

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Crl.R.C.No.892 of 2015

Craigmore Plantations (India) Pvt. Ltd.,
Represented by its
The Deputy General Manager,
Kullakamby, Coonoor,
Nilgris District.

...Petitioner

Versus

1. Sub Divisional Magistrate &
Revenue Divisional Officer,
Coonoor.
Nilgiris District.

2. Mr.C.S.Rajasekaran,
S/o.M.Chandrasekaran
(Second respondent impleaded as per
the order of this Court dated 08.09.2017
passed in Crl.M.P.No.11461 of 2017
in Crl.R.C.No.892 of 2015)

...Respondents

Criminal Revision Petition filed u/s.397 r/w 401 of Code of Criminal Procedure praying to call for records of learned Sub Divisional Magistrate, Coonoor, passed in Order No.Na Ka, A1 No.2387/2015 dated 17.08.2015 and set aside the same.

For Petitioner : Mr. B. Kumar, Senior Counsel
for Mr.S.Ramachandran

For Respondents : Mr.V.Arul,
Government Advocate (Crl. Side) [R1]
Mr. P. Vijendran [R2]

O R D E R

This revision challenges the order of first respondent passed in Na.Ka.A1.No.2387 of 2015 dated 17.08.2015 whereunder, first respondent required the Tahsildhar to remove the two gates which prevented access to Survey Nos.498/3 and 518/3 in Revenue Village Thoodhoormattam, Coonoor Taluk.

2. Petitioner has, in response to summons issued u/s.133

Cr.P.C, caused appearance and raised objections informing that the land, access to which was sought, belongs to petitioner/Company over a prolonged period and ingress and egress through the gates would cause problems to petitioner/Company, workers, employees and others as also schools and hospitals therein.

3. Sections 137 and 138 of the Code of Criminal Procedure read thus:

'137. Procedure where existence of public right is denied. - (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 138.

(3) otiose

138. Procedure where he appears to show cause. -

(1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.'

4. The order of first respondent under challenge reflects the position that first respondent has not considered the objections raised on behalf of petitioner and proceeded to pass the order under challenge, going by the report of the Revenue Authorities. In the instant case, petitioner has denied the existence of a public right to pass through gates. Section 137

(1) Cr.P.C. requires a Magistrate to inquire into the matter. Section 137(2) Cr.P.C., in effect informs that if the Magistrate

is satisfied that the denial of public right is justified then he shall stay his proceedings until the question of existence of public right is decided by a competent Court. If he does not find merit in the denial of public right, he is required to proceed in keeping with Section 138 Cr.P.C. Section 138 Cr.P.C would require the Magistrate to take evidence in the matter as in a summons case and he shall then proceed in keeping with sub-sections 2 and 3 of Section 138 Cr.P.C. In passing the order under challenge, first respondent has failed to follow the prescribed procedure.

The Criminal Revision shall stand allowed. The order of first respondent passed in Na.Ka.A1.No.2387 of 2015 dated 17.08.2015 shall stand set aside. The matter shall now stand remitted back to first respondent for further proceedings and in keeping with the manner indicated herein above.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Divisional Magistrate,
Coonoor.
2. Sub Divisional Magistrate &
Revenue Divisional Officer,
Coonoor.
Nilgris District.

3. The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.S.Ramachandran, Advocate, S.R.No.67693

+1cc to Mr.P.Vijendran, Advocate, S.R.No.67444

Cr1.R.C.No. 892 of 2015

RRK(06/03/2018)