

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

CrI.O.P.No.6545 of 2013
and
MP.No.1 of 2013

Dr.K.Nedunchezian

... Petitioner

Vs.

1.The Revenue Divisional Officer/
Sub Divisional Executive Magistrate,
Tiruchengode, Namakkal District.

2.N.Mathiyalagan

Impleaded as the 2nd respondent as per order of this Court
dated 11.08.2014 in MP.No.2 of 2013.

... Respondents

Prayer : - Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records in the file of the Sub Divisional Executive Magistrate/Revenue Divisional Officer, Tiruchengode in MC.No.287/2012 dated 31.12.2012 pertaining to the Lions Club Charitable Trust, Velur, Namakkal District and to quash the same.

For Petitioners : Mr.Krishnamoorthy SC
for R.Karthikeyan.

For Respondents : Mr.C.Emalias, APP for R1.
Party-in-person for R2.

ORDER

The petitioner herein claiming himself to be the President of Lions Club, Charitable Trust has come forward with the present petition against the order of the first respondent herein, in and under which, the petitioner Lions Club is treated to be one of the aggressors in unlawful possession of the property in question and is denied restoration of possession of the property in question.

2.The dispute has a chequered history. The property in question measuring 1.73 acres in S.No.33/1 was originally purchased by the trustees of Mahatma Gandhi Memorial Committee Trust by means of registered sale deed dated 29.05.1950. Thereafter, the committee members constructed a building for the purpose of reading rooms, indoor games and other recreation for the public residing in and around Vellore. Gandhiji Memorial Club, Vellore having the first trust of Mahatma Gandhi memorial committee as its President was registered in S.No.6 of 1958 under the Act.XXI of 1860. Gandhiji memorial club after repealing Act XXI of 1860 and after enactment of Act 27 of 1975 was also registered under the new Act in S.No.18 of 1980. In 1985 then collector of Salem issued oral orders to Tahsildar, Namakkal to take forcible possession of the building wherein Gandhiji Memorial Club was functioning and Additional Tahsildar, Namakkal in compliance with the oral order took delivery and locked up the premises and refused any member to enter into the club. Aggrieved against the same, the Gandhiji Memorial Club represented by its president approached High Court by way of WP.No.5090 of 1986 for issuing a writ of mandamus forbearing the official respondents from in any manner interfering with the peaceful possession and enjoyment of the property in question. The High Court by Order dater 13.08.1986 directed the Collector to hand over the key to the petitioner on or before 30.08.1986 with liberty given to the Collector to take action for any activity of the club if it is in violation of any law. This court in the Order dated 13.08.1986 mentioned that the collector cannot take possession of the private club. It is not in dispute that the order of this court was duly complied with by the revenue officials by handing over the building to the petitioner/Gandhiji Memorial Club. While Gandhiji Memorial Club has been in occupation, Gandhiji Memorial club through its then President entered into a lease deed with Lions Club of Vellore Charitable Trust represented by its President on 11.04.2001, thereby allowing Lions Club to occupy 15000 sq.ft (East West 100 feet x North South 150 feet) to use the same for thirty years for the social activities of the club. The portion of the property was also being used for running gym centre under the name and style of M.Rathinasabapathy Physical Fitness Memorial Centre having one N.Mathialagan as its master. While Gandhiji Memorial club, Lions club of Vellore Charitable Trust and Rathinasabapathy Fitness Centre had been in occupation of the respective portions of the property for the purpose of carrying on various activities, dispute arose between Gandhiji Memorial Club and Lions Club on one hand and Mathialagan on other hand resulting in institution of OS.No.102 of 2007 by Mathialagan against (1)A.P.Kamarajan, Lions club and (2)Vellore Lions Club by its Secretary for declaration that the defendants therein have no right

