



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.04.2018

DELIVERED ON : 21.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

Crl. R.C.(MD)No.655 of 2016

1.S.Kavitha
2.Karthika

.. Petitioners/Respondents

Vs.

1.M.Sulokshana
2.S.Prathipa
3.The Executive Magistrate,
and Thasildar, Bodinayakanur,
Theni District.

.. Respondents 1 & 2/Petitioners

.. 3rd Respondent/Presiding Officer

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records relating with the order dated 14.09.2016 made in NA.KA.No.5840/2016/A6 on the file of the Executive Magistrate and Tahsildhar, Bodinayakanur, Theni District and to set aside the same.

For Petitioners : Mr.S.Saravana Kumar

For Respondent No.3 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

For Respondents 1 and 2 : Mr.D.Selvaraj

ORDER

Heard Mr.S.Saravanan, learned counsel appearing for the petitioners, Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the 3rd respondent and Mr.D.Selvaraj, learned counsel appearing for the respondents 1 and 2.

2.This petition has been filed to set aside the order passed dated 14.09.2016 made in NA.KA.No.5840/2016/A6 on the file of the Executive Magistrate and Tahsildhar, Bodinayakanur, Theni District.



3. The petitioners herein are the owners of the agricultural land in Survey Nos. 707/1, 707/2 and 707/2B situated in Kodangipatti Village, Bodinayakanur Taluk, Theni District. The respondents 1 and 2 are the adjacent land owners. The petitioners filed a civil suit against the respondents 1 and 2 on the file of the learned Sub Judge, Theni. The respondents 1 and 2 gave a complaint to District Collector, Theni as if they have disturbed the water channel in the patta land, thereby, causing water stagnant in the land of respondents 1 and 2. The said complaint was forwarded to the third respondent. The third respondent initiated proceedings under Section 133 Cr.P.C. After hearing the petitioners, the third respondent passed an order in the proceedings in Na.Ka.No.5840/2016/A6 dated 14.09.2016.

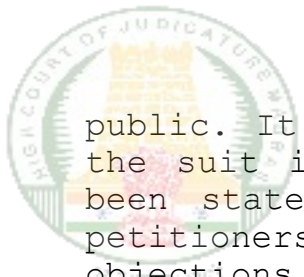
4. On the side of the petitioners, it is stated that the Tahsildar has failed to consider the nature of the dispute and erroneously concluded that the issue is different from that of the suit filed in O.S.No.132 of 2016. The third respondent failed to pass preliminary order under Sections 133 and 138 of Cr.P.C., but straight away passed an order under Section 133 of Cr.P.C., No evidence was recorded under Section 133 of Cr.P.C. The order of the learned Executive Magistrate is against the Judgment reported in 2001 CTC 295.

5. On the side of the petitioners, it is stated that an opportunity to show cause notice is to be given to the petitioners under Section 133 of Cr.P.C. In support, the Judgment published in 2008(1) MLJ (Cr1.) 1299 (V.S.Sankaranarayanan v. Sub-Divisional Magistrate cum Revenue Divisional Officer, Tenkasi) is cited.

6. On the side of the petitioners, it is stated that the dispute is with regard to patta land and the learned executive Magistrate has no jurisdiction to conduct proceedings as the dispute is not relating to the public place. It is further stated that in this case, only the private dispute is involved and the learned Executive Magistrate is wrong in issuing the proceedings.

7. On the side of the respondent, it is stated that under Section 133 of Cr.P.C., the learned Executive Magistrate can take action for a dispute relating to public place or 'any other place'. The learned Executive Magistrate passed a conditional order for causing nuisance. The only relief available to the petitioners is to file objections. If there are no objections filed under Section 133 of Cr.P.C., proceedings can be taken. The petitioners have challenged only the notice under Section 133 of Cr.P.C., and no objections were filed for the proceedings under Section 133 of Cr.P.C.,

8. On the side of the petitioners, it is stated that the reports were filed by the Village Administrative Officer and that the village Administrative Officer has wrongly stated that there is law and order problem whereas there is no such problem in the



public. It is stated that the schedule of property is the same and the suit is pending before the Sub Court, Theni. No reasons have been stated in the impugned order for not giving notice to the petitioners and the time and the date, when or before whom the objections is to be filed is not stated in the order.

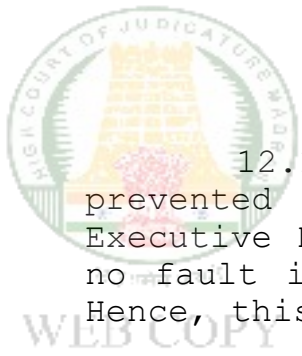
WEB COPY

9. The learned counsel for the petitioners relied upon the Judgment passed by this Court in the case of Pepsico India Holding Ltd., v. The District Revenue Officer reported in 2001(2) CTC 295, which reads as follows:

"Mere issue of Order under Section 133 will not give power for making order under Section 142 - Executive magistrate must be satisfied that imminent and serious injury may be caused to public - Order under Section 142 is liable to be set aside if there is no indication of such satisfaction in order issued under Section 142 or in records"

10. A perusal of the records reveals that the Tahsildar passed an impugned order only after conducting enquiry under Section 133 of Cr.P.C. The Tahsildar after getting report from the Village Administrative Officer, has examined some of the neighbours of the land and then only passed the impugned order. The Tahsildar in his report has stated that the respondents 1 and 2 are using the water channel to irrigate their lands. The petitioners are disturbing and the water channel were causing serious law and order problem. The Tahsildar examined some of the neighbouring land owners and witnesses namely, Thangam and Gurusamy who deposed that there is water channel in the land in Survey No.707/1, 707/2C, after Sub Division owner of land in Survey No.707/2C disturb the water channel. The learned Executive Magistrate examined some of the villagers and the villagers gave evidence that there was water channel passing through the patta land of the petitioners. After spot visit, the learned Executive Magistrate passed the impugned order and after verification of revenue records, the learned Executive Magistrate came to the conclusion that there was a water channel running through the petitioners' land in Survey No.707/2B, 707/2C.

11. On the side of the petitioners, it is stated that the main contention of the petitioners is that there was a public water channel in the Government land and they have not disturbed any such channel. All the agricultural lands will be irrigated through branch channels which may pass through patta lands. In such case, the right of other person who can collect the water cannot be curtailed by the other owners. The impugned order is passed after detailed enquiry under Section 133 of Cr.P.C. In the enquiry notice, it is clearly stated that the petitioners have to attend the enquiry on 12.08.2016 at 11.00 a.m., before the Tahsildar Office. The contention of the petitioners is that no such notice was given, whereas only the notice dated 10.08.2016 is questioned by the petitioners herein.



12. In the above circumstances, when the agricultural land is prevented from being irrigated, it is the duty of the learned Executive Magistrate to pass an appropriate order. This Court find no fault in the order passed by the learned Executive Magistrate. Hence, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Executive Magistrate,
and Thasildar, Bodinayakanur,
Theni District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.Suriyanarayanan, Advocate SR.No. 69260
+1cc to M/S.D.Selvaraj, Advocate SR.No. 69270

Crl. R.C. (MD) No. 655 of 2016
21.06.2018

mrn
JM/SB/SAR 4/29.06.2018/4P/5C