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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2018
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.(MD).No.13371 of 2015
and
M.P.(MD) Nos.1 and 2 of 2015

Kandaiah ... Petitioner/Respondent
Vs.

1. The Sub- Divisional Magistrate cum
Revenue Divisional Officer
Tenkasi, Tirunelveli District
2. The Commissioner
Kadayanallur Municipality
Kadayanallur, Tirunelveli District
3. The Revenue Tahsildhar
Kadayanallur Taluk (Law and Order)
Tirunelveli District
4. The Sub Inspector of Police
Kadayanallur Police Station
Kadayanallur, Tirunelveli District
5. N.Karuppasamy ..Respondents/Petitioners

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order in A2 /CC / 03/133 Cr.P.C/2015 on the file of the first respondent.

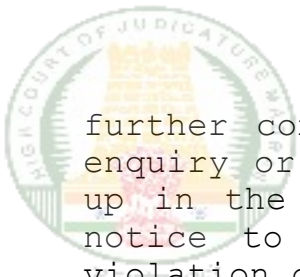
For Petitioner : Mr.P.Athimoolapandian
For Respondents : Mr.A.P.G.Ohm Chairma Prabhu
No.1to 4 Government Advocate(CrI.Side)
No.5 : Mr.T.lajapathi Roy

ORDER

This quash petition is filed to set aside the order dated 04.07.2015 in A2 /CC /03/133 Cr.P.C/2015 on the file of the first respondent.

2. The petitioner has filed this petition challenging the order passed by the first respondent in A2 /CC /03/133 Cr.P.C/2015 dated 04.07.2015 thereby ordering to remove the encroachment made by the petitioner.

3. The learned counsel for the petitioner would submit that the first respondent has no jurisdiction to pass order and the order is illegal. He would further contend that without any notice to the petitioner, the impugned order has been passed. He would



further contend that the first respondent failed to conduct any enquiry or spot visit to ascertain the construction of temple put up in the poramboke land and also without issuing any show cause notice to the petitioner suddenly passed order and it is clear violation of principle of natural justice.

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4. The learned counsel for the fifth respondent would submit that the order of removal of encroachment caused by the first respondent was only after notice and detailed enquiry and only thereafter passed order to remove encroachment made by the petitioner herein. Therefore there is no question of violation of principle of natural justice and he prayed for dismissal of the quash petition.

5. The learned Government Advocate(Crl.Side) would submit that there are 107 proceedings pending between the petitioner and the fifth respondent herein. Pending the same this petition has been filed to remove the encroachment made by the petitioner herein. Due notice was given to the petitioner and after conducting enquiry and after receipt of explanation from the petitioner, order has been passed. Therefore he prayed for dismissal of quash petition.

6. Admittedly the so called Pillaiyar statue was kept in Survey No.131, Block No.37, Ward No.B. Town Survey No.293 Government Poramboke Street, Paruthivilai Street, Krishnapuram Village, Kadayanallur Taluk, Tenkasi Division and it causes hindrance to the public and transport. On perusal of records, it shows that the petitioner was duly issued show cause notice and after receiving explanation from the petitioner and after conducting due enquiry order has been passed. Therefore the proceedings under section 107 of Cr.P.C between the parties is no way concern for passing orders under section 133 of Cr.P.C to remove the encroachment. Therefore this Court does not find any infirmity or illegality in the order passed by the first respondent herein.

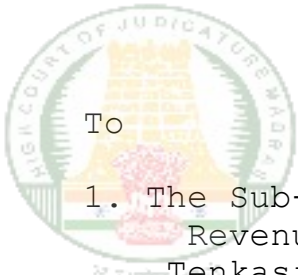
7. Therefore this Court is not inclined to entertain the petition, Hence the Criminal Original Petition is dismissed.

8. Since this petition is pending from 2015 onwards, considering the long pendency of this petition, this Court directs the first respondent to remove the encroachment as per the order dated 04.07.2015 in A2 /CC /03/133 Cr.P.C/2015 within a period of six weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1. The Sub- Divisional Magistrate cum
Revenue Divisional Officer
Tenkasi, Tirunelveli District

2. The Commissioner
Kadayanallur Municipality
Kadayanallur, Tirunelveli District

3. The Revenue Tahsildhar
Kadayanallur Taluk (Law and Order)
Tirunelveli District

4. The Sub Inspector of Police
Kadayanallur Police Station
Kadayanallur , Tirunelveli District

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.T.lajapathi Roy, Advocate, SR.No.92415

Cr1.O.P. (MD) .No.13371 of 2015
and
M.P. (MD) Nos.1 and 2 of 2015
25.10.2018

AAV

ES/SKN/RSK/SAR 3/22.10.2018/3P/7C