



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.01.2021

Pronounced on : 08.03.2021

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.25 of 2017

R.Muthu Radha : Petitioner / 'A' Party
Vs.

1.The Sub Divisional Magistrate Cum
Revenue Divisional Office,
Madurai, Madurai District.

2.Isthiyaksha Sayubu sarguru

3.Valandur Pandi

4.Pandi ...Respondents / 'B' Party

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the order passed by the first respondent/ Sub Divisional Magistrate Cum Revenue Divisional Office, Madurai, in his proceedings in Na.Ka.No.1690/15/M, dated 16.10.2015 under Section 145 of Cr.P.C.

For Petitioner : Mr.J.Lawrence

For 1st Respondent : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side).

For 3rd Respondent : No Appearance

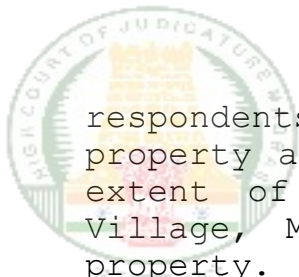
For 4th Respondent : Mr.P.Rajagopalan

R2 died

ORDER

The Criminal Revision Case is directed against the order passed in proceedings in Na.Ka.No.1690/15/M, dated 16.10.2015, under 145 of Cr.P.C, dated 16.10.2015 by the Sub Divisional Magistrate Cum Revenue Divisional Officer, Madurai.

2.The petitioner has filed a petition under Section 145 (4) Cr.P.C, seeking order restraining the unlawful activities of the
<https://hcservices.ecourts.gov.in/hcservices/>



respondents and to recover the possession of the petition mentioned property and hand over the same to the petitioner. The land to an extent of 1.07 Acres comprised in Survey No.93 at Kizhamathur Village, Madurai South Taluk, Madurai District, is the disputed property.

WEB COPY

3.The petitioner's case is that the said property is owned by the second respondent, that one Pitchai Devar was the cultivating tenant of the said property and he granted the tenancy rights in favour of the petitioner's husband through a registered document and that the petitioner and her family members have been cultivating the said property and are in possession and enjoyment of the same.

4. It is their further case that second respondent started refusing to receive the lease amount from the petitioner and hence, the petitioner was forced to file petitions before the Revenue Court, Madurai in T.C.T.P.No.36 of 1988, T.C.T.P.No.39 of 1990 and T.C.T.P.No.17 of 1999, seeking direction to the second respondent to receive the lease amount and all the above three petitions were allowed, that thereafter, the 2nd respondent's brother had started instigating the respondents 3 and 4 and dispossess the petitioner from the said property, that the respondents 3 and 4 are highly influential persons and claim themselves as real estate agents and brokers, that the respondents 3 and 4, at mid-night trespassed into the property and removed and damaged all the crops and trees standing in the property using JCB vehicle and caused severe financial loss to the petitioner, that the petitioner gave a complaint before the Inspector of Police, Nahamalai Police Station on 31.05.2011 and also sent a copy of the same to the Superintendent of Police, Madurai, but the police did not take any action, that the respondents 3 and 4 have illegally and without due process of law dispossessed the petitioner from the said property, that the complaints given to the police on 27.06.2011 and 30.09.2011 were no avail, that the respondents 3 and 4 in collusion with the police, have again trespassed into the property on 15.02.2012 and removed the motor pumps, closed the well existing in the property and dispossessed the petitioner from the said property, that the petitioner's another complaint on 16.02.2012 to the police was also of no use and that thereafter, the petitioner was constrained to initiate the proceedings, now under consideration.

5.The learned Sub Divisional Magistrate Cum Revenue Divisional Officer after receiving the complaint, has summoned the petitioner and also the respondents for enquiry on 27.04.2012 and that after conducting enquiry, the Sub Divisional Magistrate Cum Revenue Divisional Officer, Madurai, passed the impugned order on 16.10.2015, dismissing the petition filed under Section 145 Cr.P.C. Aggrieved by the said order, the petitioner has come forward with the present revision.



6.Before entering into the further discussion, it is necessary to refer the Section 145 Cr.P.C.

"145. Procedure where dispute concerning land or water is likely to cause breach of peace. (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2)For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3)A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

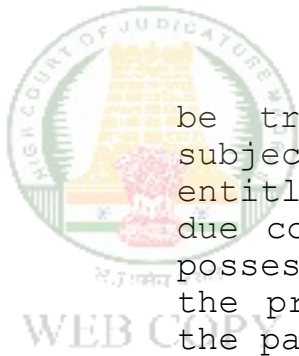
(4)The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5)Nothing in this section 'shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed ; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

(6)(a) If the Magistrate decides that one of the

<https://hcservices.courts.gov.in/hcservices/> parties was, or should under the proviso to sub-section (4)



be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b)The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7)When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8)If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of. such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

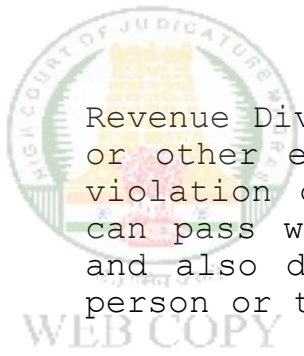
(9)The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10)Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107."

