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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.151 of 2021
and
Crl.M.P.No.3236 of 2021

Craigmore Plantations (I) Private Limited
Rep.by its Managing Director,
Maletira Nanjappa Bopana,
Having Office at
Kullakamby post,
Nilgriris District.

...Petitioner

..VS..

- 1.The Sub-Divisional Magistrate/Sub-Collector,
Coonoor,
The Nilgiris District.
- 2.The Tahsildar,
Coonoor Taluk,
Coonoor,
The Nilgiris District.
- 3.The Inspector of Police,
Kullakamby Police Station,
Coonoor, The Nilgiris District.

4.*C.S. Rajasekaran
S/o. M. Chandrasekaran
D.No. 12/257, Thuthurmattam
Kullakamby Post
Coonoor Taluk, Nilgiris District
(R4 impleaded as per order of this Court in
Crl.R.C.No.151/2021 dated 13.08.2021)

...Respondents

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, to call for the records pertaining to the order dated 24.02.2021 made in R.C.A1 No.3845/2013 on the file of the Sub-Divisional Magistrate/Sub-Collector, Coonoor, The Nilgiris District, the first respondent herein and set aside the same.

For Petitioner : Mr.B.Kumar
Senior Counsel for
Mr.S.Ramachandran



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For Respondents: Mr.S.Sugendran
Government Advocate (Crl.Side)

For Intervenor : Mr.P.Vijendran

O R D E R

This Criminal Revision Case has been filed against the order dated 24.02.2021 made in R.C.A1 No.3845/2013 on the file of the Sub-Divisional Magistrate/Sub-Collector, Coonoor, The Nilgiris District, in and by which, the first respondent required the Tahsildhar to remove iron gates which prevented access to S.Nos.498/3 and 518/3 Melur Village, Coonoor Taluk.

2.Heard Mr.B.Kumar, learned Senior counsel appearing for Mr.S.Ramachandran, learned counsel for the petitioner, Mr.S.Sugendran, learned Government Advocate (Crl.Side) for the respondents and Mr.P.Vijendran, learned counsel for the Intervenor and also perused the materials available on record.

3.The learned Senior counsel appearing for the petitioner would submit that the impugned order came to be passed on 24.02.2021, without providing an opportunity to the petitioner, which is against the principles of natural justice. He would further submit that the lands in Survey Nos.498/3 and 518/3 are patta lands registered in the name of the petitioner and the disputed land is existing on the petitioner's patta land. Even otherwise, assuming that it is an encroached land, before removing obstructions and before passing the impugned order, show cause notice has to be given in writing, however, in the present case no show cause notice has been issued in writing. Therefore, the impugned order is liable to be set aside.

4.The learned Government Advocate (Crl.Side) for the respondents would submit that as per the revenue records, the disputed pathway is earmarked as 'cart track'. The residents of the villages/colonies have been using the said cart track for their access without any objection for more than 50 years. Since there are schools, residential areas and community places surrounded in that place, it is being used as 'vandipathai'. He would further submit that though show cause notice was not issued in writing, however, in person, the petitioner was called for enquiry and the petitioner also participated in the proceedings through his agent and raised his objections. Even though, the revenue records also clearly show that the said land is ear marked as 'cart track' and hence, in the interest of public the impugned order was passed, after giving opportunity to the petitioner.

5.The learned counsel for the Intervenor would submit that there is a cart track existing in S.Nos.498/3, 518/3 and villagers have been using the said pathway for their access



without any objection for more than fifty years. However, the petitioner, all of a sudden, obstructed and blocked that place and hence, the public are not able to use the cart track, even though, the children also not able to go to their school. He would further submit that issuance of show cause notice in writing is not necessary, before passing the impugned order. The impugned order also clearly shows that sufficient opportunity was given to the petitioner and he also participated in the proceedings through his agent and at that time he has not co-operated and also behaved rudely with the officers. He would further submit that the revenue records and field map clearly show that the said land is earmarked as cart track. Therefore, the petitioner should not obstruct the public to use the pathway.

6.Today, when the matter is taken up for hearing, Ms.Deepanavisveswari V., Assistant Collector/Sub-Divisional Magistrate, Coonoor appeared before this Court and also admitted that the said path way is existing on the petitioner's patta land and the same was registered in the erstwhile revenue records as 'vandipathai' and the villagers have been using the said pathway for their access without any objection for more than 50 years.

7.The impugned order has been assailed mainly on the ground that the petitioner was not given an opportunity and it has been passed in violation of the principles of natural justice. On a careful perusal of the records shows that no show cause notice was issued in writing and no opportunity was given to the petitioner before passing the impugned order. This Court opines that the petitioner should have been heard before any adverse orders passed against him.

8.Under these circumstances, the order impugned in this criminal revision case is set aside and the Criminal Revision Case stands allowed on the following directions :

**** (i) that the matter is remanded back to the first respondent, who shall issue show cause notice to the petitioner as well as the fourth respondent by way of providing an opportunity of hearing to defend their case, within a period of fifteen days and on receipt of the same, the petitioner shall submit its objections within a period of fifteen days thereafter;**

(ii) that the 1st respondent, on receipt of the objections from the petitioner shall pass orders afresh on merits and in accordance with law, within a period of one month;

(iii) that all the above said exercise shall be completed within a period of two months from the date of receipt of a copy of this order; and



(iv) that in the meanwhile, as the revenue records and the field Map show that the said pathway is earmarked as cart track, the petitioner shall not restrict the public to use the cart track, since schools and community places are there.

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Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)
Dated: 28.07.2021

*** Impleaded as per order
dated 13.08.2021 made in
Crl.R.C.No.151/2021
** Deleted and Substituted
as per order dated 13.08.2021
made in Crl.R.C.No.151/2021.
Sd/- Assistant Registrar(CS-II)
Dated: 13.08.2021**

True Copy

Sub-Assistant Registrar

ms
To

- 1.The Sub-Divisional Magistrate/
Sub-Collector,
Coonoor,
The Nilgiris District.
- 2.The Tahsildar,
Coonoor Taluk,
Coonoor,
The Nilgiris District.
- 3.The Inspector of Police,
Kullakamby Police Station,
Coonoor, The Nilgiris District.
- 4.The Public Prosecutor,
High Court, Madras.

To be Substituted to the
order already despatched
on 29.07.2021

+ 1 cc to Mr. P. Vijendran, Advocate Sr. 40227

Crl.R.C.No.151 of 2021
and
Crl.M.P.No.3236 of 2021

RLD(CO)
EU 28/7/2021
SR(13/08/2021)