

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2018

Pronounced on : 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.25106 of 2010

and

M.P.No.1 of 2010

Kirubanithy,
S/o.Sadasivam.

.... B Party/Counter
petitioner/Petitioner

Vs.

1.The Station House Officer,
Lawspet Police Station,
Puducherry.

2.Sethuraman.

.... A Party/Petitioner/
Respondents

3.The Sub Divisional Magistrate
[North], at Puducherry. Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records connected with the order passed in MC No.313 of 2010 in Cr.No.68 of 2010 on the file of the Sub Divisional Magistrate [North], at Puducherry, dated 22.09.2010 and set aside the same as illegal, incompetent and without jurisdiction and render justice.

For Petitioner : Mr.Sharath Chander for
Mr.V.Raghavachari

For R1 : Mr.D.Bharatha Chakravarthy,
Public Prosecutor (Pondicherry)

For R2 : Mr.B.Baskaran

O R D E R

The petitioner, who is a 'B' Party, Counter petitioner in M.C.No.313 of 2010 has filed the above petitioner, challenging the orders passed by the learned Sub Divisional Magistrate [North], Puducherry dated 22.09.2010 under Section 145 of the Code of Criminal Procedure.

2.The first respondent is the Station House Officer, Lawspet Police Station, who had registered a case in Cr.No.68 of 2010 and forwarded the same to the Sub Divisional Magistrate [North], Puducherry. The second respondent is the 'A' Party in the case.

3.The gist of the case is that the Station House Officer, Lawspet Police Station had laid a FIR in Cr.No.68 of 2010 under Section 145 of the Code of Criminal Procedure that a dispute exists between the petitioner and the second respondent concerning the possession and enjoyment of the pathway situated at R.S.No.218/5 & 218/6 in Cadastre No.391, 391/22 of Saram Revenue Village.

4.On 12.08.2009, the petitioner/'B' Party namely Kirubanithy lodged a complaint against the second respondent/'A' Party namely Sethuraman stating that he owned a vacant land in R.S.No.218/5, 218/6 situated at Saram Revenue Village measuring to an extent of 3000 Sq.ft. With the facility of 20 feet public road for access to his land which was suddenly fenced by the second respondent/'A' Party.

5.Based on the complaint, necessary G.D. entry was made and both the parties were advised to seek remedy either through the Civil Court or by surveying the land through the Survey Department, Puducherry. After few days, the petitioner/'B' Party lodged a complaint against the second respondent/'A' Party alleged that the second respondent/'A' Party dumped red soil in the disputed land and claimed ownership for the same. The G.D. entry was again made.

6.On 09.03.2010, the petitioner/'B' Party lodged a complaint against the second respondent/'A' Party stating that the second respondent/'A' Party was carrying out the fencing work around the disputed land and requested to take necessary action against him, since, there was a likelihood of breach of peace.

7.The first respondent had referred the matter to the Sub Divisional Magistrate [North], Puducherry, who had satisfied that there exists a reasonable apprehension of breach of peace on the rival claim by both the parties over possession and enjoyment of the road earmarked in the layout for passage.

8.As the dispute arose as a result of a landed property, an order under Section 145 of the Code of Criminal Procedure dated 09.06.2010 was made by the learned Sub Divisional Magistrate [North], Puducherry and communicated to both the petitioner/'B' Party and the second respondent/'A' Party to put in their written statements along with documentary evidences in support of their claim. On 26.05.2010 both the petitioner/'B' Party and the second respondent/'A' Party were present and made their statements. Thereafter, impugned order came to be passed.

9.The contention of the learned counsel for the petitioner is that the portion of the land under dispute is a public way as proposed by the promoter of the land. Hence, the second respondent/'A' Party cannot claim that vacant portion as a matter of right. Further, it causes public nuisance to them.

10.Further, the learned counsel for the petitioner contended that the second respondent/'A' Party had blocked the rightful path of access to the petitioner/'B' Party. The further contention of the learned counsel for the petitioner is that the law enforcement agency had directed protection to the one who is seeking to interference with a public way. Instead of abating the nuisance the third respondent had endeavoured to encourage it.

11.Further submitted that the order of the third respondent is perverse illegal, since, notice dated 02.06.2010 directing the parties to produce the documentary evidence on 11.06.2010. Without permitting them to adduce oral proof and allowing them to examine one another as against the law.

12.The counsel for the second respondent/'A' Party supported the finding of the third respondent, submitting that proper hearing was held, both the petitioner/'B' Party as well as the second respondent/'A' Party had submitted the documents, adduced evidence, thereafter only the third respondent on analysing all the evidences and materials before him has passed the impugned order. Before passing of the impugned order a preliminary order under Section 145 of the Code of Criminal Procedure has been passed, thereafter the final order was passed. Hence, the third respondent had followed the principles and procedures of law and passed the impugned order which need not be interfered with.

13.The learned Public Prosecutor [Pondicherry] appearing for the first respondent had supported the order of the third respondent and submitted that the third respondent's order is a well reasoned order, which need not be interfered with. Further submitted that due to the order of the third respondent the nuisance and disturbance to the public and cause of breach of

peace can be averted and has rightly held by the third respondent. It would be proper only a Civil Court order is obtained by either of the parties.

14.Considering the submission made by the petitioner/'B' Party and the second respondent/'A' Party and on perusal of the order of the third respondent, it is seen that the third respondent had give a well reasoned order, which does not suffer any infirmity. In view of the above, the order of the third respondent is confirmed.

15.Hence, this Criminal Original Petition filed by the petitioner/'B' Party is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Station House Officer,
Lawspet Police Station,
Puducherry.

2.The Sub Divisional Magistrate
[North], at Puducherry.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.V.Raghavachari, Advocate Sr.No.2624

+1 cc to The Government Pleader, (Puducherry) Sr.No.2914

ORDER IN
Crl.O.P.No.25106 of 2010

CNR (CO)
CSL/26.02.2019

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