7.Considering the above, it is clear that the above Section contemplates that a dispute, relating to land or water and likely to cause breach of peace and it is further evident from the above Section that it confers power on the Executive Magistrates to intervene and pass temporary order in a dispute between the parties regarding possession of the land, which is likely to cause breach of peace.

8.No doubt, an order can be passed under Sub-Section(1) at the temporary stage and /or in the final stage, after enquiry under sub Section (4) of Section 145 of Cr.P.C. The proceedings under Section 145 Cr.P.C are intended to prevent the breach of peace as well as to avoid any conflict as a safety measure. If there is conflict between the two parties over the ownership of land, water or borders and if the conflict is likely to do a breach of peace, the Sub Divisional Magistrate Cum Revenue Divisional Officer can take action under

<https://hccservices.com/gov47hccsec/Cr.P.C> and whenever a Sub Divisional Magistrate Cum



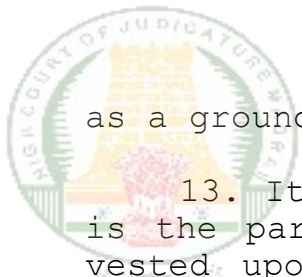
Revenue Divisional Officer is convinced by a police officer's report or other evidence that there is a conflict likely to result in a violation of peace involving any land or water or its borders, he can pass written order indicating the reasons for his satisfaction and also directing both the parties/groups to attend the Court in person or through an Advocate.

9.The necessary conditions to invoke jurisdiction under Section 145 Cr.P.C are that there is a conflict, that it is likely to result in a breach of peace, that the conflict involving land or water or its borders and that the suspected dispossession occurred within two months of the Magistrate issuing the initial order.

10. Bearing this legal position in mind, let us consider the case on hand. Admittedly the property under dispute is owned by the second respondent. The petitioner has pleaded that she was in possession on the basis of the sub-lease given to her husband by the original lessee Pitchaidevar. Though the petitioner has alleged that they have filed an application before the Revenue Court at Madurai and obtained orders, they have not chosen to produce the copy of the orders. It is not in dispute that the petitioner has already filed a civil suit in O.S.No.202 of 2012 against the respondents on the file of the District Munsif Court, Thirumangalam, claiming permanent injunction restraining the respondents and their men from interfering with their cultivating tenancy rights and from dispossessing them except under due process of law and the same is pending.

11.As rightly pointed out by the respondents side, the petitioner is not clear as to when she was dispossessed from the property. The petitioner has referred one mid-night, but without mentioning the date, that the respondents 3 and 4 have trespassed into the property and damaged the plants and other crops and that she gave a complaint before the Nahamalai Puthupettai Police Station and sent a copy of the same to the Superintendent of Police on 31.05.2011. According to the petitioner, again the respondent had attempted to dispossess the petitioner and hence, she preferred complaints on 27.06.2011 and 30.09.2011. Thereafter, according to the petitioner, on 15.02.2012, the respondents 3 and 4 along with their henchmen came with 5 lorries, 3 JCBs, had trespassed into the said property and damaged everything in the said property. She has filed the petition before the Sub Divisional Magistrate Cum Revenue Divisional Officer, on 23.02.2012, but she was not clear as to when she was dispossessed from the property.

12.Whatever it is, the learned Sub Divisional Magistrate Cum Revenue Divisional Officer, by observing that the proceedings under Section 145 of Cr.P.C are pending for long time and that since there was no law and order problem with respect to the present dispute, dismissed the petition. No doubt, the learned Magistrate has passed



as a ground or reason for setting aside the same.

13. It is pertinent to mention that maintenance of public order is the paramount consideration and the main power or jurisdiction vested upon the Sub Divisional Magistrate Cum Revenue Divisional Officer is to prevent the breach of peace and to maintain tranquility. It is not the specific case of the petitioner that law and order problem still exists. As already pointed out, the petitioner has initiated the proceedings under Section 145 Cr.P.C on 23.02.2012, that the Sub Divisional Magistrate Cum Revenue Divisional Officer has passed the impugned order on 16.10.2015, that the present revision has been filed on 04.07.2016 and that already more than 5 years have elapsed since the passing of the order impugned.

14. Even assuming for arguments sake, that the learned Magistrate has not assigned any reason for his conclusion and that the said order is liable to be set aside, remanding the matter again to the Sub Divisional Magistrate Cum Revenue Divisional Officer at this point of time would not serve any purpose and the same would not be in the interest of justice. Admittedly, the civil suit is still pending between the parties.

15. Considering the entire facts and circumstances, this Court is of the view that the impugned order in Na.Ka.No.1690/15/M, dated 16.10.2015, passed by the learned Sub Divisional Magistrate Cum Revenue Divisional Office, Madurai dismissing the complaint cannot be found fault with and this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

16. In the result, this Criminal Revision case is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

1. The Sub Divisional Magistrate
Cum Revenue Divisional Office, Madurai.

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



3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1cc to Mr.J.Lawrence, Advocate Sr.NO.9563

+1cc to Mr.R.Devaraj, Advocate Sr.No.9653

CRL.R.C. (MD) .No.25 of 2017

08.03.2021

NR(26.03.2021) 7P:7C