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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.R.C. (MD).No.477 of 2015

and M.P. (MD).No.1 of 2015

1.M.Selvam

2.M.Mohan

...Petitioners / Petitioners

Vs.

1.The Executive Magistrate-cum-Tahsildar,
Kovilpatti,
Tuticorin District.

2.The Inspector of Police,
Kovilpatti West Police Station,
Kovilpatti,
Tuticorin District.

3.K.Kamalakannan

4.Velammal

...Respondents / Complainants

Prayer:- Criminal Revision is filed under Sections 397 r/w 401 of Criminal Procedure Code, against the order dated 03.08.2015 under Section 137 of Cr.P.C passed by the Executive Magistrate-Cum-Tahsildar in Na.Ka.No.A6/8202/2015.

For Petitioners

: Mr.M.P.Senthil

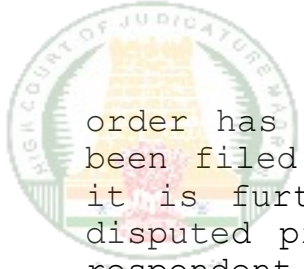
For Respondents 1 & 2

: Mrs.S.Bharathi
Government Advocate

ORDER

The petitioners are the owners of the property. In this revision petition, they have challenged the order passed by the learned Executive Magistrate-Cum-Tahsildar in Na.Ka.No.A6/8202/2015, dated 03.08.2015 under Section 137 of Cr.P.C.

2.According to the petitioners, they are the owners of the property in S.No.671/1, in which, a joint patta was granted to them. As per the village accounts, Sy.No.671/1 was owned by one Arunaiya S/o.Subbaiya and one Unnamalai Ammal, W/o.Murugan and hence, they possessed joint patta. The Law Enforcing Agency already disturbed the petitioner's possession by way passing an order on 23.05.2014. Challenging the very same 133 Cr.P.C proceedings, on an earlier occasion, they have already approached this Court by way Cr1.O.P. (MD).No.5473/2015. This Court, by an order dated 06.04.2015, directed the first respondent therein to pass final order within a period of 6 weeks from the date of receipt of a copy of the order therein. In pursuance of that, the present impugned



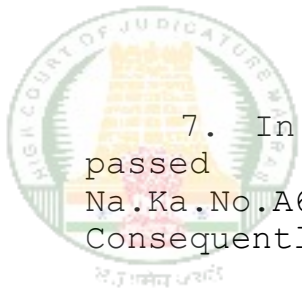
order has been passed. As against that, the present revision has been filed. With regard to the property owned by the petitioners, it is further alleged that some of the persons have enjoyed the disputed property as pathway for some time. Therefore, the first respondent has passed the 137 Cr.P.C proceedings against the petitioners, which is legally unsustainable. According to the petitioners, they cannot be deprived of their rights as owners of the property and further, they cannot be restrained from enjoying their property by way of passing 137 Cr.P.C proceedings. Even though some of the persons claim easementary right over the disputed land, there is no proof on their side to show that except the disputed land, there is no other pathway available. However, in the impugned order it has been mentioned that the Government decided to take the land in question for the benefit of some group of persons under the emergency Land acquisition proceedings but till date, no proceedings were initiated.

3. It is further submitted that the private respondents damaged the compound wall put up by the petitioners, for which, criminal case has already been registered against them under Sections 294(b) and 506(ii) I.P.C and Section 3(1) of Tamil Nadu Properties (Prevention of Damage and Loss) Act and in the said case, after trial, convicted the accused for the offences mentioned above. Hence, the impugned order is liable to be quashed.

4. The learned Government Advocate appearing for the respondents 1 & 2 would submit that admittedly, the petitioners are the owners of the property and the private respondents used the property as a pathway. She would further submit that though the impugned order discloses that the Government have decided to initiate land acquisition proceedings, however, till date, acquisition proceedings have not been initiated.

5. Heard the learned counsel for the petitioners as well as the learned Government Advocate and perused the records carefully.

6. On perusal of the impugned order, it is seen that the ownership of the land was not disputed and the petitioners are the owners of the property comprised in S.No.671/1 of Pandavarmangalam Village, Kovilpatti, Thoothukudi District. The claim of the respondents that they have easementary right of pathway over the disputed land is not acceptable, as no records produced before this Court to substantiate the same and they have no right to use the property in question, as pathway, however, there are enough records available to prove the ownership of the petitioners over the disputed land. Further the persons, who claimed easementary right have not approached the competent civil forum. The land acquisition proceedings also have not been initiated till date. In such view of the matter, I am of the considered view that the petitioners cannot be deprived of their rights, through the impugned order under Section 137 Cr.P.C. Since the impugned order is not legally sustainable, I have no hesitation to quash the same.



7. In fine, the Revision is allowed and the impugned order passed by the Executive Magistrate-Cum-Tahsildar in Na.Ka.No.A6/8202/2015, dated 03.08.2015 is set aside. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs

To

1.The Executive Magistrate-cum-Tahsildar,
Kovilpatti,
Tuticorin District.

2.The Inspector of Police,
Kovilpatti West Police Station,
Kovilpatti,
Tuticorin District.

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

4.The Section officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.M.ARUNSWAMINATHAN, Advocate (SR-10665[F] dated 09/03/2020)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-10749[F] dated 10/03/2020)

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