainant or 2.11.1999, he admitted the complaints dated 2.11.1999 addressed to the Superintendent of Police and Deputy Superintendent of Police were forwarded to him to register the case and accordingly, he registered the complaint sent by the complainant in Crime No. 1273 of 1999 against the respondents 6 to 9 and others.

(vii) The fact that the complaints through RPAD addressed to the Superintendent of Police and the "Deputy Superintendent of Police were sent by the complainant/petitioner on 2.11.1999 itself would show that immediately after the occurrence, the petitioner rushed to the Police Station and since he did not get justice, he sent registered post with acknowledgement to the Superintendent of Police, the Deputy Superintendent of Police and the Inspector of Police. Having found no response, the petitioner approached this Court on 19.11.1999. This would indicate that without any further delay, the petitioner sought the help of this Court seeking for justice within a week from the date of occurrence.

(viii) This apart, the Deputy Superintendent of Police who conducted investigation in pursuance of the order of this Court would file the interim report before this Court on 8.3.2001 stating that the investigation revealed that on 2.11.1999 at about 4.45 P.M., the accused Balaji, the landlord came to the shop and asked the workers to come out and locked the shop. The relevant portion of the report is as follows:

"Subsequently, it is found out from the other witnesses that from 30.10.1999 to 2.11.1999 some renovation work was carried out by the petitioner herein on the above said premises and some carpenters were working. On 2.11.1999 at about 16.45 hours the accused Balaji came to the above shop and asked the carpenters to go out and locked the shop."

(ix) Moreover, the Deputy Superintendent of Police After finishing investigation filed the charge sheet on 19.7.2001 for the offences under Sections 147,452,506 (ii) and 379 I.P.C. alleging that the respondents Balaji and others trespassed into the rented premises in possession of the petitioner on 2.11.1999 and took away the articles found inside the shop and locked the same and went away.

(x) Thus, both the enquiry conducted by the Civil Court and the investigation made by the Deputy Superintendent of Police and the materials placed before this court would *prima facie* reveal that the occurrence in which the petitioner was forcibly dispossessed by the respondents with the help of others on 2.11.1999 was true.

10. The second aspect would be with reference to the genuineness of the document dated 25.10.1999 which has been produced before this court belatedly:

(I) According to the respondents 5 to 10, the possession was voluntarily handed over by the petitioner to 6th respondent, the landlord under receipt dated 25.10.1999 and as such, there cannot be dispossession. The said contention has been refuted by the petitioner that he did not issue such a receipt dated 25.10.1999 and he never surrendered possession to the landlord on the said date. Let us now deal with this aspect.

(II) It is to be noted, at the outset, that the alleged surrender by the petitioner on 25.10.1999 through the signed receipt has now only been brought to the notice of this court by the 10th respondent by producing the receipt dated 25.10.1999, that

too when the matter was taken up for final disposal, the 10th respondent filed his counter on 16.2.2001 in this application. In the said counter-affidavit, no reference was made about the receipt dated 25.10.1999. It is stated in the fifth paragraph that he was handed over the vacant possession by his vendors, the respondents 8 and 9 along with some specified documents. He also mentioned about the details of those documents in the affidavit. But, this document dated 25.10.1999 has not been referred to. This would mean that the document dated 25.10.1999 which has been produced before this Court by the 10th respondent, was not handed over to the 10th respondent by the 6th respondent earlier

(III) Moreover, the counsel for the 10th respondent himself would fairly admit that the document dated 25.10.1999 was never handed over to him earlier and only when this Criminal Original Petition was taken up for final disposal, that too after filing of all the respective counters, the said receipt dated 25.10.1999 was handed over by 6th respondent, thus, it is obvious that the receipt dated 25.10.1999 alleged to have been issued by the petitioner for surrender was never handed over by the 6th respondent either to the respondents 8 and 9, the first purchasers or to the 10th respondent, the present purchaser earlier.

