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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.11.2019

PRONOUNCED ON: 07.05.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.22183 of 2016

and

CRL.M.P. (MD)No.11481 of 2016

State rep. by,
The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.
Keelavalavu P
(Crime No.155 of 2012)

... Petitioner/Petitioner/
Respondent/Complainant

Vs.

M/s.PRP Exports,
M/s.PRP Granites through its
Power Agent/Partner,
P.Sureshkumar, S/o.Palanichamy,
379, Sarveswarar Koil Street,
Anna Nagar, Madurai - 20.

... Respondent/Respondent/
Petitioner/Accused

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records of the dismissal order in Crl.R.P.No.59 of 2013 dated 08.11.2016 on the file of the I Additional District and Sessions Judge, Madurai filed against the order in Cr.M.P.No.3286 of 2013 on the file of the Judicial Magistrate, Melur and set aside the same.

For Petitioner : Mr.A.Natarajan,
State Public Prosecutor,
assisted by Mr.A.Robinson,
Government Advocate(Crl. Side).

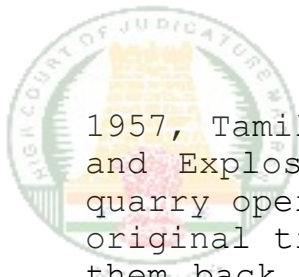
For Respondent : Mr.S.Ramesh

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O R D E R

Heard the learned State Public Prosecutor appearing for the petitioner and the learned counsel appearing for the respondent.

2.It is not in dispute that the respondent firm and its partners have been accused of having indulged in illegal mining operations and that quite a few cases have been registered under the Mines and Minerals(Development and Regulation) Act



1957, Tamil Nadu Public Property (Prevention of Damage and Loss) Act and Explosive Substances Act. The respondent was a major granite quarry operator. During the course of investigation, as many as 5429 original title deeds belonging to the respondent were seized. To get them back, the respondent filed Crl.M.P. No.3286 of 2013. The prayer made by the respondent was countered by the petitioner herein. After hearing both sides, the learned Judicial Magistrate, Melur, by order dated 10.06.2013 allowed the petition and directed the petitioner herein to hand over the petition mentioned title deeds to the respondent herein on their executing a bond for a sum of Rs.50,00,000/-.

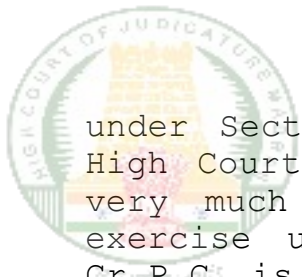
3.Questioning the same, the petitioner herein filed Crl.R.P.No.59 of 2013 before the learned Sessions Judge(I Additional District and Sessions Judge), Madurai. The learned Sessions Judge by order dated 08.11.2016 dismissed the same. Challenging the said order of dismissal passed by the Sessions Court, this criminal original petition has been filed under Section 482 of Cr.P.C.

4.The learned State Public Prosecutor contended that the respondent herein who is accused in several mining cases is on the face of it in possession of hundreds of acres of land and this is evident from the sheer number of title deeds. The investigation officer has seized as many as 5429 title documents. Therefore, when the violation of the mandatory provisions of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 is apparent, the respondent is not entitled to seek return of the title documents. On this ground, the learned State Public Prosecutor wants this Court to set aside the impugned orders.

5.The learned counsel appearing for the respondent, on the other hand, wanted this Court to dismiss the original petition on the simple ground that a second revision is barred in terms of Section 397(3) of Cr.P.C. as the same cannot be casually overcome by invoking Section 482 of Cr.P.C. He also contended that the impugned orders are very much sustainable in law.

6. I carefully considered the rival contentions.

7. It is true that aggrieved by the order passed by the learned trial Magistrate, the petitioner herein invoked revisional remedy before the Sessions Court and that the learned Sessions Judge was not inclined to interfere with the order passed by the learned trial Magistrate. It is of course true that a second revision before this Court is barred in terms of Section 397(3) of Cr.P.C. But it is beyond dispute that the three Judges Bench of the Hon'ble Supreme Court clarified in Krishnan and Another V. Krishnaveni((1997) 4 SCC 241) that although a second revision before the High Court after the dismissal of the first one by the Court of Sessions is barred by Section 397(3) of Cr.P.C., the inherent powers of the High Court

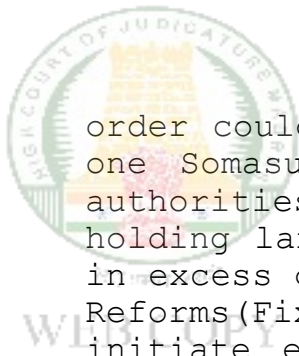


under Section 482 of Cr.P.C. are nevertheless available. If the High Court notices that there has been failure of justice, it is very much open to the High Court to intervene. Of course the exercise under Section 482 of Cr.P.C. dehors Section 397(3) of Cr.P.C. is to be sparingly exercised in exceptional circumstances.

