

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 8310 of 2011

and

M.P. 2 of 2011

Dr.P.Thangaraj

... Petitioner

Versus

1. The Tahsildar,
Dharmapuri Taluk,
Dharmapuri.

2. The Village Administrative Officer,
Vellegoundenpalayam,
Dharmapuri Taluk & District.

3. P.Baskar,
S/o. Pachaiaappa (late),
25-A, Kaliappa Gounder Street,
Mathikonpalayam,
Dharmapuri-1.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka.No.1/2011 (Aa3) dated 08.02.2011 on the file of the 1st respondent, quash the same in so far as the petitioner's property in S.No.13/C2A1 (Ward C, Block No.9) of Vellagoundenpalayam, Dharmapuri Municipality is concerned and direct the respondents 1 and 2 to earmark the property of the petitioner and hand over possession to the petitioner from the 3rd respondent.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.I.Sathish,
Addl. Govt. Pleader for R1 & R2

Mr.Parthasarathy,
Senior Counsel for
Mr.J.Ramakrishnan for R3

ORDER

This Writ Petition has been filed challenging the order passed by the 1st respondent Tahsildar directing the petitioner to hand over the possession of the property to the 3rd respondent herein.

2. The above impugned order has been passed by the 1st respondent pursuant to an earlier order passed under Sec.145 of Crl.P.C. by Executive Magistrate dated 02.01.2011, thereby directing the parties to hand over the possession of the property to the Village Administrative Officer. Now, it is stated that challenging the order passed by Executive Magistrate dated 02.01.2011, the Criminal Revision Petitions have been filed before this Court in Crl.R.C.Nos.162, 353, 553 and 1070 of 2011 and this Court by an order dated 27.01.2016 disposed the Criminal Revision Petitions, directing the petitioners to approach the Civil Court. The relevant portion of the order reads as follows:-

"2. What has been stated above is only towards informing that all the revision petitions before us are to be treated as infructuous. It is admitted by both sides that the parties are before Civil Court and agitating their rights in O.S.Nos.4 of 1997 and 305 of 2003 on the file of Sub-Court, Dharmapuri. It is informed that the vendors of Mr.P.Baskar have obtained orders of injunction on 26.08.2011 against interference with their peaceful possession and enjoyment. It is admitted position that Mr.Muniappan has sought to vacate the order of injunction. Therefore, when the parties are agitating their causes in right earnest before the Civil Court, this Court is of the view that it is appropriate to allow the Civil Court to decide the issue. However, the order of the Executive Magistrate wherein keys of the premises disputed has been handed over to Mr.P.Baskar cannot be allowed to stand, since such order came to be passed while an order of stay of proceedings in Na.Ka.No.1 of 2011 (B3) in FIR No.8 of 2011, was in force."

Since the order passed under Sec.145 of Crl.P.C. already been set aside, the consequential order passed by the 1st respondent, which is impugned in this Writ Petition is necessarily be set aside.

3. Mr.S.Doraisamy, learned counsel appearing for the petitioner would submit that since the order passed by the 1st respondent is set aside, this Court may grant the consequential relief sought in the Writ Petition, directing the Tahsildar to measure the property. But, this request cannot be accepted for

the simple reason that the consequential prayer sought by the petitioner is beyond the scope of Writ Petition. If at all, the petitioner wants to measure the property, it is always open to the petitioner to file necessary application before the concerned authority and any such application is filed, the authority is directed to dispose the same after hearing of the parties. In the result, the Writ Petition stands partly allowed and the impugned order passed by the 1st respondent dated 08.02.2011 is set aside. No costs. Consequently, the connected Miscellaneous Petition in M.P. 2 of 2011 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Tahsildar,
Dharmapuri Taluk,
Dharmapuri.
2. The Village Administrative Officer,
Vellegoundenpalayam,
Dharmapuri Taluk & District.

+1 cc to M/s.J.Ramakrishnan, Advocate Sr.No. 87249
+1 cc to M/s.V.Elangovan, Advocate Sr.No.87245
+1 cc to The Government Pleader Sr.No.88246

AKM/22.11.19/3P-6C /

सत्यमेव जयते

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