(IV) Further, the respondents who are the defendants in the suit wherein they claimed possession through the said surrender, did not produce the said document when the enquiry was conducted in 1. A.No.761 of 2000. The suit was filed by the petitioner on 17.4.2000. As stated, a full fledged enquiry was conducted in 1.A.No.761 of 2000 wherein, the petitioner sought for injunction against the defendants including the 10th respondents including the 10th respondent. On behalf of the respondents 6 to 9, no documents were marked. 10th respondent marked Exs. B1 and B2 which are the documents showing the sale executed by the respondents 8 and 9 in favour of the 10th respondent and expenses incurred by the 10th respondent for demolition work.

(V) Admittedly, this document dated 25.10.1999 was not produced by any of the respondents. In the said application, the respondents 6 to 9 did not even choose to file a counter. The 10th respondent never mentioned anything about this document in his counter filed in Civil Court. After finishing enquiry, the Civil Court has given a specific finding that no document was produced by the respondents/defendants to prove the surrender of possession by the tenant to landlord.

(VI) Though it was stated on behalf of the defendants/respondents that surrender was in September 1999, it was not specifically stated that it was on 25.10.1999 and while surrendering, the petitioner issued a signed receipt. Therefore, this document dated 25.10.1999" before this Court would not have been in existence, as it is the definite denial by the petitioner that he never issued such a receipt.

(VII) In this context, it is to be pointed out that no counter-affidavit sworn to by the respondents 6 and 7 has been filed before this Court, but a mere counter statement

signed by the counsel has been filed on their behalf. Though it is stated in the said counter that they were contesting the suit in O.S.No. 171 of 2000 filed by the petitioner and they sold the property to the respondents 8 and 9 on 27.12.1999 after surrender, they never mentioned as to why the said document dated 25.10.1999 was not produced before the civil court nor handed over to the other respondents. The respondents 8 and 9 filed their counter affidavit on 25.2.2001. They did not mention anything about the surrender receipt dated 25.10.1999.

(VIII) Curiously, the document dated 25.10.1999 produced by the 10th respondent stating that it was handed over by the 6th respondent belatedly would contain the signature of Ghulam Mohideen, 9th respondent as one of the attestors. But, in the counter affidavit filed by the respondents 8 and 9, Ghulam Mohideen, 9th respondent did not state that such a surrender receipt was prepared on that date and he signed in the said receipt. It is also mentioned in the counter-affidavit filed by the respondents 8 and 9 that they are the contesting parties in the suit filed by the petitioner in the Civil Court. Thus, it is noticed that it is not the case of the respondents 8 and 9 through their counter-affidavit filed on 25.2.2001 that the surrender receipt was obtained from petitioner on 25.10.1999 and the same was attested by the 9th respondent. Moreover, the counsel for the respondents 8 and 9 would not submit any argument with reference to the surrender receipt dated 25.10.1999 and about the signature of the 9th respondent as one of the attestors.

(IX) It is the case of the petitioner that on 1.10.1999, he sent a letter seeking for permission from the 6th respondent to carry out minor alteration. The said letter was returned to the petitioner on 12.10.1999. Again, another registered post was sent. The same was also returned on 25.10.1999. On the same date, another registered post was sent to the 6th respondent which was again returned on 4.11.1999. In the meantime, the rent sent by money order by the petitioner on 4.10.1999 was received by the 6th respondent on 20.10.1999. In such a situation, it cannot be comprehended that the petitioner would have surrendered the possession on 25.10.1999 under a surrender receipt.

(X) In this fact situation, we cannot give any importance to the document dated 25.10.1999, as there is some force in the contention of the petitioner that the said document is a fabricated one and the same has been created for the purpose of this case belatedly.

11. The third aspect would be in regard to the claim of the 10th respondent that he is a bona fide purchaser:

(A) It was contended by the 10th respondent that he is a bona fide purchaser and he did not know about the dispute between the petitioner and the 6th respondent and that much water had flown after the alleged dispossession dated 2.11.1999 and since the property has been transferred by a valid sale deed to the 10th respondent and consequently, the building was demolished and new building has been

constructed, he would be entitled to the possession and as such, the earlier order passed by this court on 29.1.2001 has to be cancelled and the Superintendent of Police may be directed to hand over the key to him.

(B) On the other hand, it is contended by the counsel for the petitioner that the entire episode was known to the 10th respondent and as such, he was a party to the conspiracy to eject the petitioner from the premises in order to get the property from the landlord through sale deed with the help of the respondents 8 and 9 who are politically influential and so, he is not a bona fide purchaser.

