



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.9 of 2015

and

MP(MD)No.1 of 2015

1.Sugumaran

2.Lakshmi

3.Savarimuthu

4.Thirumeni

... Petitioners / Accused Nos.3 to 6

Vs.

Krishnan

... Respondent / Petitioner

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to PRC No.11 of 2014 on the file of the Judicial Magistrate Court, Thiruvadanai filed by the respondent herein and quash the same.

For Petitioner : Mr.S.Muthukumar

For Respondent : No appearance

ORDER

The petitioners have been shown as Accused Nos.3 to 6 in PRC No.11 of 2014 on the file of the Judicial Magistrate, Thiruvadanai. The respondent herein is the complainant. Since the offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 has also been invoked, the proceedings are yet to be committed to the Sessions Court. The case of the respondent is that the petitioners herein without following the procedure laid down in Tamil Nadu Land Encroachments Act, 1905 have trespassed into his property and damaged the building and caused loss. The first petitioner is the Tahsildar. The petitioners 2 to 4 are also revenue officials. The property in question is a poramboke land. In fact, it was the subject matter of WP(MD)No.11580 of 2010 filed by the respondent herein. While disposing of the said writ petition vide order dated 18.10.2010, the Hon'ble Division Bench held as follows :



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"4.From the records, it could be seen that the land in dispute comprised in Survey No.401-1, has been classified as poramboke land. But, the learned counsel for the petitioner would submit that it belongs to the petitioner. It is also seen from the records that earlier a civil suit was filed in O.S No.19 of 2003 by third parties claiming some right over the property. The said suit was dismissed by the learned District Munsif, Thiruvadanai on 29.10.2009. In the said suit, under Issue No.6, the learned District Munsif has clearly held that the land in question is a Government Poramboke land. Therefore, in our considered opinion, the dismissal of the said suit cannot be an impediment for the 3rd respondent, the Tahsildar, to remove the encroachment if the land is required for any public purpose. But, the impugned order has not been issued after following the procedure established under the Tamil Nadu Land Encroachment Act, 1905, inasmuch as there was no notice issued under Section 7 of the said Act and there was also no opportunity given to the petitioner. The learned Additional Government Pleader would submit that the 3rd respondent is prepared to issue such a notice under Section 7 of the Tamil Nadu Land Encroachment Act and then to pass appropriate orders, after affording reasonable opportunity to the petitioner.

5.In view of the facts and circumstances of the case, we set aside the impugned notice and without expressing any opinion as to whether the petitioner is liable to be evicted or not, we give liberty to the third respondent to initiate appropriate proceedings under the Tamil Nadu Land Encroachment Act by issuing notice under Section 7 of the Act to the petitioner and to afford sufficient opportunity to him. If the petitioner has not any claim over the said property, he is at liberty to make his objections, after receipt of such notice. On considering all the above materials and after affording sufficient opportunity to the petitioner, the third respondent, the Tahsildar, shall pass appropriate orders."

2.If the petitioners have not followed the due process of law, the remedy open to the respondent can only be to seek damages. The petitioners acted in discharge of their official duties. They have only removed encroachments in a poramboke land. In fact, it is the duty of the any revenue authority to remove the encroachment found in a Government land. For doing so, they cannot be saddled with criminal prosecution. The impugned proceedings constitute a clear



abuse of legal process. The impugned proceedings stand quashed. This criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

The Judicial Magistrate Court, Thiruvadanai.

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VB(06.11.2019) 3P 2C