in the suit schedule property in any manner and for permanent injunction restraining the defendants and their men from in any manner disturbing the peaceful possession and enjoyment of the suit Schedule properties by the plaintiff. The subject matter of the Civil Suit in OS.No.102 of 2007 is the old building constructed in the year 1952 i.e., Gandhiji Memorial Club and the vacant land adjoining the same bearing Door No.90, North Street, Vellore measuring about 4000sq.ft, toilet portion constructed about 600 sq.ft and the remaining portion excluding the building for indoor games and about 150 trees, the building for indoor game center, which is according to the averments raised in para 4 constructed by the Lions Club. Pending suit, an Advocate Commissioner was appointed in OS.No.102 of 2007 to note down the physical features of the suit property and the Advocate Commissioner filed his report and rough plan as per which Gandhiji Memorial Club, Lions club and fitness centre were in respective possession of the respective portion of the property.

3.In the meanwhile, Mahatma Gandhiji Memorial Committee Trust which became defunct was restarted with 9 members vide registered document dated 21.08.1995. While so, the respondent/RDO, Thiruchengode passed a suo-moto order dated 24.09.2011 under Section 144 Cr.P.C thereby prohibiting any one to enter, trespass and or using the said property for any kind of activities until further orders stating that there are some people trespassed in to Mahatma Gandhi Memorial Hall Committee and it is likely to lead to a riot or an affray and will induce a breach of peace and public tranquility. The order so passed by the respondent herein are challenged by AP.Kamarajan who was the then President of Gandhiji Memorial Club by way of Crl.OP.No.23885 of 2011. This court by order dated 03.04.2012 having regard to the fact that the impugned order was not extended beyond two months and already lapsed and closed the criminal original petition stating there is no need to quash the said order.

4.In pursuance of such order dated 03.04.2012 the President Gandhiji Memorial Club approached RDO, Tiruchengode for restoring the possession of the premises to the president Gandhi Memorial club. The then RDO on receipt of the representation, directed the Tahsildar, Paramathy, Vellore to restore the premises in question to the President Gandhiji Memorial Club. In compliance with the order dated 10.04.2012, the Tahsildar handed over the possession of the building along with articles inside the same to the President, Gandhiji Memorial Club. Both the Tahsildar and the President Gandhiji Memorial club for handing over and accepting the possession of the property in question made due endorsements.

5. In the meanwhile, Mahatma Gandhiji Gnabagaartha Committee made representation to the District Collector on 03.01.2012 to handover the possession of the building to the committee. The District Collector on receipt of the same directed the RDO, Tiruchegode to conduct Section 145 Cr.P.C proceedings and to dispose of the issue. In pursuance of order dated 04.01.2012, the respondent/RDO initiated Section 145 Cr.P.C proceedings and passed preliminary order on 12.04.2012 thereby directing the parties to attend the Court of RDO. In pursuance of the notice, enquiry was conducted on 30.04.2012 and another order dated 04.05.2012 was passed under Section 146(1)Cr.P.C. thereby authorising the Inspector of police, Vellore to attach the said land to keep and to hold the same under attachment until the decree or order of a competent court determining the rights of the parties. In pursuance of the order dated 04.05.2012, the Inspector of Police took possession of the land and buildings on 15.5.2012. While the land and building were in the custody of the Inspector of Police, Vellore police station the respondent RDO passed another order dated 17.05.2012 under Section 146(2)Cr.P.C. thereby appointing the Tahsildar Paratmathy, Vellore Taluk as a receiver for looking after the property in dispute and in compliance with the orders of the RDO, the Inspector of police handed over the possession to the Tahsildar, Paramathy Vellore along with the articles as per the list prepared by the inspector of police.

