

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9939 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash proceedings No.C/194/2017, dated 31.07.2017, passed by the Executive Magistrate and Tahsildar, Dharmaram, whereby the Tahsildar issued order under Section 145 Cr.P.C. to maintain law and order till completion of land dispute in Sy.Nos.349 and 350 situated at Dharmaram Village and Mandal, Peddapally District.

The main contention of the petitioner is that the impugned proceeding is liable to be set aside for non-compliance of procedure under Section 145 Cr.P.C.

Learned Public Prosecutor supported the order passed by the Executive Magistrate and Tahsildar, Dharmaram.

In view of the specific ground raised by the learned counsel for petitioner about non-compliance of procedure under Section 145 Cr.P.C., it is appropriate to refer to Section 145 Cr.P.C., which reads thus:-

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 subsection (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 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.

From a reading of Section 145 Cr.P.C., it is clear that passing of final order would arise only after completion of necessary enquiry as contemplated under sub-sections 1 to 4 and after completion of such formalities only passing of order under sub-section (6) would arise.

In the present case, on receipt of information about the law and order problem from the Sub-Inspector of Police, Dharmaram, without following the procedure under Section 145 Cr.P.C. and without issuing notice to the petitioner, the Executive Magistrate and Tahsildar, passed the impugned proceeding under Section 145 Cr.P.C., which is in violation of principles of natural justice.

Therefore, the impugned order is set aside quashing the same while directing the Executive Magistrate and Tahsildar, to follow the procedure under Section 145 Cr.P.C. and pass appropriate final order subject to recording his satisfaction as required.

In the result, the Criminal Petition is allowed.

Miscellaneous petitions pending, if any in this criminal petition, shall also stand closed.

M.SATYANARAYANA MURTHY,J

30.10.2017
Prv

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Prv