



WEB COPY

Crl. R.C.(MD)No.549 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.12.2020

Delivered On : 16.12.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.549 of 2020

and

Crl.M.P.(MD)Nos.4822 and 6483 of 2020

- 1.Sasikumar
- 2.Jegadees
- 3.Madhu
- 4.Ramesh
- 5.Chandran

.. Petitioners

Vs.

- 1.The Executive Magistrate cum
Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

- 2.The Inspector of Police,
Kulasekaram Police Station,
Kulasekaram,
Kanyakumari District.

- 3.Rev Sudharsan,
Parish Priest,
St. Antoniar Church,
Nagacode,
Kulasekaram

.. Respondents

Prayer : This criminal revision case is filed under Sections 397(1) and 401 of Cr.P.C., to call for the records relating to the proceedings initiated under Section 107 of Cr.P.C., and the show cause notice and the order passed in A2/MC 03/2020 dated 02.09.2020 on the file of the first respondent.

For Petitioners	: Mr.H.Velvadhas
For Respondents 1 and 2	: Mrs.S.Bharathi Government Advocate
For 3 rd Respondent	: Mr.Louis

ORDER

This petition has been filed to set aside the order passed in A2/MC 03/2020 dated 02.09.2020, on the file of the first respondent.

2.On the side of the petitioners, it is stated that the third respondent purchased the land in survey No.172/3 within 100 feet away from the temple. There are 250 Hindu families residing



surrounding the temple and a cashew nut factory is functioning near the temple. The third respondent purchased the land as agricultural land having rubber trees. There is a church two kilometers away from the place. Now the land was used as a burial ground.

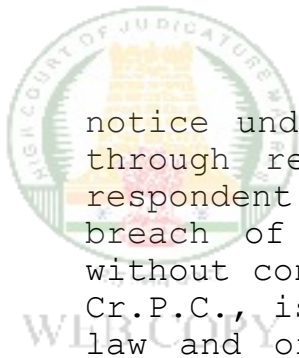
3.It is stated that the burial of dead bodies in residential area was objected by the Hindu people, since the groundwater will be affected. As per Sections 278 and 279 of the Tamil Nadu District Municipalities Act, for using a land as a burial ground, the license from the municipality is necessary. The first petitioner filed a petition in W.P.(MD)No.26267 of 2019, preventing the burial of dead bodies without obtaining proper license from the Panchayat.

4.In the meantime, the third respondent started some construction and challenging the same, the fourth petitioner has filed a petition in W.P.(MD)No.9548 of 2020, wherein this Court granted interim injunction in W.M.P.(MD)No.8605 of 2020 dated 19.08.2020, restraining the third respondent from making any construction. The third respondent appeared in the above writ petition and made an undertaking that he will not construct anything in the above said land.

5.On 04.03.2020, the District Collector has clearly mentioned that there was no law and order problem in that area. Contrary to the same, the first respondent has sent a communication dated 25.08.2020 through the second respondent stating that there is a law and order problem. Without serving notice, the second respondent sent a police constable to the first petitioner's house at 09.15 p.m. The constable orally directed the first petitioner to appear before the first respondent on the next day morning along with the petitioners 2 to 5. Since no notice was served upon the petitioners, the petitioners did not appear before the first respondent on 02.09.2020.

6. The first respondent violating the provisions under Sections 111 and 113 of Cr.P.C., issued a warrant against the petitioners, based on the false information given by the second respondent to the first respondent. The policemen came to the first petitioner's house on 02.09.2020 at 07.00 a.m., and handed over a warrant dated 02.09.2020 along with a notice dated 25.08.2020. The proceedings initiated by the first respondent is in violation of the principles of natural justice and in violation of Sections 111 and 113 of Cr.P.C.

7.It is stated that the first respondent without issuing notice under Sections 111 and 113 of Cr.P.C., issued a warrant under Section 113 of Cr.P.C. Since no notice was served upon the petitioners, the decision of the first respondent is wrong. In obedience to the warrant issued to the petitioners, the petitioners appeared before the first respondent on 02.09.2020. The show cause



notice under Section 111 of Cr.P.C., has to be served to a person through registered post or through second respondent. The first respondent has to satisfy herself that there is a likelihood of breach of peace in that area. Without inspecting the place and without conducting any enquiry, the proceedings under Section 107 of Cr.P.C., is against law. The petitioners have no intention to create law and order problem. They are approaching the proper forum by sending complaints and by filing writ petitions. The Executive Officer, Thirupparappu Selection Grade Town Panchayat passed an order dated 16.07.2020, preventing the third respondent from constructing the burial ground in violation of Section 279 of the Tamil Nadu District Municipalities Act and prayed the impugned order to be cancelled.

8.On the side of the first respondent, it is stated that there is 300 metre distance between the Vanasastha Kavu koil and the burial ground. There are no house situated between the hindu temple and the burial ground. The disputed place is functioning as a cemetery for the past 20 years and there were 32 cemeteries. There is no structures or residential building. Since there is a problem between the hindus and the christians, 107 proceedings has been initiated for maintaining peace and tranquility in that area. Summon was issued for the presence of the petitioner but the petitioner failed to appear. Then warrant was issued, on 25.08.2020 under Section 111 of Cr.P.C.

9.On the side of the first respondent, a copy of the order dated 04.09.2020 was filed wherein the petitioner has executed a bond under Section 116(3) of Cr.P.C.

10.It is seen that this Court has passed an order in W.P.(MD) No.9548 of 2020, wherein this Court has passed an interim injunction restraining the third respondent from putting up any construction in the petition mentioned site. The said writ petition is pending. It is seen that bonds were obtained from both the parties to keep peace in that area. This petition has been filed only against the issuance of warrant for appearance. Since the entire proceedings was already closed, this matter become infructuous.

11.In view of the above observation, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

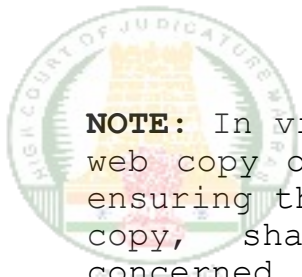
Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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.

WEB COPY

To

- 1.The Executive Magistrate cum
Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.
- 2.The Inspector of Police,
Kulasekaram Police Station,
Kulasekaram,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl. R.C. (MD) No. 549 of 2020
16.12.2020

(SSS)CO
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