



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHANW.P. (MD)No.1063 of 2021 andW.M.P. (MD)Nos.918 & 920 of 2021

WEB COPY

1. S.Jeyalakshmi
2. M.C.Selvam
3. S.Karthikeyan

... Petitioners

Vs.

1. The Revenue Divisional Officer,
Tiruchirapalli,
Collectorate,
Tiruchirappalli - 620 001.
2. The Inspector of Police,
Woraiyur police station,
Tiruchirappalli - 620 003.
(Crime No.112 of 2019 dated 19.03.2019)

3. S.Subramanian
4. S.Swaminathan

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the suo motu First Information Report in Crime No.112 of 2019 on the file of the second respondent against the petitioners and respondents 3 and 4, quash the same and directing the first respondent not to proceed with the proceedings under Section 145 of Cr.P.C. against the petitioners.

For Petitioners : Mr.S.K.Mani

For R-1 & R-2 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

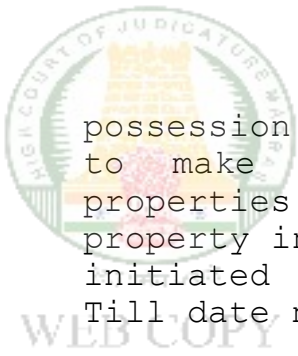
For R-3 & R-4 : Mr.R.Gandhi

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O R D E R

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the official respondents and the learned counsel appearing for the private respondents.

2. In respect of the suit property, there is a dispute between the petitioners on the one hand and the private respondents on the other. According to the private respondents, they are in



possession of the suit property and that the petitioners are trying to make encroachment. The petitioners would claim that the properties are in their possession. But the fact remains that the property in question is a vacant site. The impugned proceedings were initiated by the executive Magistrate way back in the year 2019. Till date no order has been passed.

3. It is seen that Rajamani Ammal, mother of the petitioners has filed O.S.No.1413 of 2017 before the II Additional Sub Judge, Tiruchirappalli, against the first petitioner and her sister Padmavathy in respect of the subject matter. It is only just and proper that the subject issues are resolved in the pending suit. When the civil Court is seized of the matter, the executive Magistrate ought not to have assumed the jurisdiction. I am also not able to find any potential and imminent threat to public peace. In any event, the proceedings under Section 145 of Cr.P.C. could not have been kept pending for two long years. The petitioners did not rush to the Court immediately. Only after two years, this writ petition came to be filed for forbearing the executive Magistrate from proceeding further in the matter.

4. The learned counsel appearing for the private respondents states that this writ petition challenging a notice is not maintainable. I do not agree. If it can be shown that the impugned notice itself is without jurisdiction, the writ petition is maintainable. The civil suit was filed way back in the year 2017 itself. When the civil Court is seized of the matter and there is no material indicating existence of threat to public tranquility, the question of the executive Magistrate assuming jurisdiction under Section 145 of Cr.P.C. will not arise at all. This writ petition is allowed. The parties shall work out their rights and remedies in the pending civil suit. I make it clear that I have not gone into the merits of the matter. All the contentions and defences of the respondents are left open. No costs. Consequently, connected miscellaneous petitions are closed

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmu

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.



To:

1. The Revenue Divisional Officer,
Tiruchirapalli,
Collectorate,
Tiruchirappalli - 620 001.
2. The Inspector of Police,
Woraiyur police station,
Tiruchirappalli - 620 003.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

W.P. (MD) No. 1063 of 2021
11.11.2021

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