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8. This Court is not inclined to throw out the petition on the ground of technicality. Tamil Nadu Land Reforms Act 58 of 1961 has fixed the ceiling on the landholdings. One cannot acquire the lands beyond the said ceiling limits. In fact transfer or partition made on or after the date of the commencement of the Act itself is void and they will be vested with the Government. There are provisions in the Act for acquiring lands beyond the ceiling limit and for failure to furnish information or returns. Section 93 of the Act states that the Judicial Magistrate will have the jurisdiction to try the offence punishable under the Act. Of course the complaint has to be filed in writing by the authorised officer or any officer empowered by him by special order. As the learned State Public Prosecutor rightly submitted, possession of the lands beyond and in excess of the ceiling limit by the respondent is evident on the very face of it. If something is apparent, the Court cannot shut its eyes to it. No Court ought to have a blinkered vision. They will have to see the things as a whole. They must connect the dots. The Government is an impersonal machinery and one department may not know what is happening in the other. The situation has not improved even after the advent of digitization. There must be an unified and integral approach. As already pointed out, it is the Court of Judicial Magistrate that is competent to take cognizance of any of the complaint that may be filed by the authorised officer. Since the possession of lands in excess of the ceiling limit is so obvious, the authorised officer under the Land Reforms Act ought to have been put on notice by the learned trial Magistrate before directing return of title deeds to the respondent herein. Again as rightly projected by the petitioner, if the title deeds are returned to the respondent herein, in order to frustrate the proceedings under the Land Reforms Act, the respondent would surely effect alienations and create encumbrances.

9. Section 451 of Cr.P.C. enables the Court before which any property is produced during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. This in the very nature of things implies that the Court will have to see, if there is any other party who will be interested in the subject matter of the proceedings apart from those who are before it. Applying the said yardstick, I have no hesitation to come to the conclusion that apart from the prosecuting agency and the respondent, there is one other interested person, namely, the authorised officer under the Tamil Nadu Land Reforms Act. Therefore, the authorised officer is a necessary party to the instant proceedings. Without hearing him, no



order could have been passed. It has been brought to my notice that one Somasundaram filed W.P.(MD)No.1956 of 2013 for directing the authorities to initiate action against the respondents herein for holding lands in Melur and Madurai North Taluks of Madurai District in excess of the ceiling area as defined under Section 5 of the Land Reforms(Fixation of Ceiling on Land)1961 (Act 58 of 1961) and to initiate expeditious steps to acquire the surplus lands from the respondents herein as per the provisions of Tamil Nadu Reforms (Fixation of Ceiling on Land) Act 1961(Act 58 of 1961) so as to assign and distribute the same among the poor farmers as per the provisions of Tamil Nadu Land Reforms(Disposal of Surplus Land) Rules, 1965. The writ petition was disposed of by the Hon'ble First Bench vide order dated 17.11.2016 in the following terms:-

"Learned Advocate General submits that notices have been issued in respect of excess land held in view of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. He further submits that 444 out of 1425 individual notices and 336 out of 792 company notices have been issued and states that the process will take some time.

2. In view of the authorities having already taken action, the question of distribution of surplus land is dependant on the fate of the proceedings, no further directions are required and the writ petition stands accordingly closed, leaving the parties to bear their own costs.

3. In order to ensure that progress is made, we may initially monitor the matter and thus we call upon the respondent to file the progress report before the next date of hearing.

4. List for compliance on 10.03.2017."

10.The learned counsel on either side are unable to enlighten the Court to what happened subsequently. Therefore, interest of justice will be served by remitting the matter to the file of the learned trial Magistrate.

11.Therefore, I am inclined to set aside the impugned orders on the sole ground. The orders impugned in this criminal original petition stand accordingly set aside.

12.The matter shall stand remitted to the file of the learned Judicial Magistrate, Melur. The learned Judicial Magistrate will issue notice to the jurisdictional authorised officer under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 as one of the respondent in these proceedings. After hearing the authorised officer, an appropriate order in accordance with law will be passed by the learned Magistrate.



13. With this direction, the criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (Crl. Side)

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Sub Assistant Registrar(CS)

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To:

1. The I Additional District and Sessions Judge,
Madurai.
2. The Judicial Magistrate, Melur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cr1.O.P.(MD)No.22183 of 2016

Dated: 07.05.2020

PU (19.05.2020) 5P 4C