6. The order of the Tahsildar dated 04.05.2012 and 17.05.2012 were again challenged by Gandhi Memorial Club, Vellore rep by its President A.P.Kamarajan by way of Crl.OP.Nos.14099 and 14100 of 2012 and the impugned orders were sought to be quashed mainly on the ground that the RDO, directed both the parties to appear before him for enquiry without determining as to who is the aggressor and the same is contrary to law and against the principles of natural justice. This court by order dated 03.09.2012 accepted the contention so raised on the side of the President of Gandhi Memorial Club and set aside the impugned orders and remitted the matter back to the RDO to fix up the aggressor and to issue summons simultaneously and to conduct enquiry in the manner known to law.

7. Thereafter the respondent conducted fresh enquiry and passed the impugned interim order on 31.12.2012 thereby fixing (1) Gandhiji Memorial Club (2) Mathialagan and (3) Lions Club as trespassers/aggressors in unlawful possession and arrived at conclusion as if Mahatma Gandhiji Gnabagaartha committee has been in possession of the property and denied restoration of possession to Lions Club. The RDO further directed the parties to appear for full fledged enquiry along with the documents either in person or through their counsel. Aggrieved against the order of the RDO, thereby

treating Lions club as one of the aggressors in unlawful possession of the property and denying restoration of possession to Lions Club, the Lions Club has approached this court by way of the present criminal original petition. Though this petition has been originally filed against RDO who passed the impugned order, the second respondent/Mathialagan got himself impleaded herein.

8. The learned senior counsel for the petitioner has seriously challenged the correctness of the impugned order passed by the RDO on the following grounds that the course adopted by the RDO in fixing the aggressors and allowing the committee trust to take possession of the property and to deny possession to the Lions club and thereafter fix the enquiry for appearance of the parties with the documents in their possession to decide the issue relating to the possession is totally in derogation of the direction issued by this court vide order dated 03.09.2012. When this Court has remanded the matter for holding enquiry and for fixing the aggressor and to issue summons simultaneously and to dispose of the matter in the manner known to law, the question of allowing the committee to take possession of the property by way of interim arrangement during the pendency of the proceedings does not arise herein. The respondent herein has exceeded the jurisdiction vested on him under Section 145 Cr.PC in going into the right of the parties which is against the well settled legal principles. The RDO has failed to consider the legal and factual events that preceded the direction issued by this Court on 03.09.2012 to decide the person in actual possession of the property and such failure resulted in miscarriage of justice. The RDO ought to have seen that the duty of the court is only to give a finding regarding possession of the disputed land on the date of the order made by him under sub section (1) without reference to the merits of the claims of any of the parties to right to possess the subject of dispute. Whereas, the order passed by the respondent herein in going into the claim of the parties on merits is legally unsustainable. The respondent/RDO has, before passing any direction to the Tahsildar to initiate Section 145 proceedings failed to see that mere contesting of two or more parties will not attract invocation of Section 145 Cr.P.C. unless there is likely to have such dispute resulting in disturbance to public order and tranquility and in breach of peace and the respondent ought to have rendered a finding based on materials regarding existence of one such factual situation. The failure to render one such finding and failure to refer to the nature of the information and the source of information for arriving at a conclusion that there is likely to be breach of peace, the impugned order is vitiated. It is also contended before this court that in the event of the impugned order held to be bad in law, the status quo prior to the order of attachment and appointment of

receiver shall be restored and the parties who were in possession of the respective portions of the building shall be put back in possession of the property.

9.The learned counsel for the petitioner in support of his contention cited the following authorities.

1. 2002 (2) Crimes 24 SC - Ranbur Singh V. Dalbir Singh and others.
2. 1977 LW (Cr1) 187 - A.M.Kulandaiswamy V. S.Sherfuddin
3. 1979 LW (Cr1) 48 - Meenakshiammal and others V. Inspector of Police, Hasthampatti and another.
4. 1984 LW (Cr1) 79 - Abdul Rasheed V. Syed and others.
5. 2001 MLJ (crl) 608 - C.S.Sampath and others V. R.Perumal Naidu
6. 2006 (1) MLJ (Cr1) 532 - V.Mariyapushpam V. Revenue Divisional Officer-cum-Sub Divisional Magistrate, Thanjavur and others.
7. 2010 3 MLJ 1273 - All India Trade Union Congress, Rep by General Secretary, Cuddalore District, M.Sekar V. Neyveli Lignite Corporation Ltd., Rep by its Chairman and others.
8. 2012 (4) MLJ (crl) 617 - Infovision Private Ltd and others V. Inspector of Police, St.Thomas Mount Police Station and others.

