



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE : 11.09.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.507 of 2020

and

Crl.M.P.(MD)No.4524 of 2020

R.Radhakrishnan

.. Petitioner

Vs.

1.The Sub Divisional Magistrate and Sub Collector,
Tirunelveli.

2.The Commissioner of Tirunelveli,
City Municipal Corporation,
Tirunelveli.

3.The District Collector,
Tirunelveli,
Tirunelveli District.

4.The Tahsildar,
Palayamkottai,
Tirunelveli.

.. Respondents

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.A5/02/2020 dated 19.08.2020 and to set aside the same.

For Petitioner : Mr.B.Saravanan

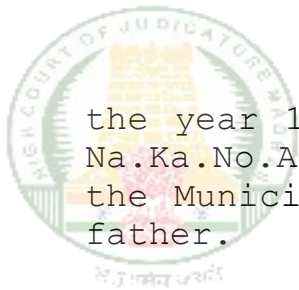
For Respondents 1, 3 and 4: Mr.K.Dinesh Babu,
Additional Public Prosecutor

For 2nd Respondent : Mr.Aayiram K. Selva Kumar
Standing counsel

ORDER

This petition has been filed to set aside the proceedings passed in Na.Ka.A5/02/2020 dated 19.08.2020 under Section 133 of Cr.P.C., on the file of the first respondent.

2.On the side of the petitioner, it is stated that the petitioner's father, late Ramalingam had put up a hut in S.F.No.1291/2, block no.10, Door no.1, Theppakulam Emperumanar Street, Palayamkottai Town in the year 1962. In the year 1987, he constructed a house in the said land. He is paying property tax from the year 1987 - 1988 and water supply connection was given in



the year 1988. The Tahsildar, Palayamkottai in his proceedings in Na.Ka.No.Aa2/4575/94 dated 25.04.1994, called for objections from the Municipality for assigning the house site to the petitioner's father.

3.The Municipal Council of Palayamkottai passed a resolution No.58 dated 28.04.1994, expressing no objection for the assignment of the house site to the petitioner. The petitioner's father passed away on 27.03.1998. The second respondent attempted to evict the petitioner's family on 10.02.1999. The petitioner's mother Rajeswari approached the learned I Additional District Munsif, Tirunelveli and filed a suit in O.S.No.50 of 1999. The suit was decreed on 21.08.2001. Again the second respondent sent a notice on 08.03.2005 and the notice was challenged in W.P.(MD) No.2163 of 2005 before this Court and this Court ordered the respondent to consider the representation of the petitioner in its order dated 21.03.2005. The second respondent has not passed any order till date.

4.The petitioner's mother passed away. The petitioner filed a petition on 14.12.2018 to grant him patta and then he filed a petition in W.P.(MD)No.5231 of 2019. The petition was disposed of by this Court on 06.03.2019, directing the second respondent to consider the representation of the petitioner. The fourth respondent failed to pass any order till date.

5.On 09.06.2020, the first respondent sent a show cause notice under Section 133 of Cr.P.C. The petitioner submitted his representation on 11.06.2020 requesting the first respondent to give 30 days time to submit his explanation. No enquiry was conducted on 12.06.2020. The petitioner approached this Court in Crl.O.P.(MD)No.6833 of 2020, for an order directing the respondents not to disturb the petitioner, till a decision is taken on his reply. The petitioner submitted his representation on 08.07.2020 along with a stability certificate dated 15.06.2020. The first respondent passed the impugned order on 19.08.2020 directing the petitioner to remove the encroachment.

6.The mandatory provisions under Sections 133, 138 and 141 of Cr.P.C., were not followed by the first respondent. As per the provisions under Section 133 of Cr.P.C., the first respondent is duty bound to pass a preliminary conditional order. Only after passing such conditional order, he can issue a show cause notice as to why the preliminary order may not be made absolute. Without passing a preliminary order, the first respondent issued the show cause notice dated 09.06.2020 and the impugned order dated 19.08.2020 is illegal. Section 138 of Cr.P.C., provides that if a person against whom an order under Section 133 of Cr.P.C., is made, appears and shows cause against the order, the learned



Magistrate shall take evidence as in a summary case. If the learned Magistrate is satisfied, the order shall be made absolute with or without modification.

