



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :20.11.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.29738 of 2019

and

W.M.P.Nos.29634, 29637 and 29639 of 2019

1.Mrs.Basheernnisa

2.Ms.Thameemunnisa

3.Ms.Ghousunnisa

.. Petitioners

/versus/

1.The Executive Magistrate cum
Revenue Divisional Officer,
Chengleput.

2.The Executive Officer,
Arulmigu Ekambareswarar Thirukovil,
Hindu Religious & Charitable Endowments
Department,
Singaperumel Koil,
Chengleput.

3.The Tahsildar,
Chengleput.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent dated 01.04.2019 in Na.Ka.No.454/2019/A of the 1st respondent and quash the same and consequently forbear the respondents from interfering with the possession and enjoyment of the property of the petitioner of an extent of 5546 sq.ft in S.No.344/1,2A,2B,2C in Pillaiyarkulam, Chengleput Taluk.

For Petitioners :Mr.A.RL.Sundaresan,
Senior Counsel for
M/s.AL.Gandhimathi

For Respondents:Mr.M.Maharaja, Spl.G.P for R2
Mr.S.Suresh Kumar,GA
for R1 and R3



O R D E R

This writ petition has been filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent dated 01.04.2019 in Na.Ka.No.454/2019/A of the 1st respondent and quash the same and consequently forbear the respondents from interfering with the possession and enjoyment of the property of the petitioner of an extent of 5546 sq.ft in S.No.344/1,2A,2B,2C in Pillaiyarkulam, Chengleput Taluk.

2.The grievance of the petitioners is that the husband of the first petitioner has purchased the land in S.No.344 Chengleput Village, Chengleput Taluk, Kancheepuram District, pursuant to the execution of the Court decree passed in O.S.No.241 of 1955. The 1st petitioner has inherited the property through her husband and patta in respect of the said survey No.344/1, 2A, 2B, 2C were also transferred in the name of the petitioners. Whiles, when the dispute arose between the petitioners and their erstwhile tenant, who alleging demolition of the shop in the said land given a complaint to the Inspector of Police, Chengleput, who in turn referred the matter to the Executive Magistrate-cum-District Revenue Officer to take action under Section 107 of the Cr.P.C.

3.The first respondent during the course of enquiry initiated under Section 107 of the Cr.P.C., has passed an order stating that the property in S.No.343 of Chengleput Village, belongs to Arulmigu Ekambareswarar Thirukovil as per the Revenue Record and the disputed property falls within the said survey number. Therefore, both 'A' party as well as 'B' party have no right and title over the said land. So, to maintain peace they are restrained from entering the said land and the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, shall remove the encroachment and take possession of the same.

4.The grievance of the petitioners is that the dispute between them and the erstwhile tenant is in respect of S.No.344/1. Since the criminal complaint was given by the tenant, the police has forwarded the matter to the Executive Magistrate to proceed under Section 107 of the Cr.P.C. Under the guise of enquiry under Section 107 of the Cr.P.C., the Executive Magistrate has passed an order in respect of S.No.343 and directed the Hindu Religious and Charitable Endowments Department to take possession of the land in S.No.343 which is totally beyond the scope and power of the Executive Magistrate under Section 107 of the Cr.P.C.



5. In the counter, the first respondent has stated that pursuant to the request of the Inspector of Police to initiate action against the sparring parties in view of registering FIR, under Section 107 of the Cr.P.C., enquiry was conducted and after hearing both the parties and report from the Town Surveyor, who has measured the land, he found that the disputed land falls in S.No.343 and the revenue records indicates that the said survey number with an extent of 0.0263.5 sq.mts stands in the name of Arulmigu Ekambareswarar Thirukovil. Therefore, the order was passed on 01.04.2019 directing the Hindu Religious and Charitable Endowments Department to remove the encroachment and take possession of the land.

6. The contention of the respondents is that they have taken possession of the land falling in S.No.343 and there is no malafide intention on their part to grab the land of the petitioners. Contrarily, it is the petitioners who have filed the writ petition with malafide intention to create confusion in respect of the survey number and try to grab the government land. The order issued by the respondents is only pertaining to S.No.343 and not in S.No.344/1 as alleged by the petitioner.

7. Under Section 107 of the Cr.P.C., the Executive Magistrate have empowered to require such person to show cause "why he should not order to execute the bond to keep peace", if he has enough information that such person is likely to commit breach of peace and disturbing the public tranquillity. Insofar as the powers of the Executive Magistrate is concerned, when there is the dispute concerning the land or water likely to cause breach of peace, he can proceed under Section 145 of Cr.P.C.

8. In this case, though the Executive Magistrate have powers under Statute to seal the disputed premises and prohibit the disputing parties from entering the disputed land, it should be done in accordance with law.

9. In the course of his enquiry under Section 107 of the Cr.P.C., if it is found that any party had encroached government land or temple land under separate proceedings, under Section 107 of the Cr.P.C is not the provision for that. On perusing the impugned order, this Court finds that the Executive Magistrate has passed order to the Hindu Religious and Charitable Endowments Department to take over the land in S.No.343 and not S.No.344/1. Whereas, the specific case of the petitioner is that the land in dispute falls in S.No.344. If it is so, the Hindu Religious and Charitable Endowments Department can have no right over the land in S.No.344.



10. In such circumstances, the impugned order of the 1st respondent does not co-relate with the land in dispute and further the operative portion of the order is not in consonance with the power conferred on the Executive Magistrate under Section 107 of the Cr.P.C. Hence, the order of the first respondent is liable to be quashed. Accordingly, it is quashed.

11. At the same time, if the first respondent is of the opinion that based on the report of the Inspector of Police regarding the dispute and breach of peace, action has to be taken, he is at liberty to do so after causing notice to the respective parties following the procedure under law. Also, the Hindu Religious and Charitable Endowments Department (2nd respondent) shall retain the retrieved portion of the land only if it is in S.No.343 ad-measuring 0.0263.5 sq.mts and not beyond that.

12. In the result, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous Petitions are closed.

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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To:

1. The Executive Magistrate cum
Revenue Divisional Officer,
Chengleput.

2. The Executive Officer,
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Hindu Religious & Charitable Endowments
Department,
Singaperumel Koil,
Chengleput.

3. The Tahsildar,
Chengleput.

+1 CC to Govt. Pleader (HR & CE) sr 97239

+1 CC to Govt. Pleader sr 97070

+1 CC to M/s.A.L. Gandhimathi, Advocate sr 96982.

W.P.No.29738 of 2019

SP(04/12/2019)