10.The relief is seriously opposed on the side of the respondent/Revenue official mainly by relying on the pendency of the Civil suit between two or more persons. The petition is also seriously opposed by the second respondent/Mathialagan individual mainly on the ground that neither Gandhiji Memorial Club nor Lions club have any right to be in the lawful occupation of the property but have been making attempts to grab the property and they are rightly fixed as aggressors and are disentitled to challenge the impugned order and disentitled to seek restoration of possession and occupation.

11.Heard the rival submissions made on both sides and perused the records.

12.The facts above stated in the foregoing paragraphs would undoubtedly go to show that though the property was purchased from and out of the public funds of Mahatma Gandhi Memorial Committee trust (herein after referred to as memorial committee) the entire land which is the subject matter of the sale deed of the year 1950 and the building put up thereon had been in possession of Gandhiji Memorial club (herein after referred to as memorial club) constituted

by the same memorial committee. The fact that the memorial club had been in possession and enjoyment of the property is evident from the proceedings in WP.No.5090 of 1986 and in Crl.OP.No.23885 of 2011, initiated by the Memorial Club when the possession of memorial club was sought to be intervened by the Collector and the Sub Divisional Executive Magistrate/RDO respectively and by the orders passed by this Court on 13.08.1986 in the writ petition and on 03.04.2012 in the criminal original petition. The High Court by order 13.08.1986 passed in the writ petition specifically directed the Collector to hand over possession of land and building to the writ petitioner/memorial Club and the possession of the property was duly handed over to the memorial club represented by its President in compliance with such order. The memorial club through lease deed dated 11.04.2001 leased an extent of 15000 sq.ft to Lions club of Vellore charitable trust for thirty years. Both memorial club and lions club had been in possession and enjoyment of respective portion of the land and building. In addition to the same, the physical fitness centre was also functioning in a portion of the property which is the subject matter of Civil suit in OS.No.102 of 2007 filed by the second respondent herein. The RDO in pursuance of the order dated 03.04.2012 made in the criminal original petition, handed over the possession of the property along with entire articles and fixtures inside the property to memorial club who was the petitioner in the criminal original petition. Between 1986 and 2011 the memorial committee was nowhere in the picture and was not shown to be in possession of any portion of the property.

13.The Advocate Commissioner report filed in OS.No.102 of 2007 and the report of the Inspector of police, regarding the delivery of possession of the property along with the articles and fixtures in the property to the President Memorial club in pursuance of the order dated 03.09.2012 in Crl.OP.Nos.14099 & 14100 of 2012 filed by the same memorial club against the order of attachment and appointment of receiver in the property in question would reveal that Gandhiji Memorial Club and Lions Club had been in possession and enjoyment of the respective portions of the building and portion of the property was also used for running physical fitness centre. The possession and enjoyment of the property in question by the respective club is also evident from the pamphlets of Lions Club relating to various activities carried on by them, the foundation stone laid thereon, EB card, EB bills, property receipt and building approval receipt relating to the year 2001 enclosed in the typed set of papers filed by the petitioner Lions club. Thus, there are sufficient and satisfactory material to prove the actual persons in possession of the land and buildings in question prior to the orders passed on 04.05.2012 and 17.05.2012.

