

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	08.01.2020
Date of Judgment	24.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

WEB COPY

Cr1.RC(MD)No.960 of 2019
and
Cr1.MP(MD)No.11353 of 2019
&
Cr1.OP(MD)No.18933 of 2019

1.Nithyananthan @ Saravanan
2.Kumaresan
3.S.K.Radhakrishnan : Petitioners

Vs.

1.The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Thiruchendur,
Thoothukudi District.

2.Regibert Fernando
3.Xavier Fernando : Respondents
(R3 is given up)

Prayer in Cr1.RC(MD)No.960 of 2019: Criminal Revision filed under section 374 and 401 of the Criminal Procedure Code against the order passed by the 1st respondent in Na.Ka.No.A3/7183/2018, dated 19.11.2019.

2.Cr1.OP(MD)No.18933 of 2019:

E.Regibert Fernand : Petitioner

Vs.

1.The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Thiruchendur,
Tuticorin District.

2.The Inspector of Police,
Thiruchendur Police Station (Temple),
Thiruchendur.



3.K.Radhakrishnan

4.P.Kumaresan

5.S.Saravanan @ Nithyanandan

: Respondents

Prayer in Crl.OP(MD)No.18933 of 2019: Criminal Original Petition filed under section 482 of the Criminal Procedure Code, directing the 2nd respondent to give police protection to the petitioner to comply with the order of the 1st respondent, bearing in Na.Ka.No.A3/7183/2018, dated 19.11.2019.

For Petitioners in
Crl.RC(MD)No.960 of 2019

&

For R3 to R5 in Crl.OP(MD)
No.18933 of 2019

: Mr.Vallinayagam
Senior counsel
for Mr.M.Saravanan

For 1st Respondent in
Crl.RC(MD)No.960 of 2019

&

For R1 and R2 in

Crl.OP(MD)No.18933 of 2019 : Mr.APG.Ohm Chairma Prabhu
Government Advocate
(Criminal side)

For 2nd Respondent
in Crl.RC(MD)No.960 of 2019

&

For the petitioner in

Crl.OP(MD)No.18933 of 2019 : Mr.Gnanagurunathan

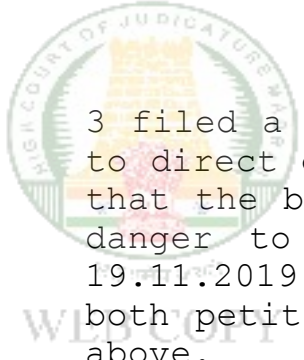
For 3rd Respondent

in Crl.RC(MD)No.960 of 2019 : Died

COMMON JUDGMENT

The criminal revision is directed against the order passed by the 1st respondent in Na.Ka.No.A3/7183/2018, dated 19.11.2019, whereas the criminal original petition has been filed to direct the 2nd respondent to give police protection to the petitioner therein to comply with the order of the 1st respondent, dated 19.11.2019.

2.The petitioners in the criminal revision are tenants and running cool drinks, drinks shop, milk booth with cycle shop and grocery shop. The respondents 2 and 3 took unlawful efforts to evict the petitioners from their shops. The petitioners requested them to act in accordance with law. However, the respondents 2 and



