

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2022

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD) No.8052 of 2015

M.P.Nos.1 and 2 of 2015

1.Bose

2.Ganesan

3.Gandhi

4.Nehru

5.Booma

... Petitioners

-VS-

1.The Sub Divisional Magistrate
cum Sub Collector,
Paramakudi
Paramakudi Taluk
Ramanathapuram District

2.The Tahsildar
Paramakudi Taluk
Ramanathapuram District

3.Ramakrishnan

4.Sakthivel

5.Sathiyendran

6.Vinoth

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 1st respondent in Na.Ka.No.A-0037-2015 dated 21.04.2015 herein and quash the same as illegal and consequently direct the 1st respondent to not to disturb the petitioners peaceful possession and enjoyment over the land in Survey No.236/3 of Karadarenthakudi Village, Paramakudi Taluk, Ramanathapuram District.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.A.Thiruvadikumar for R1 & R2
Additional Public Prosecutor
Mr.T.R.Jeyapalam for R3 to R6

ORDER

This writ petition has been filed challenging the proceedings of the first respondent dated 21.04.2015 and for a consequential direction to the official respondents not to disturb the peaceful possession and enjoyment of the subject property.

2.The case of the petitioners is that the subject property in S.Nos.236/2 and 236/3 were originally in possession of one Chellakonar, who is the grandfather of the first petitioner's husband and his brothers.

On the demise of Chellakonar, the same devolved upon his legal heirs and they continued to be in possession and enjoyment of the property.

3.The further case of the petitioners is that the Special Tahsildar, Paramakudi Taluk, through proceedings dated 30.06.1982 assigned an extent of 0.60 acres in S.No.236/3 to the first petitioner as per Order 15 of the Revenue Standing Orders. The petitioners claimed that after the land was assigned, it was put to cultivation and the taxes have also been paid regularly. The cultivation could not be continued and the land became unfit for cultivation due to the growth of Karuvelam Trees (*Prosopis Julifera*).

4. The first petitioner permitted construction of houses by allotting 5 cents of land to three persons. Respondents 3 to 6 and others, who are also residing in the same village, started claiming right over the assigned property.

5. Under such circumstances, the third respondent preferred a criminal complaint against the petitioner and a case came to be registered in Crime No.164 of 2014. This complaint, according to the petitioners, is

due to the instigation of the third respondent and others, who do not have any right over the property in S.No.236/3. It is further stated that a civil suit was also filed in O.S.No.5/2015 on the file of the District Munsif Court, Paramakudi by the third respondent and others seeking for the relief of permanent injunction. Since the complaints were given by both the parties, the Inspector of police, Nainarkoil Police Station, referred the complaints to the first respondent under Section 145 of Cr.P.C. and a case was registered in Crime No.2/2015 in this regard. The first respondent issued a notice to the parties through proceedings dated 21.01.2015 and ordered the petitioners to maintain status quo. It became a subject matter of challenge before this Court in W.P.(MD) No. 5943/2015.

6. The petitioners appeared before the first respondent and substantiated their claim by producing all the relevant records, namely, the assignment patta issued by the Special Tahsildar in Patta No.1270.

7. The grievance of the petitioners is that the first respondent, through the impugned proceedings dated 21.04.2015 has directed the second respondent to maintain peace and tranquility in the property and a

further direction has been given to the second respondent to cancel the assignment that stand in the name of the first petitioner and till such cancellation, there was a direction that none of the parties should cut the Karuvelam Trees (Prosopis Julifera) that grows in S.No.236/3. Aggrieved by the same, the present writ petition has been filed before this Court.

8. Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor for the respondents 1 and 2 and the learned counsel for the respondents 3 to 6.

9. It is brought to the notice of this Court that the suit filed by the third respondent and others in O.S.No.5/2015 was dismissed for default on 30.06.2015. That apart, the writ petition that was filed challenging the notice that was issued by the first respondent in W.P. (MD) No.5943 / 2015 has also been disposed of.

10. The only issue that requires the consideration of this Court is as to whether the first respondent had the power and jurisdiction to issue directions to the Tahsildar to cancel the assignment patta granted in

favour of the first petitioner and not permit anyone to cut the Karuvelam trees (Prosopis Julifera).

11. The scope of Section 145 of the Code of Criminal Procedure is to pass orders in order to maintain peace and tranquility in the disputed property and the Revenue Divisional Officer is not given any other powers. It is the duty of the Revenue Divisional Officer to ascertain as to who is in possession of the property and direct for the maintenance of the status quo till the parties resolve their disputes before the competent Court.

12. In the present case, an assignment patta has been granted in favour of the first petitioner as early as in the year 1982 and patta No. 1270 stands in the name of the first petitioner. A right is claimed by the rival parties over this property. It seems that the Karuvelam Trees (Prosopis Julifera) have grown all over and the actual dispute seems to be in cutting down the trees and selling it. The first respondent, while dealing with the claim made by the rival parties, directed the second respondent, namely, the Tahsildar to proceed further to cancel the assignment patta granted in favour of the first respondent and till such

order is passed, not to permit the removal of the Karuvelam Trees (Prosopis Julifera) from the property.

13. In the considered view of this Court, these directions issued by the first respondent travels beyond the power and jurisdiction that has been vested under Section 145 of the Code of Criminal Procedure. If at all there is any violation of the conditions of assignment of patta, independent proceedings must be initiated by the concerned authority under the Revenue Standing Orders and the first respondent cannot issue any such directions under Section 145 of the Code of Criminal Procedure. The impugned order passed by the first respondent is clearly beyond the power and jurisdiction conferred under Section 145 of Cr.P.C.

14. In view of the above, the impugned proceedings dated 21.04.2015 issued by the first respondent is liable to be quashed. It is made clear that if there is any violation of the terms and conditions of the assignment patta granted by the second respondent, it is left open to the second respondent to independently initiate action in accordance with law for the cancellation of the patta. This order will not stand in the way

of the second respondent to initiate such proceedings.

15. The writ petition stands allowed in the above terms.

Consequently connected Miscellaneous Petitions are closed.

02.11.2022

Internet : Yes

RR

To

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cum Sub Collector,
Paramakudi
Paramakudi Taluk
Ramanathapuram District

2.The Tahsildar
Paramakudi Taluk
Ramanathapuram District

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N.ANAND VENKATESH, J.

RR

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