14. By orders dated 04.05.2012 and 17.05.2012, the RDO once again initiated Section 145 Cr.P.C. proceedings and took possession of the property from memorial club and lions club and as on the date of order (i.e.) on 03.09.2012 passed by this Court in Crl.OP.Nos.14099 and 14100 of 2012, the Tahsildar, Paramathy Vellore has been in the custody of the property and the same state of affairs continued during the course of fresh enquiry by RDO and on the date of passing impugned order on 31.12.2012. In other words, the actual persons in the occupation prior to the orders dated 04.05.2012 and 17.05.2012 were memorial club and his lessee i.e. Lions Club, as such, the persons dispossessed by virtue of the orders dated 04.05.2012 and 17.05.2012 were memorial club and its lessee lions club. This Court, in its order dated 03.09.2012, while setting aside the order dated 04.05.2012 and 17.05.2012, remanded the matter for fresh enquiry to fix up the aggressors i.e. to fix up the trespassers. In other words, the person who forcibly and wrongfully dispossessed any other person who had been in actual possession of the property. However, the respondent/RDO has by erroneously interpreting the expression aggressor as that of the persons in the occupation without any right to do so, proceeded to go into the right of the parties on merits and arrived at a conclusion that the property belong to memorial committee and memorial club was no longer in existence and the memorial club was unregistered one and was in possession of the property without any right to do so and the lions club, who was lessee under the memorial club also had no right to be in the occupation of the property and are hence aggressors. The RDO also arrived at another conclusion that the property has been in possession of this memorial committee. Both the findings are in my considered view outside the scope of enquiry in the proceedings under Section 145 Cr.PC and are contrary to material available.

15. Insofar as the finding regarding the possession of the memorial committee is concerned, the same is baseless unfounded and contrary to the earlier orders passed by this court and contrary to the order passed by the RDO in directing restoration of possession to president memorial club. This court has, in the foregoing paras stated that the possession was handed over to the president Gandhiji memorial club and this court also referred to other documents, which referred to the possession of memorial club and lions club and various activities conducted by them in the respective buildings in their occupation. As a matter of fact, in the representation given by the memorial committee, it is categorically stated that possession was not with them and what is sought for by them is restoration of possession of the property, as such, the finding that the memorial committee has been in possession on the date of the impugned order, is legally and factually unsustainable.

16. Regarding the finding that the petitioner herein is one of the aggressors, the same is based on two facts (i) Gandhiji Memorial club is no longer in existence and it has no right to be in occupation and it has no right to deal with the property belonging to memorial committee and (ii) the lessee lions club also has no right to be in the occupation.

17. Regarding the maintainability of the petition by the unregistered memorial club, the same is answered by the learned brother judge in the judgment reported in 2010 (3) MLJ 1273 - All India Trade Union Congress, Rep by General Secretary, Cuddalore District, M.Sekar V. Neyveli Lignite Corporation Ltd., Rep by its Chairman and others wherein the learned brother judge of this Court under identical circumstances is pleased to support the maintainability of the writ petition by the unregistered trade union, who was dispossessed from the building in terms of Section 145(b)(a) Cr.P.C.

18. Regarding the finding that the lions club is one of the aggressors, the learned counsel for the petitioner at this juncture has drawn the attention of this Court to the scope of enquiry under Section 145(4) Cr.P.C, wherein it is made clear that the Magistrate is under section 145(4) without reference to the merits of the claims of any of the parties and right to possess the subject of dispute bound to enquire whether any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received or before the date of the order made by him under sub Section(1). This Court has more than once referred to the documents, which go to establish the possession of Lions Club in the disputed portion of the property as lessee under the Memorial Club. When the scope of enquiry under section 145 Cr.P.C is to decide the issue regarding possession or dispossession as the case may be and not the right of the parties or right to be in possession, the finding rendered by the Revenue Divisional Officer that Lions Club has no legal right to occupation of the property, is hence not only contrary to the available materials, but also without jurisdiction. Lions Club having been in possession of the property under its lessor Memorial Club, on the date of the orders i.e., on 4.5.2012 and 17.5.2012, the issue relating to the possession ought to have been decided only in the light of the prevailing state of affairs on those dates. Whereas, the Revenue Divisional Officer has by going into the question of title, enlarged the scope of enquiry under section 145 Cr.P.C and arrived at the finding without any evidence and without full fledged trial regarding the title and the right of the parties in possession of the

property and such finding is, in my considered view, legally and factually unsustainable.

