

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2015

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Cr1.R.C.No.405 of 2015

and

M.P.No.1 of 2015

1. Attur Thuluva Vellalar Sangam
represented by its President
R.Vasanthan
100 and 101 Thayumanavar street
Attur-636 102.
Salem District.
 2. Attur Dharmarajar Thirukoil and
Arukighu Draupathi Amman Temple
represented by
Attur Thuluva Vellalar Mahajana Mandram President
S.Arunachalam
No.73 Thayumanavar Street
Attur-636 102.
Salem District
 3. Attur Dharmarajar Thirukoil and Arulmighu Draupathi
Amman Temple
represented by
Attur Thuluva Vellalar Mahajana Mandram Vice President
S.Palanisamy
Proprietor Sri Ram Rice Mill
Thayumanavar Street
Attur-636 102.
- ... Petitioners

Vs

1. The Sub Divisional Executive Magistrate cum-
Revenue Divisional Officer
Attur-636 102.
Salem District.
2. A.Raja @ Rajaram
S/o.K.Arumugam

3. The Assistant Executive Engineer
Public Works Department
Water Resources Organisation
Sarabanga River Basin Circle
Attur-636 102.
Salem District.

... Respondents

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, Attur, Salem District, passed in Na.Ka.No.3784/2014/A2 on 05.03.2015.

For Petitioners : Mr.T.Murugamanickam

For Respondents : Mr.C.Iyyapparaj,
Government Advocate [Crl.side]
[R1 & R3]
Mr.A.Raja @ Rajaram,
Party-in-Person [R2]

O R D E R

This revision arises against the order of Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, Attur, Salem District, passed in Na.Ka.No.3784/2014/A2 on 05.03.2015.

2. Heard learned counsel for petitioner and learned Government Advocate [Crl.side] for respondents 1 and 3. Second respondent, party-in-person, who has raised very many objections and casts several aspersions against petitioners herein. This Court, however, is not required to go into the same.

3. Second respondent had approached this Court by way of W.P.No.20913 of 2006 seeking removal of encroachment across Salem District, Attur Vasishta River. This Court, under orders dated 19.09.2008, has held thus:

"This is a writ petition filed by the petitioner in public interest for removal of encroachment from water bodies.

2. In view of the judgment of this Court, dated 26.08.2008 rendered in W.P.No.20494 of 2008 (R.Munuswamy -vs- District Collector, Vellore), this Court holds that this petition for removal of encroachment/obstruction from water bodies is not maintainable under Article 226 of the Constitution of India, in view of the fact that

there is a specific statutory remedy provided under Section 133 of the Code of Criminal Procedure.

3. This writ petition is, therefore, misconceived. But, we make it clear that if the petitioner is so advised, he can approach the Magistrate under Section 133 Cr.P.C. and if such proceeding is initiated, the learned Magistrate will examine the same and pass appropriate orders, on merits and in accordance with law. We, however, do not make any observation on the merits of the case.

4. The writ petition is, thus, disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."

Informing such order, the second respondent moved the District Collector under petition dated 29.08.2012. The same labelled a petition u/s.133 Cr.P.C., sought action against the petitioners herein and in respect of water bodies allegedly under their control for offences u/s.431, 432, 467, 468 and 474 IPC. The first error of the first respondent was of issuing notice dated 07.10.2014 to petitioners, second respondent as also others calling upon them to attend an enquiry u/s.133 Cr.P.C. The initial requirement for proceeding u/s.133 Cr.P.C. is the satisfaction of the Magistrate concerned that there was an unlawful obstruction and nuisance at a public place, way, river or channel which may be lawfully used by the public and which, in it's opinion, should be removed. Upon such satisfaction, the Magistrate is required u/s.133 Cr.P.C. to pass a conditional order calling for the removal of the unlawful obstruction/nuisance. Having started on the wrong foot, the matter has been adjourned on several occasions in the course whereof petitioners have also filed their objections. To end on the same note on which the proceedings were initiated, the first respondent has passed the impugned order. A reading thereof informs his dissatisfaction with the non-cooperation of the third respondent/Assistant Executive Engineer, Public Works Department, Water Resources Organisation, Sarabanga River Basin Circle, Namakkal (Trichy Road) in the proceedings held by him. Having expressed his displeasure, the first respondent has gone on to direct the third respondent to take action for removal of encroachment across Salem District, Attur Vasishta River, after issuing notice to the concerned parties and with the assistance of Municipal Commissioner and Tahsildar and with proper police protection and to submit a report thereof within 30 days to him as also to the District Collector. The manner in which the proceedings had been gone about is not in keeping with Chapter X-B of the Criminal Procedure Code.

This Criminal Revision shall stand allowed. The order of Sub-Divisional Executive Magistrate-cum-Revenue Divisional Officer, Attur, Salem District, passed in Na.Ka.No.3784/2014/A2 on 05.03.2015, shall stand set aside. The first respondent is now required to conduct proceedings afresh strictly in keeping with Chapter X-B of the Criminal Procedure Code. It would be open to petitioners to raise all contentions including that of denial of public right in the property in question. It is seen that the second respondent has been vexing the case over several years. It is the submission of learned counsel for petitioners that the second respondent's actions stem out of ill-will and there also are civil actions pending adjudication by Courts. When the proceedings of the first respondent are found to be totally not in keeping with the procedure established by law, this Court would not enter upon the merits of the rival cases. This Court makes it clear that this Court is not expressing any view on the merits of the rival cases. This Court leaves it to the first respondent to deal with the issue solely on merits and in accordance with the procedure prescribed under law and with expedition. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kpr/gm
To

1. The Sub Divisional Executive Magistrate cum-
Revenue Divisional Officer,
Attur-636 102, Salem District.
2. The Assistant Executive Engineer
Public Works Department
Water Resources Organisation
Sarabanga River Basin Circle
Attur-636 102, Salem District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Murugamanickam, Advocate, S.R.No.65805

+3cc's to Mr.A.Raja @ Rajaram, Advocate, S.R.No.65773

CrI.R.C.No.405 of 2015

AK(CO)

CA(04/02/2016)