(C) On going through the typed set filed by both parties and the submissions made by the counsel for the petitioner and the respondents, this court is unable to hold that the 10th respondent is a bona fide purchaser.

(D) As a matter of fact, the 10th respondent is doing his business for a long number of years just opposite to the premises in question in the same street. Therefore, it could not be said that he did not know anything about the forcible dispossession on 2.11.1999, especially when it is found by both the civil court and the investigating agency through Deputy Superintendent of Police that the petitioner was ejected from the premises forcibly with the help of several unruly elements in the day light in a crowded bazaar.

(E) That apart, while the petitioner seeking the help of the High Court to intervene filed the petition and the same is pending, the property which was taken forcible possession by the respondents 6 and 7 was hurriedly sold to the respondents 8 and 9 within few days and again it was sold to the 10th respondent within few months. On coming to know of this, hurried sale, during the pendency of the said Crl. O.P. No. 19788 of 1999" before the High Court filed on 9.11.1999. the petitioner filed a suit against the respondents 6 to 10 for restoration. Even before filing of the suit, the 10th respondent expecting that the suit will be filed against him also, filed a caveat before the civil Court along with other respondents. If the 10th respondent was a bona fide purchaser and he did not know anything about the episode, he would not have filed a caveat before the Civil Court, that too along with the other respondents.

(F) The fact that he filed caveat along with other respondents would show that he wanted to see that the petitioner did not get any interim order against the 10th respondent and the same would further indicate that the entire episode was a planned one and was known to all these respondents. Further, this aspect has been dealt with by the civil court also, while passing the order in 1.A. No.761 of 2000 on 4.8.2000.

(G) On the basis of the materials placed before the civil court during the course of enquiry, it has been specifically held that the 10th respondent cannot be said to be unaware of the earlier episode, since there was a quick succession in the execution of sale deeds from 6th respondent to respondents 8 and 9 and thereafter, from

respondent 8 and 9 to 1 Oth respondent.

(H) Besides this, during the pendency of the enquiry in 1.A.No.761 of 2000, an Advocate Commissioner was appointed to inspect the suit property and accordingly, after inspection the Commissioner filed the report stating that the construction was not completed. Later, by the detailed order dated 4.8.2000, injunction was granted by the civil Court directing the 10th respondent not to complete the construction. In spite of the order of injunction, the 10th respondent proceeded with the construction. Therefore, the petitioner had to file contempt proceedings against him and the same is pending now.

(I) Under these circumstances, it is stated by the counsel for the petitioner that these things would clearly demonstrate that the 10th respondent purchased the property after fully knowing about this episode and continued to proceed with construction, despite the order of injunction.

(J) This submission made by the counsel for the petitioner cannot be brushed aside, especially when it is not disputed that the 10th respondent is carrying on business quite opposite to the premises in question from where the petitioner was forcibly thrown out in a day light. Though it was stated before the civil Court by the 10th respondent that the construction was already completed, the finding given by the civil court on the basis of the Advocate Commissioner's report is that the construction was not completed and further construction should not be made.

(K.) Now, it is stated by the counsel for the 10th respondent that construction has been completed and the 10th respondent is doing business. This would show that not only he must be aware of entire episode but also the fact that he is such a person to go to any extent for flouting the orders of the Court. But however this court need not go deep into this matter, as this is a matter to be decided by the Court concerned where the contempt proceeding is pending. However, the fact remains from the above mentioned that he cannot be said to be a bona fide purchaser, but he purchased the same after knowing all the details about the dispute. Probably, that was the reason, he wanted to purchase from the landlord not directly but through the respondents 8 and 9 who are said to be political bigwigs of the local area.

(L) In this context, it may be borne in mind the submission made by the counsel for the petitioner that the respondents 8 and 9 are influential political persons who are known for such action for dispossession of persons who are in lawful occupation.

(M) In such circumstances, the request of the 10th respondent praying this Court to hold that he is a bona fide purchaser and as such, he is entitled to the possession, cannot be acceded to. Therefore, the said claim of bona fide purchaser is to be rejected.