19. Other ground on which the correctness of the impugned order can be viewed is that there is no material or finding to the effect that the dispute between the parties is such, which is likely to result in disturbance of public tranquility leading to breach of peace. Except referring to the existence of dispute among the parties, no statement is found in the order about the serious nature of the dispute resulting in breach of peace to enable the Revenue Divisional Officer to allow the committee/trust to take possession of the property and to deny the restoration of possession to the petitioner Lions Club. The petitioner Lions Club having been found to be in possession of the property, the denial of restoration of possession to the same is against law.

20. Our High Court in the judgments reported in 1979 LW (Cr1.) 48 Meenakshiammal and others V. Inspector of Police, Hasthampatti and another and 1984 LW (Cr1) 79 Abdul Rasheed V. Syed and others has clearly held that the Magistrate is required to decide as to who was in possession on date of preliminary order, and not who had the right to be in possession and it is the duty of the court to have adverted its mind on the question of the actual possession on the date of the order passed under Section 145(1) Cr.P.C without reference to the merits of the claims of any of the parties to a right to possess the subject of dispute. The same view was followed by the Hon'ble Apex Court in the judgment reported in 2004 SCC (cr1) 320 - Shandi Kumar Panda V. Shakuntala Devi wherein it is in para 10 held that Section 145 of the Cr.P.C authorises the Executive magistrate to take cognizance relating to any land causing a likelihood of breach of the peace and settle the same by holding an enquiry into possession as distinguished from right to possession or title.The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of preliminary order or within two months next before the said date as referred to in the proviso to Sub Section (4) of Section 145 and maintain status quo as to possession until the entitlement to possession was determined by a Court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession simpliciter the same view was followed by the learned brother judge in the judgment reported in (2006) 1 MLJ 532 V. Mariyapushpam V. Revenue Divisional Officer-cum-Sub Divisional Magistrate, Thanjavur and others wherein it is clearly held that the Executive Magistrate is not authorised to adjudicate

upon right to possession or title.

21.The Hon'ble Supreme Court has in other judgment reported in 2002 (2) crimes 24 - Ranbur Singh V. Dalbir Singh and others while defining the limited scope of the proceedings under Section 145 Cr.P.C, categorically held that the court is mainly concerned with possession of the property in dispute on the date of preliminary order and dispossession, if any, within two months prior to that date. The court is not required to decide either title to the property or right of possession of the same. The question arises for determination before this Court in the present case is one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) Cr.P.C. and sustainability of the order of attachment passed under Section 146(1) Cr.P.C.

22.If the issue relating to the possession on the date of the preliminary order and dispossession within two months prior to the date is appreciated in the light of the above legal principle laid down, the same would render the impugned order to be an abuse of process of law, for the simple reason that the Executive Magistrate had decided the issue by going into the title and the right to possession and held the parties as aggressors mainly on the ground that they have no right to be in possession. Such course adopted by the Executive Magistrate is not proper approach in the observations of the Hon'ble Supreme Court and by our High Court in the judgments cited above.

23.Next question arises for consideration herein is the absence of any material to show that the dispute between the parties is likely to lead to disturbance of public order and tranquility and resultant breach of peace. Our High Court has in the judgments reported in 1977 LW (Cr1.) 187 - A.M.Kulandaiswamy V. S.Sherfuddin; 1979 LW (Cr1.) 48 Meenakshiammal and others V. Inspector of Police, Hasthampatti and another and 1984 LW (Cr1) 79 Abdul Rasheed V. Syed and others clearly observed that every dispute will not attract invocation under Section 145 Cr.P.C. but only dispute attended with a threatened breach of peace. Whereas in the present case, the respondent has simply arrived at conclusion that there is likely to be disturbance of public peace and tranquility and breach of peace solely on the ground that there are disputes pending between the parties. There is no material or finding by the Inspector of police or by any other way of information to show that the dispute is likely to lead to breach of peace. It is only explained so in the counter filed by the respondent/RDO. What are the reasons explained in detail in the counter are not reflected in the impugned order to

sustain the finding regarding the likelihood of breach of peace.

