



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2020

CORAM:

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD)No.2253 of 2020

M.S.Srinivasan

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Madurai District.

2.The Revenue Divisional Officer,
/Sub Divisional Magistrate,
Thirumangalam Division,
Madurai District.

3.The Inspector of Police,
C-2, Subramaniyapuram (L&O) Police Station,
Madurai City,
Madurai District,
Madurai - 3.

4.B.Gayathri Balaji

... Respondents

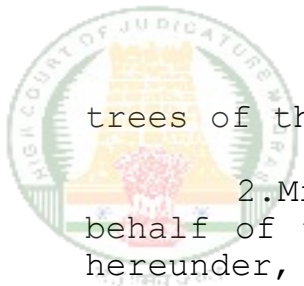
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus calling for the records relating to impugned order passed by the 2nd respondent in his proceedings in O.Mu.No.2040/2019/A3 dated 06.11.2019 and quash the same and direct the respondents 1 to 3 to take appropriate action to remove the trees of 4th respondent.

For Petitioner : Mr.S.Sankarasubramanian

For R1 to R3 : Mr.M.Murugan
Government Advocate

ORDER

This writ petition is filed seeking for issuance of a writ of certiorarified mandamus calling for the records relating to impugned order passed by the second respondent in his proceedings in O.Mu.No.2040/2019/A3 dated 06.11.2019 and quash the same and direct the respondents 1 to 3 to take appropriate action to remove the



trees of the fourth respondent.

2.Mr.M.Murugan, learned Government Advocate takes notice on behalf of the respondents. In view of the order going to be passed hereunder, notice need not be sent to the fourth respondent.

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3.The fourth respondent is a neighbour of the petitioner. The petitioner made a complaint before the third respondent on 03.09.2019 to take necessary action against the fourth respondent for not taking any action to cut and remove the neem trees belonging to him leaning on the petitioner's building and caused damage to his property. Since there had been no action, the petitioner lodged a private complaint under Section 200 Cr.P.C. before the Judicial Magistrate, No.IV, Madurai. The said complaint was returned holding that the District Magistrate or Sub Divisional Magistrate are empowered to initiate action. Therefore, the petitioner had presented a petition before the respondents 1 and 2 for taking action with respect to the said grievance. The second respondent passed the impugned order stating that the dispute is civil in nature and directed the petitioner to go before the civil forum. Challenging the same, the petitioner is before this Court.

4.The learned Government Advocate appearing for the respondents 1 to 3 opposed the grant of relief as sought by the petitioner stating that the remedy available to him is before the appropriate civil forum and this writ petition invoking under Article 226 of the Constitution of India is not maintainable.

5.The learned counsel for the petitioner submits that the second respondent without considering the powers contemplated under Section 133 Cr.P.C. has passed the impugned order and therefore, the same requires interference.

6.At this juncture, it is relevant to look into Section 133 Cr.P.C., which reads as follows:

"133.Conditional order for removal of nuisance.

(1)Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be



prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the Order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

....."

7.A mere reading of Section 133 Cr.P.C. would clearly reveal that the second respondent, being an Executive Magistrate has power to pass orders on the petition filed by the petitioner. But he passed the impugned order holding that the dispute is civil in



nature. In such circumstances, the impugned order is not sustainable and accordingly the same is set aside and the matter is remanded to the second respondent for considering the petitioner's request afresh. The second respondent shall entertain the petition and pass appropriate orders if he is satisfied that the facts and circumstances fulfill the requirements of the said provision. However, the second respondent is directed to afford an opportunity of hearing to the petitioner as well as fourth respondent before passing orders. Such exercise shall be completed in expedition, however, not later than 30.04.2020.

8.The writ petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

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