12. The fourth aspect would be regarding the non-performance of the statutory duty vested with the police resulting in the forcible dispossession of the tenant from the premises in question.

(i) It is urged on behalf of the counsel for the petitioner that the petitioner was forcibly dispossessed not only by the respondents with the help of rowdies and political bigwigs but also with the active assistance of the Inspector of Police, the 5th respondent herein who wantonly failed to perform his statutory duty of preventing the day light dispossession of the premises from the tenant who was occupying the same by virtue of the order of the High court earlier passed.

(ii) On going through the affidavit filed by the Inspector of Police as well as the documents filed by the Deputy Superintendent of Police and on perusal of other records, it is obvious that the Inspector of Police, the 5th respondent herein has not only not discharged his statutory duty as provided in the Code of Criminal Procedure but also filed an affidavit before this Court containing the particulars which are not true.

(iii) According to the petitioner, immediately after the occurrence on 2.11.1999, he went to the Police Station, met the Inspector of Police and handed over a complaint, but the Inspector of Police refused to entertain the same. Due to the said refusal, the petitioner had to send the complaints through RPAD to the Superintendent of Police, Deputy Superintendent of Police and Inspector of Police on the very same day. The petitioner was able to get acknowledgement cards with regard to the Tapals sent to the Superintendent of Police and Deputy Superintendent of Police and Deputy Superintendent of Police, but to the shock and surprise of the petitioner, the RPAD sent to the Inspector of Police was returned as "Refused".

(iv) In page 9 of the typed set filed by the petitioner, xerox copy of the copy of the RPAD is filed. This shows that the Tapal addressed to the Inspector of Police, Town Police Station, Villupuram, was sent on 2.11.1999 and the same was sent back to the sender/petitioner with the endorsement. "Refused". There is no reason to reject this document. Therefore, it cannot be said that the complainant did not give the complaint to the 5th respondent on 2.11.1999 nor the RPAD was sent back by the Inspector of Police as "Refused".

(v) The Inspector of Police himself would admit in his affidavit that he received the complaint from 6th respondent on 2.11.1999. The same was treated as a local petition CSR No.210 of 1999. If that is so, the Inspector of Police would have found out the truth on the very same day by interrogating the complainant as well as the 6th respondent. There is no reason given by the Inspector of Police as to why the complainant and other witnesses were not interrogated. The Inspector of Police has not produced either before the lower Court or before this Court about the result of the enquiry in CSR No.21() of 1999.

(vi) Unfortunately, for the Inspector of Police, he was constrained to register the complaint given by the petitioner as the same was forwarded to him for action by the Superintendent of Police. Even after registration of the said case in Crime No. 1273 of 1999 for various cognizable offences against the respondents, he did not incline to find out the truth by examining the witnesses and arresting the persons concerned.

(vii) The inspector of Police would simply state in his counter-affidavit that he referred the said case, as the complainant was not cooperating with him in the investigation. Can this be a ground for referring the matter as "mistake of fact?" This is nothing but sheer escapism. Instead of conducting proper and prompt enquiry on the complaints of both and restoring the possession of the premises to the petitioner, as he was forcibly dispossessed on 2.11.1999, the Inspector of Police registered the case for namesake and referred the matter as "mistake of fact" without making any investigation. Admittedly, the referred notice was not served-on the complainant.

(viii) This would clearly indicate that he was not inclined to conduct investigation to take action against the culprits, since he must have supported the case of the respondents, especially when some of the respondents are political bigwigs. Had he taken action on the complaint given by the petitioner on 2.11.1999 itself, the hurried sale and quick succession of execution of the sale deeds would not have been taken place. The petitioner would not have been driven to tap the door of the High Court seeking redress. The fact that he sent back the registered post to the "sender himself as "Refused" and referred the case hurriedly as "mistake of fact" would clearly show that the 5th respondent was a party to the injustice which was done to the petitioner by the forcible dispossession by the landlords and political bigwigs.