7.The stability certificate which was annexed with the reply of the petitioner was not considered by the first respondent. The first respondent has utilized the power under Section 136 of Cr.P.C., which is within the exclusive domain of the second respondent. The power under Section 133 of Cr.P.C., shall be invoked only in the event of imminent danger to the public and no action can be taken when the alleged obstruction has been in existence for a long period.

8.On the side of the petitioner, it is stated that the petitioner's daughter is getting married. The petitioner is living in the building for more than 50 years. The petitioner and his family is paying water tax, house tax, etc and prayed the impugned order to be set aside.

9.On the side of the respondents, it is stated that the buildings in that area are in a dilapidated stage endangering the residents, neighbours and passersby. It is stated that the building is adjoining the sivan temple tank and the building is constructed adjoining the wall of the temple tank. It is stated that the drainage water is led into the temple tank causing damage to the wall surrounding the tank.

10.On the side of the respondents, it is stated that the respondent is taking action to vacate the petitioner from 10.02.1999 onwards. The petitioner and his family members approached various Courts and are evading the eviction proceedings.

11.On the side of the petitioner, it is stated that the petitioner annexed photos and stability certificate from the Engineer, which reveals that the building occupied by the petitioner is stable.

12.On the side of the respondents, it is stated that the building is in a dilapidated condition endangering the residents, neighbours and passersby. It is further stated that a letter was issued by the PWD, Engineer stating that the building is in a dilapidated condition and the building was constructed approximately 60 years ago. It is further stated that the Executive Officer, Thiripuranthisvarar temple in his letter dated 17.04.2020 has stated that the wall of the temple tank is in a dilapidated condition endangering the people who are occupying that area.



13.It is seen that the respondents passed an order on 09.06.2020 itself and a show cause notice was sent to the petitioner. The petitioner was given an opportunity to submit his representation by the order of this Court dated 27.07.2020. The impugned final order was passed on 19.08.2020. The contention of the petitioner is that a preliminary order was not passed is unsustainable.

14.On the side of the petitioner, it is stated that if the objection was raised against the show cause notice, it is the duty of the respondents to conduct an enquiry and shall take evidence in the manner as in a summary case. Evidence can be either oral or documentary. The order passed by the respondents is based on the documentary evidence. Hence, the argument of the petitioner is unsustainable.

15.Admittedly the building of the petitioner was constructed 50 years ago. The petitioner has submitted photographs of the side view and front view of the house. The allegation of the respondents is that the wall of the temple tank is adjoining the building. The back side view of the house was not photographed by the petitioner. The wall of the temple tank adjoining the house is stated to be in a dilapidated stage. It is seen that the petitioner is evading eviction proceedings from the year 1999 onwards. It is stated that the property is classified as 'street' and there is no possibility for issuing patta to the petitioner.

16.In the above circumstances, considering the situation of the petitioner and considering the order passed in ***W.P. (MD) Nos.7050 and 7052 of 2020***, the respondents are directed to give one week time to the petitioner to evict the premises from today (11.09.2020). In the interregnum period, if any damage is caused either to the petitioner or to any body else, due to the dilapidated condition of the building, the petitioner is liable and the respondents are not liable.

17.With the above direction, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

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Sub Assistant Registrar (CS)



Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Sub Divisional Magistrate and Sub Collector,
Tirunelveli.
- 2.The Commissioner of Tirunelveli,
City Municipal Corporation,
Tirunelveli.
- 3.The District Collector,
Tirunelveli,
Tirunelveli District.
- 4.The Tahsildar,
Palayamkottai,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl. R.C.(MD)No.507 of 2020

11.09.2020

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