



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:11.01.2018

Pronounced on:22.01.2018

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P. (MD) No.15354 of 2017

and

Crl.M.P. (MD) .Nos.10210, 10211 and 11240 of 2017

Katturaja (died)

K.Vijay Kumar
S/o.Katturaja

... Petitioner/Aggrieved person

-Vs-

1.The Sub Divisional Magistrate cum
Assistant Collector,
Paramakudi,
Ramanathapuram District.

2.The Inspector of Police,
Parthibanoor Police Station,
Ramanathapuram District.

3.Murugesan

4.Velu

... Respondents/Respondents

(R-3 and R-4 are impleaded as per the orders of this Court
made in Crl.M.P. (MD) .No.10807/2017 vide order dated
28.11.2017)

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to the proceedings of the 1st respondent in Na.Ka.A2/7659/2016 dated 26.10.2017 and quash the same.

For Petitioner : Mr.R.Anand

For Respondents : Mr.A.P.G.Ohm Chairma Prabhu
Govt. Advocate (Crl.Side)
for R-1 and R-2
Mr.D.Senthil for R-3 & R-4

**O R D E R**

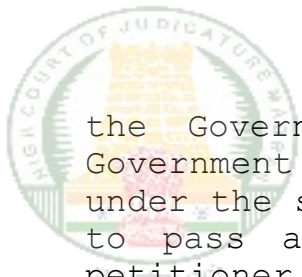
This Criminal Original petition has been filed to quash the proceedings initiated by the first respondent in Na.Ka.A2/7659/2016 dated 26.10.2017.

2.Heard both sides.

3.The brief facts of the case are as follows:

When the petitioner's father Katturaja was alive, the Tahsildar of Paramakudi Taluk has assigned a house site in Sy.No.355/2016 measuring 0.0063 hectares for the purpose of constructing a house, as per the order in H.S.T.A.No.112-123/1421, dated 30.04.2012. After taking possession, the petitioner's father put up a hut and lived there till his death i.e upto 01.11.2013. Thereafter, the petitioner and other legal heirs of the said Katturaja succeeded to the said property and with a view to construct a R.C.C building, they have laid a foundation. At that time, the first respondent has sent his subordinates frequently and forced the petitioner not to proceed with the construction work. Hence, the petitioner has filed a writ petition in W.P.(md).No.18364 of 2017. This court has passed an order on 27.09.2017, directing the petitioner to give a fresh representation to the first respondent and on such representation, the first respondent has to consider the same and pass appropriate order. He was also instructed not to take any steps to form a road in the above said survey number. Based on the said order, on 09.01.2017, the petitioner's mother has sent a representation to the Collector of Ramnad District and the same has been forwarded to the first respondent and when the petitioner was waiting for getting favourable order, the first respondent has passed an order on 31.10.2017 under Section 145(1) of Cr.P.C in Na.Ka.A2/7659/2016, dated 26.10.2017, directing the petitioner to maintain status-quo in sofar as his construction of house is concerned. He also directed the petitioner to attend the enquiry before him on 03.11.2017. Hence, this petition has been filed.

4.The learned counsel appearing for the petitioner has submitted that in order to provide a pathway to the persons, who are residing in Sy.Nos.355/10 and 355/21, the Tahsildar, Paramakudi gave a report to the first respondent stating that since the petitioner's father and one Rajangam did not commence construction, as per the terms and conditions stipulated under the assignment order, even after five years, the assignment may be cancelled and a pathway may be provided through the said land. He further submitted that the petitioner's father has already put up a hut in the house site which was assigned to him and hence, the question of not complying the conditions mentioned in the assignment does not arise. He further submitted that even if it is assumed that the petitioner's father did not comply with the conditions mentioned in the said assignment order, as per the clause 14 of the said assignment order, it is for



the Government to pass an appropriate order, but, so far, the Government has not passed any order for taking back the land and under the said circumstances, it is not open to the first respondent to pass an order under Section 145 of Cr.P.C, restraining the petitioner from constructing house.

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5. The learned counsel for the third and fourth respondents has submitted that the assignment order was passed on 30.04.2012 and as per the said assignment, the petitioner's father ought to have constructed a building within 12 months. So far, no construction has been made and hence, the first respondent is empowered to cancel the said assignment. He further submitted that since there is no pathway for the people, who are residing in Sy.Nos.355/10 and 355/21, they have made request to the Tahsildar, Paramakudi to provide a pathway and the said Tahsildar, Paramakudi, after inspecting the sites, submitted a report to the first respondent stating that in the sites allotted to the said Katturaja and Rajangam, houses have not been constructed and hence, the assignments which were given to the said persons may be cancelled and a pathway may be provided through the said sites and after knowing the said report, the petitioner has started to construct a house in Sy.No.355/16 and hence, the first respondent has passed the impugned order, after satisfying that the dispute is likely to cause breach of peace and hence, he prayed to dismiss the above petition.

6. The learned Government Advocate (Crl.Side) appearing for the respondents 1 & 2 has adopted the arguments advanced by the learned counsel for the respondents 3 and 4.

7.A perusal of the copy of the assignment order issued by the Tahsildar, Paramakudi in favour of the petitioner's father namely Katturaja reveals that the said order was passed on 30.04.2012, in which, so many conditions have been mentioned. One of the conditions is that the assignee should construct a house within 12 months from the date of the said assignment. Clause 14 says that if the Government feels that any of the conditions is violated, then it can take the land back. Further, if any dispute arises, as to whether any of the conditions is violated or not, it is for the Government to decide that dispute and the order passed thereof by the Government shall be final. In this case, admittedly, the Government has not passed any order stating that the petitioner's father has violated the conditions imposed in the assignment order and hence the land has not been taken back by the Government.

8.It is also to be pointed out that the respondents 3 and 4 are also assignees and when they are having right to enjoy their property, the legal heirs of the said Katturaja are also having the same right to enjoy their property. As on date, the legal heirs of the said Katturaja are the owners of the land situated in Sy.No.355/10. So, without taking back the said land in accordance with law, the first respondent cannot restrain the legal heirs of



Katturaja from putting up construction in their land. If the first respondent wants to provide a pathway to the residents of Sy.Nos.355/10 and 355/21, he has to make some alternative arrangements. In the report submitted by the Tahsildar, Paramakudi, he has stated that on the eastern side, there is a Government poramboke and in such a case, the first respondent can provide a pathway to the residents of Sy.Nos.355/10 and 355/21 through the said Government poramboke land. In stead of doing so, he cannot restrain the legal heirs of the said Katturaja from putting up construction in their own land. For the aforesaid reasons, the impugned order passed by the first respondent in Na.Ka.A2/7659/2016 dated 26.10.2017 is liable to be quashed.

9. In the result, this Criminal Original petition is allowed and the impugned order passed by the first respondent in Na.Ka.A2/7659/2016, dated 26.10.2017 is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sub Divisional Magistrate cum Assistant Collector,
Paramakudi,
Ramanathapuram District.
- 2.The Inspector of Police,
Parthibanoor Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.ANAND, Advocate SR.No.43636.
+1cc to M/S.D.SENTHIL, Advocate SR.No.43203.

order made in
Crl.O.P. (MD) No.15354 of 2017
22.01.2018

VS
SDS/JC/SAR 4/02.02.2018/4P/6C