



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. (MD) No.13998 of 2020

and

W.M. P. (MD) 11653 of 2020

Mohamed Mydeen

...Petitioner

Vs.

1.The Sub Divisional Magistrate cum Deputy Collector,
Tirunelveli.

2.The Inspector of Police,
Suthamalli Police Station,
Tirunelveli.

3.Maheswari

4.Muthumari@Ganesan

5.Raja@Rajapandian

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records pertaining to proceedings in A5/M.C.03/2020(145) dated 21.09.2020 on the file of the first respondent and quash the same.

For Petitioner : Mr.P.Samuel Gunasingh

For R1 & R2 : Mr.M.Sakthi Kumar,
Government Advocate

For R3 to R5 : No Appearance

ORDER

The Challenge has been made to the show-cause notice issued by the Executive Magistrate for appearance of the parties.

2. On the receipt of the FIR, where the police apprehended breach of peace between two groups. The main ground on which the show-cause notice was challenged is that a suit has already been filed in O.S. No.194 of 2020, on the file of the District Munsif Court, Tirunelveli, which is pending. Therefore, the proceedings cannot be initiated by the Revenue Divisional Officer, in respect of the same immovable property.



3. At the outset, I am unable to persuade the submissions of the learned counsel for the petitioner.

4. The Full Bench of this Court rendered a judgment, dated 13.04.2016, in Criminal R.C.(MD) Nos.863 of 2011 etc., batch, in **A.Dhaveethu Vs. The District Collector, Sivagangai and others**, has held as follows :

38. In Amresh Tiwari Vs. Lalta Prasad Dubey {2000 (4) SCC 440}, 32 the Supreme court once again considered Ram Sumer Puri Mahant and observed as under:

"We are unable to accept the submission that the principles laid down in Ram Sumer's case would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumer's case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue."

"We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate."

5. When there is a suit in respect of possession or for declaration of title, the same cannot be adjudicated by an Executive Magistrate, whereas mere issuance of summons for holding an enquiry with regard to the breach of peace, cannot be said that no such proceedings could be issued.

6. Accordingly, it is for the petitioner to appear before the Executive Magistrate and give a proper explanation.



7. With the above direction, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (A/Cs)

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// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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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 District Munsif, Tirunelveli
2. The Sub Divisional Magistrate cum, Deputy Collector, Tirunelveli.
3. The Inspector of Police, Suthamalli Police Station, Tirunelveli.

W.P. (MD) No.13998 of 2020

and

W.M.P. (MD) No.11653 of 2020

04.03.2022

na (CO)

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