

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1222 of 2010

R.Rajendran

... Petitioner

Versus

1. Gnanasambandham

2. The Thasildhar
Thiruthuraipoondi
Thiruvarur District.

3. The District Collector
Thiruvarur.

... Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed by the learned Judicial Magistrate, Thiruthuraipoondi, Thiruvarur District, dated 16.11.2010 in CrI.M.P.No.294 of 2010 directing the petitioner to vacate the land situated at Survey No.151/8, Kothamangalam Revenue Village in case of default by the petitioner herein, directing the respondents 2 and 3 to take private action against the petitioner by evicting him from the illegal possession.

For Petitioner : Mr.M.Vijayakumaran

For Respondents : Mr.S.Sathiamurthy for R.1

Mr.V.Arul
Government Advocate (Criminal Side)
for R.2 and R.3

ORDER

The first respondent herein filed a petition in CrI.M.P.No.294 of 2010 under Section 133 of Cr.P.C. before the learned Judicial Magistrate, Thiruthuraipoondi, seeking to direct the petitioner to

evict the land situated at Survey No.151/8 in Pallankoil Village at Kothamangalam Revenue Village, Thiruthuraipoondi Taluk, in case of default by the petitioner, to direct the respondents 2 and 3 to evict the petitioner from the land in question which was alleged to be possessed illegally by the petitioner herein. The learned Judicial Magistrate, Thiruthuraipoondi, by order dated 16.11.2010, directed the petitioner to vacate the land in question within a month from the date of the order i.e., 16.11.2010, failing which, directed the respondents 2 and 3 to evict the petitioner from the land by taking private action against the petitioner herein. Aggrieved against the said order, the present Criminal Revision Case is filed.

2. Mr.M.Vijayakumaran, learned counsel appearing for the petitioner would submit that the Lower Court erred in directing the petitioner to vacate the land in question, when it has got no jurisdiction at all. He would further submit that as per Section 133 of Cr.P.C., the District Magistrate or Sub-Divisional Magistrate or the Executive Magistrate, who has been specifically empowered by the State alone can pass an order and not the Judicial Magistrate can pass a conditional order for removal of public nuisance and hence, he would seek to remit back the matter to the Lower Court for fresh disposal.

3. Mr.S.Sathiamurthy, learned counsel appearing for the first respondent would submit that the first respondent along with two others earlier filed a Writ Petition before this Court in W.P.No.21239 of 2008 and this Court, while dismissing the Writ Petition, directed the petitioners to seek appropriate remedy before the concerned Judicial Magistrate as provided under Section 133 of Cr.P.C. and hence, the first respondent had filed a petition before the learned Judicial Magistrate, Thiruthuraipoondi, and the learned Magistrate, by order dated 16.11.2010, directed the petitioner to vacate the land in question within a month and there is no infirmity in the order passed by the learned Magistrate and hence, he prayed for the dismissal of the Criminal Revision Case.

4. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

5. Having regard to the fact that as per Section 133 of Cr.P.C., the District Magistrate or Sub-Divisional Magistrate or the Executive Magistrate, who has been specifically empowered by the State alone can pass an order and not the Judicial Magistrate can pass a conditional order for removal of public nuisance, this Criminal Revision Case is allowed. Consequently, the Miscellaneous Petition is closed. The order passed by the learned Judicial Magistrate, Thiruthuraipoondi, Thiruvavur District, in CrI.M.P.No.294 of 2010, dated 16.11.2010, is set aside and the matter is remitted back to the authority concerned, viz., Executive Magistrate concerned, who shall take up the matter on file for fresh consideration and by issuing fresh notice to all parties concerned and after giving an opportunity of hearing to all parties concerned, shall pass appropriate orders,

on merits and in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. Both parties are directed not to drag on the proceedings and to co-operate with the case.

Sd/-
Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

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To

1. The Thasildhar
Thiruthuraipoondi
Thiruvarur District.
2. The District Collector
Thiruvarur.
3. The Judicial Magistrate,
Thiruthuraipoondi,
Thiruvarur District
4. -do- Through The Chief Judicial Magistrate,
Tiruvarur
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.VijayaKumaran, Advocate, S.R.No.32522
+1cc to Mr.S.Sathiamurthy, Advocate, S.R.No.32006

सत्यमेव जयते

Cr1.R.C. No. 1222 of 2010

KSJ(CO)
CA(23/07/2015)

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