



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.07.2021
DELIVERED ON : 19.07.2021
CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**
CRL.O.P (MD) .No.6314 of 2021

WEB COPY

- 1.Paramasivam
- 2.Veerasamy
- 3.Alaguraja
- 4.Viswa
- 5.Muthuraj

... Petitioners/A-Party

Vs.

1. The Sub-Divisional,
Executive Magistrate Cum,
Sub-Collector,
Sivakasi,
Virudhunagar District.

- 2.The Deputy Superintendent of Police,
Srivilliputhur,
Virudhunagar District.

- 3.The Sub-Inspector of Police,
Watrap Police Station,
Virudhunagar District.
In Crime No.08 of 2021.

...Respondent 1 to 3/Complainant

- 4.Veerasamy
- 5.Baskaran
- 6.Periyasamy
- 7.Karuppaiah
- 8.Govindan
- 9.Ganesan

- 10.Selvakumar
- ... Respondents 4 to 10/B-Party

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records pertaining in A2/M.C.No.20/2021 dated 15.02.2021, Sub-Divisional, Executive Magistrate Cum Revenue Divisional Officer, Sivakasi and quash the same.



For Petitioners
For Respondents

: Mr.C.Susi Kumar
: Mr.R.M.Anbunithi
Additional Public Prosecutor
for RR1 to 3
Mr.M.Jothi Basu for RR4 to 10

WEB COPY

ORDER

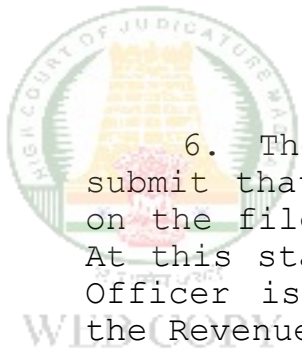
This petition has been filed to call for the entire records pertaining in A2/M.C.No.20/2021 dated 15.02.2021 Sub-Divisional, Executive Magistrate Cum Revenue Divisional Officer, Sivakasi and quash the same.

2. The case of the petitioners is that in respect of disputed land situated in Natham Survey No.1092/1 which belongs to the petitioners through the registered deeds, the private respondents claimed that it is a public land. Therefore, the Sub-Inspector of Police, Watrap, Sivakasi has filed a *suo motu* case under Section 145 of Cr.P.C. in Crime No.08 of 2021 and the matter has been referred to the Executive Magistrate, Sivakasi, in which, the petitioners have been arrayed as "A" Party and the respondent has been arrayed as "B" Party. Summons have been issued to the petitioners to appear before the Enquiry Officer on 15.02.2020. In the summons issued on 15.02.2020, the Sub Divisional Executive Magistrate Cum Revenue Divisional Officer has made out an interim order of *status quo* which is contrary to the Section 145 of Criminal Procedure Code.

3. In respect of civil dispute, a suit has also been filed in O.S.No.27 of 2021 on the file of the Principal District Munsif Court, Srivilliputur by the petitioners and a notice has also been ordered. Further, without giving any opportunity, the Executive Magistrate has passed an order which is erroneous. Hence, the present petition has been filed.

4. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent Nos.1 to 3, the learned counsel appearing for the respondent Nos.4 to 10.

5. After hearing the parties and on perusal of the records, it shows that there was a dispute with regard to the property situated in Survey No.1092/1 in Kottaiyur Village. There were two groups in the village. According to the proceedings, the petitioners group have been arrayed as "A" party. They claimed right over the property whereas the private respondents herein also stated that it is a common property which belongs to the village. Therefore, they made a representation before the Village Panchayat President. On that basis, fence was put up by the Government. Later, both the groups were creating trouble with regard to the property. In this regard, the proceedings have been initiated.



6. The learned counsel appearing for the petitioners would submit that the petitioners have filed a suit in O.S.No.27 of 2021 on the file of the Principal District Munsif Court, Srivilliputhur. At this stage, invocation of Section 145 proceedings by the Revenue Officer is without jurisdiction. Since title dispute is involved, the Revenue Officer ought not to have passed the order.

7. But, however, the learned counsel appearing for the private respondents would submit that only subsequent to the initiation of the proceedings under Section 145 of Cr.P.C., the petitioner has filed the suit in O.S.No.27 of 2021 before the Civil Court. A copy of the complaint is also filed along with the typed set of papers, wherein, the date of representation has not been made. But the month is noted as February 2021. He would further submit that only to give a criminal colour to the dispute, a complaint has been filed.

8. However, a suit has been filed by the petitioners on the ground that the disputed property belongs to them by way of purchase on 12.02.1982 and 04.06.1987, wherein the house of the petitioners is situated. The second item mentioned in the suit is the adjoining of the petitioners property, which is on the western side. Therefore, both the items are contiguous in nature. The second item mentioned in the plaint is in possession and enjoyment of the petitioners. The third item mentioned in the plaint is the village Natham. So, according to the petitioners, both the items namely 1 and 2 belong to them ancestrally. The dispute is only with regard to the third item in the plaint, which is situated in Survey No.1092/1. In the plaint, it is admitted that it is a village natham land. Therefore, the private respondents also submitted that the property belongs to the village and a overhead tank has also been constructed, fence has been put up by the Government. In such circumstances, the petitioner claims right over the property illegally. The petitioner also produced the photographs showing the disputed property wherein, the tractor has also been parked. But, however, whether the petitioner is in possession of the property or not? Cannot be a matter for consideration in this petition.

9. Now, the legal point that has been raised by the petitioner in this petition is that before initiating the proceedings, the first respondent has not complied the mandatory requirements. He would contend that an interim order has been passed contrary to Section 145 Cr.P.C proceedings. Therefore, the grievance of the petitioner is that only after hearing the parties, the interim order ought to have been passed. In the order, it has been stated that because of the dispute between two groups, there is every likelihood of breach of peace and law and order problem may also arise, a continuous trouble is also existing. Only on that ground, the proceedings have been initiated. Subsequent to that, the petitioner has filed the above suit for injunction. The petitioner would say that giving a more trouble by the villagers, it cannot be said that



there is a breach of peace and more so, when it is stated that the Government has fenced the property, whether fence has been put up by the Government or the petitioner still in possession of the property is a matter of consideration before the Court where the suit is pending. Since the suit is pending, instead of quashing the proceedings, a direction is issued to the first respondent to complete the proceedings within a period of one month from the date of receipt of a copy of this order and the parties are at liberty to work out their remedy in the civil suit.

10. With these directions, this Criminal Original Petition stands disposed of.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

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 Sub-Divisional,
Executive Magistrate Cum,
Sub-Collector,
Sivakasi,
Virudhunagar District.
- 2.The Deputy Superintendent of Police,
Srivilliputhur,
Virudhunagar District.
- 3.The Sub-Inspector of Police,
Watrap Police Station,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-23271[F] dated 20/07/2021)

CRL.O.P (MD) .No.6314 of 2021
19.07.2021

PM(CO)

KB(03.08.2021) 4P 6C