(ix) One other aspect also would make it obvious that the hurried investigation conducted by the Inspector of Police was not impartial. As per the direction of this Court, as noted above, the Deputy Superintendent of Police conducted further investigation, examined the witnesses, arrested the accused and recovered some of the stolen properties and filed the charge sheet against the respondents concerned for the offences under Sections 147,452, 506 (ii) and 379 I.P.C. According to the investigation conducted by the Deputy Superintendent of Police, the occurrence which took place on 2.11.1999 was true and the landlords and others trespassed into the premises in question and took away the articles and locked the shop, thereby indicating that the investigation conducted by the Inspector of Police earlier was faulty as well as mala tide.

(x) As submitted by the counsel for the petitioner, the facts of the present case is not merely between two individuals, but the wanton inaction on the part of the 5th respondent in refusing to entertain the complaint that had been lodged by the petitioner. The statutory duty on the part of the Station House Officer is to entertain the complaint containing the averments constituting cognizable offences, look into

the matter by investigating the same and take appropriate action in that regard. Unfortunately, even though the complaint was lodged, the Inspector of Police did not care to entertain the same.

(xi) To make the matter worse, he further refused to receive the RPAD Topal containing the complaint sent by the petitioner. When the tenant was forcibly evicted from the premises by the landlord with the help of unruly elements in the daylight and his belongings were taken away, the 5th respondent must have rushed to the scene and given protection to the petitioner for his peaceful possession.

(xii)"m this case, this court is of the considered opinion that the 5th respondent has facilitated the other respondents to hurriedly dispossess the petitioner from the premises in question and wantonly refused to receive the complaint sent by the complaint and despite the order of the Superintendent of Police, he simply registered the case and referred the case as "mistake of fact" without following the procedures contemplated under law.

13. Time and again, it has been held by this Court as well as the Supreme Court as under:

(A) If a police officer illegally exercises his investigatory powers in breach of any statutory provision and improperly omitted to discharge his statutory duty causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and to pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons.

(B) Where there is a trespass or forcible dispossession, it would be the duty of the police to take appropriate action, failing which the High Court can under inherent power direct the police to do its duty, when no other efficacious remedy being available to the victim.

(C) If a person is ejected from the disputed premises illegally sometimes with the police help, the possession should have been restored to the said person with the police help, if necessary.

14. These principles have been laid down in the following authorities:

(1) Pepsi foods Ltd., and another v. Special Judicial Magistrate and others, (1998) SCC(Cri) 1400.

(2) C. Santhosh Agarwal v State by Inspector of Police, (1999) 1 L.W. (Cri.) 138.

(3) Arumuga Selvi v. The Assistant Superintendent of Police, (1989) L.W. (Crl.) 58.

(4) [Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others,](#)

15. It is contended by the counsel for the petitioner that since he was forcibly dispossessed on 2.11.1999 by the respondents with the indirect help of police, the possession must be restored to him. On the other hand, it is contended by the 10th respondent that the possession must be restored to him as the interim order which was passed by this Court on 29.1.2001 was based upon the suppression of facts and as such, the possession as on 29.1.2001 has to be restored to the 10th respondent.

16. Regarding the request of the counsel for the petitioner seeking for restoration of possession, it is to be stated that even though it is established in the civil Court or through investigation and also through the materials placed before this Court that he was dispossessed on 2.11.1999, this Court is not inclined to restore possession to the petitioner, especially when the issue of restoration is pending before the civil Court where the petitioner filed a suit for restoration u/s 6 of the Specific Relief Act.

17. It is true that the petitioner as plaintiff was able to get interim order finding that he was in possession on 2.11.1999 and restraining the continued construction by the 10th respondent who was a subsequent purchaser.

18. When the main issue regarding the restoration is to be dealt with by the civil Court concerned on the basis of the materials placed before the said Court during the course of trial, it would be better to leave the said issue to be decided by the Civil Court. Therefore, I am not inclined to pass-orders directing the Superintendent of Police to give key to the tenant, the petitioner herein.

19. In the same way, this Court is unable to accept the request of the 10th respondent as well. It is true that this Court on 29.1.2001 gave a direction to the Deputy Superintendent of Police to look into the matter and protect the possession of the petitioner as a tenant, if he was really found to be dispossessed. But subsequently, when it was brought to the notice of this Court that third party took possession of the property as if it was sold to him, this court modified the said order on 16.2.2001 directing the Superintendent of Police to have the key of the premises in question. Accordingly, the 10th respondent handed over the key to the Superintendent of Police. Therefore, the order dated 29.1.2001 is no longer in existence as the protection for the possession of the petitioner as a tenant could not be given. Hence, the entire issue regarding the restoration of the possession to the party concerned could be decided only by the civil Court, as the said decision requires the appreciation of evidence and factual finding by the Civil Court.

