



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 08.03.2019
PRONOUNCED ON : 15.03.2019

CORAM

THE HONOURABLE MR. JUSTICE **N.SESHASAYEE**

Crl.O.P.(MD)No.21823 of 2018

and Crl.M.P.(MD)Nos.10135 and 10136 of 2018

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Rajini Mohamed ... Petitioner/Rank No.2 in 'B' Party

Vs.

1.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

2.Govindaraj
The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

3.The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District.

4.Venketramaraj ... Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in M.C.No.238 of 2018 dated 30.11.2018 on the file of the first respondent and quash the same.

For Petitioner : Mr.R.Anand
For Respondents : Mr. A.P.G.OHM Chairma Prabhu
Government Advocate(Crl.side)

O R D E R

This Criminal Original Petition has been filed to quash the impugned notice in M.C.No.238 of 2018 dated 30.11.2018 on the file of the first respondent.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl.side) appearing for the respondents.

2.1 The petitioner has purchased 28.40 cents out of 92 cents bearing Survey No.293 Veerapandianpattinam Village, Tiruchendur from the legal heirs of one A.M.Hameedmuthakin. The petitioner has been in possession and enjoyment of the same. While so, one Venkataramaraj has started giving trouble to the petitioner.



Having failed in his earlier attempt, the said Venkataramaraj has approached the third respondent and filed a complaint. According to the petitioner, since in his perception the first respondent attitude tilted towards bias he is arrayed as a party in his personal capacity.

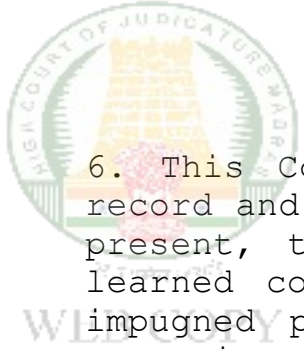
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2.2 The main contention of the petitioner is that the first respondent has mechanically issued a final enquiry notice under Section 145 Cr.P.C presumably on a letter of the second respondent/the Inspector of Police which is indicated in the said notice itself, that he is proposing to hold an enquiry on a dispute over the aforesaid land as between 'A' and 'B' parties. The petitioner is one among the few named as the 'B' Party. The impugned notice on its face does not show that the first respondent has arrived at a *satisfaction on the police report or on any other information that the dispute concerning the land is likely to cause a breach of peace exists.*

3. The learned counsel for the petitioner vehemently argued before this Court that the Executive Magistrate has issued the above said proceedings without passing a preliminary order as per Section 145 (1) Cr.P.C. To be specific, the learned counsel for the petitioner submitted that as per Section 145(1) Cr.P.C, the Executive Magistrate is required to pass a preliminary order expressing his satisfaction that a dispute between rival parties exists which is likely to cause breach of peace. But, in the instant case, the impugned proceedings only refers to a police report with regard to an outstanding dispute between the two set of parties, then about the existence of a dispute between the parties on both sides and does not go to indicate that he was satisfied with the existence of possibility for breach of peace.

4. In response, the learned counsel appearing for the fourth respondent has submitted that the Revenue Divisional Officer has passed a final order on 07.12.2018, wherein, he has upheld the possession of 'A' party. He also submitted that failure to pass a preliminary order strictly in accordance with Section 145(1) Cr.P.C is mere an irregularity and not an illegality and will not affect his jurisdiction to pass the final order. In support of his contention, he relied on the judgment of the Full Bench of this Court reported in **A.Dhaveethu Vs. the District Collector, Sivagnagai District and four others** [2016(8) CTC 12], wherein it is held that considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, failure to passing a preliminary order under Section 145(1) of the Code, will cause no prejudice to parties.

5. The learned counsel for the petitioner would now submit that the final order passed exceeds the very jurisdiction of the Executive Magistrate and the same is to be challenged separately.



6. This Court has carefully perused the materials available on record and considered the submissions made on either side. For the present, this Court is in agreement with the submission of the learned counsel for the fourth respondent. It is true that the impugned proceedings does not disclose the satisfaction of the Executive Magistrate about possibility of breach of peace owing to the outstanding dispute between the rival groups. As held by the Full Bench in **A.Dhaveethu case** referred to above, this is a mere irregularity and will not have the effect of nullifying the final proceedings. And since the final order has been passed, there is no profitable use in retaining the present petition. This Court does not find any merit in the petition.

7. In the result, this Criminal Original Petition is dismissed. Consequently, connected Crl.M.P.(MD)Nos.10135 and 10136 of 2018 are also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Revenue Divisional Officer,Tiruchendur,
Thoothukudi District.

2.Govindaraj,The Revenue Divisional Officer,Tiruchendur,
Thoothukudi District.

3.The Inspector of Police,Tiruchendur Police Station,Thoothukudi
District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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order made in
Crl.O.P. (MD)No.21823 of 2018
and Crl.M.P. (MD)Nos.10135
and 10136 of 2018

15.03.2019