



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2018

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.R.C. (MD) No.270 of 2018

and

CrI.M.P. (MD) Nos.3733 and 4751 of 2018

Arulmigu Boothanayaki Amman Temple,
Thuvarankurichi,
Represented by Executive Officer,
having office at
Arulmigu Mariamman Thirukovil,
Manapparai,
Trichy District.

...Petitioner/B Party

Vs

1.The Revenue Divisional Officer,
Srirangam,
Trichy District.

2.The Inspector of Police,
Thuvarankurichi Police Station,
Trichy District.

...Respondents 1 & 2/NIL

3.Jamal Mohamed

...3rd Respondents/A Party

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, praying, to call for the records of the impugned proceedings in Na.Ka.A7/323/2018, dated 27.04.2018 on the file of the first respondent / Revenue Divisional Officer, Srirangam, Trichy District, set aside the same and allow the Criminal Revision Petition.

For Petitioner: Mr.AN.Ramanathan

For R1 & R2 : Mr.A.Robinson
Government Advocate (CrI.side)

For R3 : Mr.G.Prabhurajadurai

**ORDER**

Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

2.The order of the Revenue Divisional Officer, Srirangam dated 27.04.2018 is impugned in the revision petition.

3.The brief facts of the case are that one V.M.S.Abdul Gani S/o.Sinnathurai Rowther, Thuvarankurichi has been conferred Ryotwari patta for the land bearing Survey No.207 to an extent of land measuring 4.13 acres, vide proceedings dated 06.09.1967 which has been given under Act 30 of 1963. Based on this patta, in the revenue records including in the settlement register, the name of the third respondent has been mutated. However, the land being inam land which belongs to Arulmigu Anbu Vinayagar Swamy Kovil. When UDR survey was undertaken in the District of Trichy, the name of Arulmigu Anbu Vinayagar Swamy Kovil has been brought into 'A Register'. Later, the third respondent herein has filed a writ petition before this without impleading the temple seeking mandamus to consider his representation for mutation of record. In the said writ petition in W.P.(MD)No.1123 of 2005, this Court has directed the revenue authorities to consider the representation of the third respondent and pass orders. Pursuant to that, patta has been again transferred in the name of the third respondent. While doing so, the temple has not been put on notice. Later, when this has been brought to the notice of the temple, a representation has been given to reconsider the unilateral transfer of patta in the name of the third respondent. The Tahsildar of Manaparai, in her proceedings dated 09.01.2008, considering the records starting from Ryotwari Patta issued to the third respondent in the year 1967 and the change of patta in the name of Arulmigu Anbu Vinayagar Temple, re-transferred the patta in the name of the third respondent. Pursuant to the order passed by this Court, the Tahsildar held that till the death of V.M.S.Abdul Gani S/o.Sinnathurai Rowther, Thuvarankurichi, the property has been in his possession and thereafter, the family members are in possession and enjoying the same. Aggrieved by the said order, the temple represented by the Executive Officer has preferred an appeal before the Revenue Divisional Officer, Srirangam.

4.While so, pursuant to some dispute between both the parties, the second respondent police has taken cognizance of the issue and an F.I.R has been registered in Crime No.9 of 2018 on the file of the Thuvarankurichi Police Station on 24.01.2018. The Inspector of Police has sought the intervention of the Revenue Divisional Officer to initiate proceedings under Section 145 of Cr.P.C. The Revenue Divisional Officer, after hearing both the parties, coming into the possession as well as the title in respect of the property has passed the impugned order, dated 27.04.2018 holding that A.Farooq Mohammed and eight others are the



owners of the property and no one should cause interference by entering the property leading to law and order issue.

