

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION Nos.21958 and 39091 of 2015

COMMO ORDER:

Since the issue involved in both these writ petitions is one and the same, they are disposed of by this common order.

W.P.No.21958 of 2015 is filed to declare the action of the 2nd respondent-Mandal Executive Magistrate, Dendulur, Mandal, West Godavari District, in issuing proceedings in M.C.No.5/ 2015/ B, dated 27.06.2015, withdrawing his earlier proceedings, dated 08.04.2015, issued under Section 145 Cr.P.C., in respect of the land to an extent of Ac.0.03 cents of land in R.S No.183/ 4 of Medinaraopalem, Denduluru Mandal, and handing over possession of the same to the 4th respondent-Village Revenue Officer, Medinaraopalem village, as illegal and arbitrary, and consequently, direct the respondents therein to continue the proceedings under Section 145 Cr.P.C., in the subject land and also direct the 4th respondent not to take possession of the said land.

WP No.39091 of 2015 is filed to declare the action of the 2nd respondent-Mandal Executive Magistrate, in passing orders in Case No.5/ 2015/ B, dated 08.04.2015, issuing orders under Section 145 Cr.P.C., as illegal and arbitrary and consequently, set aside the same.

Heard and perused the material available on record.

The 3rd respondent in W.P. No.21958 of 2015 is the elder brother of the petitioners therein. It is the case of the petitioners therein that their father was the absolute owner and possessor of Acs.0.19 guntas of land in R.S No.183/ 4 of Madinaraopalem village, Denduluru Mandal. He started a small church in his thatched house, situated in an extent of

Ac.03 cents to facilitate his family members to offer prayers and in other part of the land he has constructed a thatched house to live in therein. After his demise in 1989, his family members used to conduct prayers in the said Church and subsequently, the said church was closed.

In the year 2011, the 1st petitioner purchased an extent of Ac.0.34 ½ cents of land beside the old church, and constructed a big church with the help of other petitioners and they allowed the public also to offer prayers. The 3rd respondent, who is the elder brother of the petitioners, also came there and used to hold congregations. Due to his controversial speeches, as the public felt unhappy, the petitioners requested the 3rd respondent not to take any congregations. Therefore, the 3rd respondent bore grudge against the petitioners and started harassing by developing some anti-group against the petitioners. Further, the as the 3rd respondent broke open the locks of the old church and trespassed into the same with the help of his supporters, the petitioners made a complaint to the Divisional Police Officer to look into the matter, since there is a breach of peace in the locality. After investigation into the matter, the police registered a case in Crime No.76 of 2016 and the Sub-Inspector of police, Denduluru, reported the matter to the 2nd respondent with a request to initiate proceedings under Section 145 Cr.P.C., in respect of the subject land. After conducting a detailed enquiry and also after giving an opportunity to the petitioners as well as to the 3rd respondent, the 2nd respondent invoked proceedings under Section 145 Cr.P.C., and ordered that no one shall be entered into the disputed land until further orders. While the matter stood thus, the 2nd respondent suo-motto, recalled the above proceedings and directed the 4th respondent to take possession of the old church situated in the subject land and hand over the same to the

village elders, through the proceedings, dated 27.06.2015. Challenging the proceedings dated, 27.06.2015, the petitioners filed WP No.21958 of 2015 and challenging the earlier orders, dated 08.04.2015 of the 2nd respondent, the 3rd respondent in W.P. No.21958 of 2015, filed W.P. No.39091 of 2015.

The grievance of the petitioners in WP No.21958 of 2015 is that the subject land, in which Church is situated, is a private land and they are owners of the said land and the Church is also used as a private church by their family members only to offer prayers and due to some disputes in their family, they approached the police and the proceedings under Section 145 Cr.P.C., are initiated in respect of the subject land, however, the 2nd respondent suddenly issued the impugned proceedings, dated 27.06.2015, at the instance of some political leaders, withdrawing the earlier proceedings issued by him, without hearing them and without conducting any enquiry.

The 2nd respondent filed counter affidavit stating that on a representation filed by the villagers, stating that the Church, which is situated in the subject land was constructed by the villagers and owing to the issuance of the proceedings under Section 145 Cr.P.C., for the last 48 years, they are unable to offer prayers in the said Church and, therefore, requested to conduct enquiry and withdraw the proceedings under Section 145 Cr.P.C., with regard to the Church. Upon the said representation, the 2nd respondent, after conducting due enquiry, issued the impugned orders, dated 27.06.2015, withdrawing the earlier orders issued by him, with regard to the extent of land in which the Church is situated and directing the 4th respondent to hand over possession of the

same to the village elders, and continuing the proceedings under Section 145 Cr.P.C., in respect of the remaining land.

Admittedly, the dispute is with regard to the subject property between the petitioners and the 3rd respondent in WP No.21958 of 2015. A reading of the impugned order, dated 27.06.2015, discloses that it is passed under the provisions of Section 141 Cr.P.C. Hence, this Court is of the view that the authority concerned i.e. the 3rd respondent can be directed to dispose of the representation, said to have been filed by the villagers, after conducting an enquiry as per the provisions of Cr.P.C., and after giving proper opportunity to the aggrieved parties including the petitioners in WP No.21958 of 2015, and also the petitioner in WP No.39091 of 2015 and to pass appropriate orders in accordance with law.

Accordingly, WP Nos.21958 and 39091 of 2015 are disposed of directing the 2nd respondent - Mandal Executive Magistrate to consider the representation, said to have been filed by the villagers by issuing notices to all the parties concerned, fixing the date of enquiry, and after due enquiry, pass appropriate orders in accordance with law, within a period of three (3) months from the date of receipt of a copy of this order.

With the above directions, both the Writ Petitions are disposed of. No costs. Consequently, miscellaneous petitions, pending if any, in both the writ petitions shall stand closed.

RAJA ELANGO, J

October 18, 2016
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