

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22-12-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

W.P.No.26026 of 2013

S. Srinivasan

.. Petitioner

Vs.

1. The District Collector,
Madras District.

2. The Tahsildar,
Fort-Tondiarpet Taluk,
Chennai - 3.

3. The Inspector of Police,
P-4 Basin Bridge Police Station,
Pulianthope, Chennai - 12.

4. S. Giri

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by 2nd respondent in Aa4/01604/2013 dated 6.9.2013 and quash the same as illegal, unfair, arbitrary and amounts to abdication of statutory duty and further direct the second respondent to conduct summary enquiry as provided under Section 145 of Code of Criminal Procedure of 1973 and pass orders expeditiously for restoration of possession as provided under Sub-section (6) (a) within a time frame as fixed by this Court.

For Petitioner : Mr.R.Veeramani

For Respondents 1to3: Mr.K.Prabakar,
Government Advocate (Cr1.Side)

For 4th Respondent : Mr.K.P.Chandrasekaran

Reserved on	Pronounced on
18-12-2015	22-12-2015

O R D E R

This petition is filed to quash the order dated 6.9.2013 passed by the Tahsildar/2nd respondent herein dropping action on his complaint and for a direction to the second respondent to conduct summary enquiry as provided under Section 145 of Code of Criminal Procedure of 1973 and pass orders expeditiously for restoration of possession

2. It is the case of S.Srinivasan (petitioner) that he was a tenant under S.Giri (4th respondent) and that on 7.12.2012 he was physically dispossessed by his landlord in connection with which he made a representation dated 23.1.2014 to the District Collector, Chennai for taking appropriate action and putting him back in possession. On the said representation, the District Collector directed the jurisdictional Tahsildar to conduct enquiry and submit a report. The Tahsildar directed the Revenue Inspector to visit the place and submit a report. Based on the report submitted by the Revenue Inspector, the Tahsildar passed the impugned order dated 6.9.2013 stating that, in respect of the dispute between the petitioner and his Landlord Giri, the Police have registered a case in Cr.No.137 of 2013 and also a civil suit is pending between the parties and therefore further action may be dropped. Aggrieved by the said order, this writ petition has been filed to quash the same and for a direction to the Revenue authorities to conduct an enquiry under Section 145 of the Code of Criminal Procedure.

3. Heard the learned Counsel for the petitioner, learned Government Advocate (criminal Side) and learned Counsel for the 4th respondent.

4. Mr.R.Veeramani, learned Counsel strenuously contended that when a person is dispossessed from the property, the Executive Magistrate can initiate proceedings under Section 145 of the Code and restore possession to the party forcibly and wrongfully dispossessed, in terms of Section 145(6) (a).

5. I am unable to countenance this submission because the proceedings under Section 145 Cr.P.C. can be initiated by the Executive Magistrate only when the dispossession is likely to cause breach of peace and not in every case of dispossession. Section 145 of Cr.P.C. falls under Chapter X - Maintenance of Public Order and Tranquility, which reads as follows:

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.— (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction,

he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that 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 by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of the opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under Section 107."

A bare reading of the above provision reveals that if a particular incident is likely to cause breach of peace, it is well within the powers of the Executive Magistrate to intervene for the purpose of maintenance of Public Order and Tranquility.

6. In this case, according to the petitioner himself, he was dispossessed on 7.12.2012 and his representation was only on 23.1.2013. In the meantime a regular police case has been registered against the landlord and a suit has also been filed. Even the representation given by the petitioner does not say a word about the imminent possibility of breach of peace for conferring jurisdiction on the Executive Magistrate to initiate action under Section 145 of the Code of Criminal Procedure.

7. In such view of the matter, I hold that this petition is devoid of merits and the same stands dismissed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

vr

To

1. The District Collector, Madras District.
2. The Tahsildar, Fort-Tondiarpet Taluk, Chennai - 3.
3. The Inspector of Police, P-4 Basin Bridge Police Station, Pulianthope, Chennai - 12.

1 cc to M/s. R. Veeramani, Advocate, Sr. 69301

1 cc to M/s. K.P. Chandrasekaran, Advocate, Sr. 69628

W.P.No.26026 of 2013

RSI (CO)
kk 7/1

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