24.As a matter of fact, the Inspector of police has by way of reply under RTI Act, informed the petitioner that no incident leading to disturbance and breach of peace is either registered as FIR or reported between August 2011 and June 2012 and in the absence of one such information, the impugned order passed by the Executive Magistrate cannot at all be sustained. It is also relevant to point out at this juncture that, the contesting parties have either approached the civil forum by way of civil suit or the criminal forum by lodging the criminal complaint against the alleged offender. While the second respondent/Mathialagan has filed OS.No.102 of 2007 for the relief of declaration and consequential injunction, the memorial trust has filed another suit in OS.No.66 of 2013 for settling a scheme for proper administration and management to the trust and for declaration and injunction restraining the defendants from causing damage to the property or the buildings.

25.By applying the same principle laid down by the Hon'ble Supreme Court and our High Court in the judgments above cited the right of the parties shall be determined by the appropriate civil forum in the respective civil suit and the status quo regarding possession shall be maintained till then and it is not for the Executive Magistrate to decide the issue regarding the rights of the parties in the proceedings, which is speedy and summary in nature.

26.Regarding restoration of possession is concerned, the authority concerned is vested with jurisdiction to pass appropriate orders for restoring the person who was dispossessed from the property in question. The Hon'ble Supreme Court and our High Court in the following judgment emphasized that one such power is vested with the Executive Magistrate for ordering restoration of possession (i)2010 (3) MLJ 1273 - All India Trade Union Congress, Rep by General Secretary, Cuddalore District, M.Sekar V. Neyveli Lignite Corporation Ltd., Rep by its Chairman and others at page 1284; (ii)2001 MLJ (crl) 608 - C.S.Sampath and others V. R.Perumal Naidu; (iii)2004 SCC CrI. 320 Shandi Kumar Panda V. Shakuntala Devi; (iv)2002 (2) crime 24 (SC) - Ranbur Singh V. Dalbir Singh and others; and (v)2006 MLJ (CrI) 532 - V.Mariyapushpam V. Revenue Divisional Officer-cum-Sub Divisional Magistrate, Thanjavur and others.

27.In all these cases, the Hon'ble Supreme Court and our High Court having found that the RDO/Executive Magistrate has exceeded his jurisdiction in going into the claim of the parties on merits and right to hold possession and having found that the contesting party before the same was either in possession of the property on the date

of preliminary order or wrongfully dispossessed two months prior to the date on which information was received or after that date or before the date of preliminary order, directed restoration of possession to the party so dispossessed. Applying the same view, when the Lions Club had been in possession as lessee under memorial club in respect of the building in question prior to the preliminary order the same is held entitled to be restored to possession until the right of the parties is determined by appropriate civil forum.

28. Thus, for the discussions held above the impugned order is held to be illegal without jurisdiction and bad in law and is legally vitiated and is hence liable to be set aside. The petitioner is thus entitled to restoration of possession of the relevant portion of the property under dispute.

29. In the result the impugned order is set aside and the possession of the disputed premises is directed to be restored to the petitioner within two weeks from the date of receipt of copy of this order and the criminal original petition is accordingly ordered. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer,
Sub Divisional Executive Magistrate,
Tiruchengode, Namakkal District.

2. The Public Prosecutor, सत्यमेव जयते
High Court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.13305

KU(CO)
CA(20/04/2015)

Cr1.OP.No.6545 of 2013