5.The Executive Officer, Arulmigu Boothanayaki Amman Temple, who was in charge of the Arulmigu Anbu Vinayagar Temple, has preferred this revision inter alia contending that the impugned order is in total violation of the mandate prescribed under Sections 145(1) and 145(4) of Cr.P.C regarding the title of the property. When an appeal is preferred against improper change of patta in the name of the third respondent, the Revenue Divisional Officer has clubbed both the issues together and has decided the title of the subject matter under the guise of passing an order under Section 145 of Cr.P.C. The further contention of the revision petitioner is that the first respondent, the Revenue Divisional Officer ought not to have clubbed the appeal preferred by the revision petitioner against the order passed by the Tahsildar and the reference of the Inspector of Police under Section 145 of Cr.P.C and passed the impugned order causing grave prejudice. Though ryotwari patta was issued to the third respondent as per the proceedings dated 06.09.1967, it was without notice to the temple which is the actual owner, The 'A register' reflects that till 2008 carried the name of the temple only. Without considering the said fact, the Tahsildar passed an erroneous order which has been challenged by the revision petitioner.

6.In the said circumstances, without proper appreciation of his appeal and without considering the other contentions raised in respect of the possession of the land dispute which is a vacant land and used for the temple purpose,the Revenue Divisional Officer has passed the impugned order.

7.The learned counsel appearing for the third respondent would submit that the power of Executive Magistrate under Section 145 of Cr.P.C has been well settled by the Full Bench of this Court in **A.Dhaveethu Vs. The District Collector, Sivagangai District** reported in **2016 4 CTC 12** wherein it has been held as follows:-

1.Though the Executive Magistrate is required to pass a Preliminary Order under Section 145(1), the absence of the same will not vitiate his Final Order under Section 145 (4) of the Code.

2.The failure of an Executive Magistrate to pass a preliminary order under Section 145 ((1) of the Code is a mere irregularity and will not affect his jurisdiction.

<https://hcservices.ecourts.gov.in/hcservices/>
Any order passed by the Executive Magistrate under Section 145 of Cr.P.C, no prejudice will be caused to



parties.

4. Further, the aggrieved parties are empowered to move the same Authority for reviewing his decision or its absence to move the competent civil Court for an appropriate relief either regarding the title or regarding right to possession. In rare cases, they can move Court for a judicial review either under Section 397 of the Criminal Procedure Code or Article 226/227 of the Constitution.

8. The learned counsel for the third respondent would submit that the petitioner herein has already filed a civil suit with the composite prayer regarding title, possession and enjoyment of the property in O.S.No.176 of 2018 before the District Munsif Court, Manaparai. Having resorted to the jurisdiction of the Civil Court, nothing survives in the present revision.

9. Heard the learned counsel for the respective parties and perused the materials available on record.

10. The submission of the learned counsel appearing for the third respondent would have been not appropriate, provided the first respondent not clubbed the issue of title and the appeal preferred by the revision petitioner challenging the order of the Tahsildar dated 09.01.2008. The very order of the settlement conferring ryotwari patta to Jamal Mohamed himself is to be properly examined. Further, the request of the Jamal Mohammed to carry out mutation in the 'A Register' during the year 2008, the revenue authorities have not thought fit the temple should be given an opportunity before making mutation.

11. In such circumstances, I do not see any merit in the order passed by the Revenue Divisional Officer. No doubt, the parties have already approached the civil Court to establish their title and possession. However, the order passed by the Tahsildar which was confirmed by the Revenue Divisional Officer under the guise of passing order under Section 145 of Cr.P.C is without following the procedure contemplated under Section 145 Cr.P.C so cannot be sustained. The decision of the Full bench of this Court is applicable only when a case of possession and not clear title is under dispute. In the case on hand, the respondent temple, right from 1967, has not been given an opportunity, whenever, an order passed against their interest. Therefore, this Court has no hesitation to quash the order passed by the Revenue Divisional Officer. It is open to the parties to work out their remedy in the civil suit in O.S.No.176 of 2018 before the District Munsif Court, Manaparai. It is needless to mention that the order passed in this revision is only pertaining to the order passed by the Revenue Divisional Officer which is impugned in this revision,



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all other issues are left open for the parties to agitate before the appropriate forum.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. The Revenue Divisional Officer,
Srirangam,
Trichy District.
2. The Inspector of Police,
Thuvarankurichi Police Station,
Trichy District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.G.PRABHURAJADURAI, ADVOCATE IN SR NO.82898
+ 1 CC TO MR.AN.RAMANATHAN, ADVOCATE IN SR NO.82988

RMI

BU/SKN/SAR-II : 03.10.2018 : 5P/6C

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