3 filed a petition before the 1st respondent on 11.10.2018 praying to direct demolition of the said building on the fallacious ground that the building was in a dilapidated condition and it may cause danger to the public. The 1st respondent passed an order on 19.11.2019 to demolish the building. Hence, the petitioner(s) in both petitions are before this court seeking the relief as stated above.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The main contention raised on the side of the petitioners in the criminal revision is that the 1st respondent has failed to consider the vital and undisputed facts in proper perspective that the petitioners are doing their business in the disputed building and the respondents 2 and 3 suppressing the fact that the petitioners are doing their business in the building as tenants for several years, filed their petition seeking direction to themselves for demolishing the building and no one from the public has stated that the said building was in such a condition that it was likely to fall and thereby caused injury to the persons living or carrying on business in the neighbouring or passerby and in consequence removal, repair or support of the said building was necessary and as per section 133 of the Criminal Procedure Code, the 1st respondent could make a conditional order to the person possessing or controlling the building to carry out repair or provide support to such building if he had considered that it was likely to fall and thereby likely to cause injury to any person, however, the 1st respondent has not chosen to give any such direction to the petitioners and the 1st respondent even without informing the petitioners, passed the conditional order, dated 30.01.2018 directing the respondents 2 and 3 to demolish and remove the said building and sought objection if any from the respondents 2 and 3 who in-fact sought direction for demolition and removal of the building and the act of the 1st respondent in not disclosing the real fact, in his order, dated 30.01.2018 that the respondents 2 and 3 sought direction to themselves to demolish and remove the said building would show that the impugned order has not been passed in a fair manner and it had been passed with the ulterior intention of unlawfully evicting the petitioners from that building and the 1st respondent failed to accept the procedures as envisaged under section 138 of the Criminal Procedure Code and the petitioners filed suit against the forcible eviction and hence, the 1st respondent ought not to have passed the impugned order on 19.11.2019 in the manner of frustrating the civil proceedings pending before the civil court and no notice was given to the petitioners before making inspection by the Executive Engineer, PWD and hence, the impugned order was passed without following the mandatory procedure is invalid and hence, the

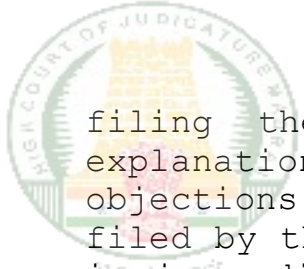
<https://services.mca.gov.in/services> on may be allowed. It is the further contention of



the petitioners in the criminal revision that the 2nd respondent in the criminal revision has filed petition under section 482 of the Criminal Procedure Code praying this court to direct the Inspector of Police, Thiruchendur to give police protection to him for complying with the order, dated 19.11.2019, which is impugned in the criminal revision and the above order is un-sustainable in law and hence, CrI.O.P(MD)No.18933 of 2019 filed by the 2nd respondent is liable to be dismissed.

5.The respondents 2 and 3 in the criminal revision in their petition, dated 01.10.2018 stated that they were enjoying the said building as the legal heirs of its owner and the above building was in a dilapidated condition, that the persons had neglected their users and prays direction to demolish the above building. Considering the petition averments, the 1st respondent directed the Executive Engineer, PWD to inspect the above building and the Executive Engineer has filed a report stating that the building was very old and that there were cracks on the beams provided on the roof and on the walls and the building may be demolished to avoid death. On the basis of the above report, the 1st respondent passed an order on 30.11.2018 for demolishing the building. For that, the 2nd respondent sent suitable reply on 12.12.2018. The petitioners submitted their representations on 07.12.2018 and 13.12.2018 requesting the 1st respondent to provide them opportunity to submit their contentions. The petitioners states that as no reasonable opportunity was given, they filed WP(MD) No.25171 of 2018 praying to direct the 1st respondent to consider their representation, dated 13.12.2018. This Court passed the order in the above writ petition directing the 1st respondent to give opportunity of hearing to the petitioners and pass appropriate orders in accordance with law. Further, the petitioners filed WP(MD)Nos.3668 of 2019 and 3369 of 2019 for quashing the order, dated 30.11.2018 and the above writ petitions were disposed on 24.04.2019 by holding to the effect that the impugned communication merely reads that the noticee is to appear before the Executive Magistrate and offer his explanation after which orders will be passed in terms of section 133 of the Code of Criminal Procedure and it is always open to the writ petitioners to raise their objections before the Revenue Divisional Officer, Tiruchendur, Tuticorin District and it is for the RDO to pass appropriate orders in accordance with law.