20. In view of the peculiar situation, as held by this Court in *Hindu Munna v. Commissioner of Police, Madras*, (1994) (1) L. W. (Cri.) 352, and *C. Santhosh Agarwal v. State by Inspector of Police*, (supra), the powers under Article 227 can also be invoked by this Court to pass suitable orders giving the appropriate directions to the parties as well as the Courts under its jurisdiction in order to secure the ends of justice.

21. Therefore, the petitioner is directed to approach the civil court where the suit is pending for appointment of Receiver to whom the key can be handed over pending disposal of the suit. On the application filed by the petitioner, the civil Court concerned shall pass necessary orders for appointment of Receiver and direct the Superintendent of Police to hand over the key to the said Receiver pending disposal of the suit, it is further directed that the Civil Court shall dispose of the suit within six months from the date of receipt of this order and pass an order in accordance with law on the basis of the materials placed before the civil court by both the parties concerned, uninfluenced by any of the observations made in this order.

22. Before parting with this case, this court is constrained to express its feelings of the agony over the non-performance of the duty vested with the police to maintain the law and order situation in the State:

(I) The duty of the police is to prevent and detect crime and to bring the accused to justice. Lord Denning in his book titled "The Due Process of Law" observed as follows:

"In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well led, well-trained and well-disciplined force or police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice. The police, of course, must act properly. They must obey the rules of right conduct.

(II) It is he who enforces the law, maintains the public order, regulates the traffic, keeps the lawless elements in check, brings the offenders to book. Police after advent of independence of India and becoming a parliamentary democracy, practically became a servant of people. While maintaining law and order as servants of the democracy, it has to act as a guide of the people to counsel them towards the responsible civic life. The police should be "of the people and for the people" and not "off the people and far the people".

(III) It is the duty of the Investigating officer to discover the truth and make a relentless pursuit for the truth. The police in conducting the investigation must act in such a way as to inspire full confidence in everybody concerned.

(IV) It is to be recalled, at this juncture, that once Tamil Nadu Police was considered to be brave and honest, equivalent to Scotland Police. Could we now say the same image is being maintained by Tamil Nadu Police? This Court is unable to answer the question in the affirmative.

(V) Day-in and Day-out, this court has to deal with the similar cases in plenty involving the incidents of forcible dispossession by the landlord with the help of local "Dhadhas", some of whom claim membership in the political parties under the very nose of the police officers of the local area.

(VI) Unless, the higher-ups in the police machinery take stern action by giving suitable directions to the local Station House Officers to curb these activities, the people will, in course of time, lose confidence in the police agency.

(VII) Earlier, we used to be informed that the civil Court matters are settled at the police station itself. Now, it seems that the said power has been given by the police to local musclemen. Consequently, it is clear that the powers "conferred on the Rent Control Authorities and the Civil Courts for settling the issues between the parties have been usurped by the musclemen giving "quick remedy" to the moneyed landlords. This is not the healthy trend, this situation, at present, is causing concern.

23. In the discussion made above, this Court has specifically given a finding regarding the wanton inaction of the 5th respondent by refusing to entertain the complaint given by the petitioner and not taking prompt action.

24. In these circumstances, it would be appropriate for this Court to direct the Director General of Police, the second respondent to take suitable departmental action against the 5th respondent in accordance with the procedure contemplated under law and accordingly directed. The Secretary, Home Department, the first respondent and the Director General of Police, the second respondent are directed to ensure that this sort of incidents involving the forcible dispossession of tenants is averted by awakening the police force to keep vigil on the offenders, namely "Supermen known for speedy eviction".

Let us hope for the restoration of the old image and reputation of the Tamil Nadu Police in the future.

25. With these observations, this Criminal Original Petition is disposed of. In view of the final order passed in the main petition, no order is necessary in Crl. M.P. Nos.9655 of 1999 and 474 of 2001.