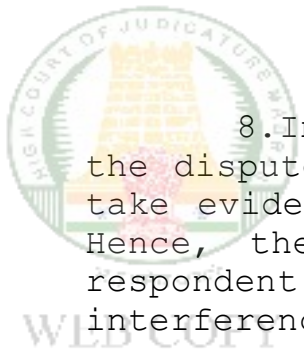
6.The order of the 1st respondent is carefully perused. The 1st respondent has categorically stated that as per the order passed in W.P(MD)Nos.3668 and 3669 of 2019 and in WMP(MD)Nos.2871 to 2874 of 2019, he issued notice on 06.05.2019 to the petitioners to appear before him. But for the above hearing, the petitioners were not appeared. Then again, the 1st respondent issued notice on 11.10.2019 for the appearance of the petitioners. <https://hcservices.e-district.gov.in/hcservices>, the petitioners appeared and sought time for



filing their objections and the petitioners submitted their explanation on 06.11.2019. After taking into consideration the objections and reasons filed by the petitioners and the report filed by the Executive Engineer stating that the disputed building is in a dilapidate condition, passed the order under section 133 of the Criminal Procedure Code. Further, one of the petitioners namely Radhakrishnan filed WP(MD)No.25171 of 2018, seeking stay order. But the court rejected to grant stay on the ground that the Executive Engineer, PWD stated that the disputed building was in a dilapidated condition. It was not denied on the side of the petitioners. Further, the Revenue Divisional Officer stated in his order that he himself inspected the disputed property and found that the above building was in a dilapidated condition. Hence, it is held that the 1st respondent provided reasonable opportunity to the petitioners. No contra evidence was let in on the side of the petitioners to prove the same.

7. At this juncture, it is significant to refer the decision reported in **2008(2) MWN (Cr.) 383 (The Manager, Kodanad Estate, Kothagiri Taluk, The Nilgiris District, rep by R.Ravichandran Vs. The Sub Divisional Magistrate and Assistant Collector, Coonoor, The Nilgiris District)**, wherein this court has held as follows:-

"11.7. On the contention that the Petitioner's evidence was not recorded as required under Section 138, Cr.P.C., Mr.P.Wilson, the learned ASGI appearing for the Interveners countered the same with a judgment of this Court in **P.Preman V. M.P.Andy, 1997(1) CTC 305**. In that case, this Court held that the party denying the public right has to produce reliable evidence when questioned related to the public rights. That case relates to the existence of a tree which the neighbour had complained that it could fall at any time and it was dangerous to personal safety and will cause damage to the property. In that context, the Executive Magistrate, who visited the spot, directed cutting of some branches which were protruding in the neighbour's property, to allow the tress to continue to exist. It was in that context, on the question whether a Magistrate under Section 137 and 138, Cr.P.C is obliged to record evidence, the learned Judge rejected the argument that he must record evidence and then held that since there was a local inspection by the Magistrate, there was no necessity to record any further evidence."



8. In the case of hand, already the 1st respondent inspected the disputed property in person and hence, it is not necessary to take evidence as per section 138 of the Criminal Procedure Code. Hence, the impugned order, dated 19.11.2019 passed by the 1st respondent is perfectly correct, which do not require any interference by this court.

9. In the case in Crl.OP(MD)No.18933 of 2019, the petitioner prayed for police protection. Since the 1st respondent in Crl.RC(MD)No.960 of 2019 has decided that the disputed building was in a dilapidated condition, the petitioners in Crl.RC(MD)No.960 of 2019 are restraining the owners from dismantling the disputed building. Hence, it is held that it is necessary to give police protection to the petitioner in Crl.OP(MD)No.18933 of 2019.

10. In the result, this criminal revision is **dismissed**. Consequential dismissal of criminal revision, Crl.OP(MD)No.18933 of 2019 is allowed and the 2nd respondent police is directed to give necessary police protection to the petitioner to comply with the order of the 1st respondent, dated 19.11.2019. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

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/ /2020

Sub Assistant Registrar(CS)

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To,

1. The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Thiruchendur,
Tuticorin District.

2. The Inspector of Police,
Thiruchendur Police Station (Temple),
Thiruchendur.

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



+2 CC to M/s.M.SARAVANAN, Advocate (SR-7897 & 7898[F] dated
24/02/2020)

+2 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-7951 & 7952[F] dated
24/02/2020)

Cr1.RC(MD)No.960 of 2019
and
Cr1.MP(MD)No.11353 of 2019
&
Cr1.OP(MD)No.18933 of 2019
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avs (CO)
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