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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WP (MD) No.23695 of 2018

and

WMP (MD) No.21469 of 2018

Mokkayan : Petitioner
Vs.

1.The Revenue Divisional Officer-cum-
The Executive Magistrate,
Uthamapalayam,
Theni District.

2.The Inspector of Police,
Koodaloor North Police Station,
Theni District.

3.Thameemsait : Respondents

Prayer: Wit Petition has been filed under Article 226 of the Constitution of India, in the nature of Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings on the file of the 1st respondent/Sub Division in MC No.1 of 2019 in Na.Ka No. 2700/A2/2018, which has been initiated by a preliminary order, dated 23/08/2018 under section 145 Cr.P.C and quash the same as illegal, arbitrary.



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For Petitioner : Mr.H.Lakshmi Shankar
For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor
For 2nd Respondent : Mr.C.Venkatesh Kumari
for M/s.Ajmal Associates

O R D E R

This Writ Petition has been filed seeking quashment of the impugned proceedings on the file of the 1st respondent/Sub Division in MC No.1 of 2019 in Na.Ka No. 2700/A2/2018, which has been initiated by a preliminary order, dated 23/08/2018 under section 145 Cr.P.C.

2.The facts in brief:-

The proceedings were initiated by the first respondent under section 145 Cr.P.C and passed an interim order barring both the parties to claim right over the property under dispute. Challenging the same, this proceedings has been instituted by the petitioner with the following facts and circumstances.

3.For better appreciation of facts, let us have a recap of the original property dispute between the



petitioner and the private respondents herein. The property comprised in Survey Nos.1897/3, 1905/2 and 1161/1 measuring about 1.63, 2.30 and 2.39 Acres respectively originally belong to one Madharmaideen. He is the father of the third respondent herein.

4. According to the case of the petitioner, he is the legal heir of one Poochi Thevar. He namely the petitioner was a tenant under Madharmaideen. So he was a cultivating tenant. For the propose of registering himself as cultivating tenant, he initiated proceedings under the provisions of the Tamil Nadu Agricultural Land Recorded of Tenancy Rights Act, 1969. That was allowed, which was challenged by the above said Madharmaideen. Pending the above said proceedings, Madharmaideen died. So that was pursued by his son namely Thameemsait. In the revisional proceedings, the order has been confirmed and the above said Poochithevar was registered as a tenant as per the order dated 06/02/1979 in R.P. No.03/39/78 by the Revisional Authority-cum-Additional Collector, Madurai. That was challenged before the High Court and the High court remitted the matter back stating that the Additional Collector is not the competent person to



decide the revision. So, it was directed to be initiated before the concerned revisional authority. Poochi Thevar after that died. The proceedings were not prosecuted further.

5. In respect of one survey number namely 1161/1 become the subject matter of the execution proceedings in EP No.1109 of 1988 on the file of the District Munsif, Uthamapalayam and that was sold to one Nagendran. After the death of Poochi Thevar, again P.Mokkayan, who is the son of the Poochi Thevar, initiated proceedings for registering himself as a tenant. Not only against the Nagendran, but also against the above said Madharmaideen. That was allowed, on 02/04/2008 in T.R. Form No.5/24/1998 by the competent authority namely the Thasildhar, who was the record of the tenancy right officer. Against the above said order, Nagendran preferred appeal before the Special Deputy Collector, Revenue Court, Madurai. In the above said proceedings, the Thameemsait, who is the son of Madhar Maideen was impleaded as the legal heir of Madhar Maideen. But that was dismissed, on 12/01/2011, by which the order of the Thasihdlar namely Revenue-cum-Recording Officer of tenancy right was confirmed. Later



the above said Nagendran filed O.S.No.570 of 2004 on the file of the District Munsif, Uthamapalayam, for permanent injunction. That was dismissed, over which, appeal was preferred in AS No.13 of 2010 and that was also dismissed on 17/08/2010.

6.Even though the petition that was filed by P.Mokkayan, who is the son of Poochi Thevar, as mentioned, recorded only in respect of Survey Nos.1897/3 and 1905/2 and in respect of Survey No.1161/1, recording was omitted. So a representation was made to include his name in respect of the above said tenancy right. But no action was taken and still, it is pending.

7.Thereafter, the above said Nagendran received lease amount in respect of survey No.1161/1. Later, one Thameemsait purchased the above said property from the above said Nagendran, on 02/09/2013. After the death of the above said Madharmaideen, the property in survey Nos. 1897/3 and 1905/2 devolved upon his legal heirs. After the death of the Madharmaideen, his legal heirs refused to receive the rent. So, he filed a petition in TCTP No.31 of 2011 and that was dismissed as withdrawn. Since



the representation of the Mokkayan was not considered to include name in respect of survey No.1161/1, he filed writ petition in WP(MD)No.21523 of 2017 and that was allowed, on 22/11/2017 and even after the order that has been passed by this court, no action was taken. So this is the happening during the life time of the above said Poochi Thevar. After the death of Poochi Thevar, P.Mokkayan filed a petition to record himself as a cultivating tenant in respect of all the properties and that was allowed, by order, dated 02/04/2008 and thereafter, no further action was taken by Mohammed Set Ansari, who purchased the property in survey No.1161/1. Fathima Beevi, who is the wife of the above said Matharmaideen was also impleaded as the second respondent, filed a petition seeking a direction to grant permission to deposit the rent amount. Later, that was not pressed and it has become final.

8.Heard both sides.

9.So the above said facts and circumstances, which has been relied upon by the petitioner and the



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respondents clearly demonstrate to the effect that originally, the claim of the Poochi Thevar that he is the cultivating tenant in respect of all the properties were negatived. But after the death of the above said Poochi Thevar, Mokkaiyan, according to him, became a cultivating tenant. He initiated fresh proceedings by filing petition under the provisions of the Tenancy Rights Act and that was allowed. As things stand today, no appeal or revision has been preferred by either parties namely Nagendran or by the subsequent purchaser or by the legal heirs. So as on today, Mokkaiyan is the cultivating tenant. That cannot be disputed on any ground.

10. In the facts and circumstances, the legal representatives of the Matharmaideen initiated action and filed a complaint stating that they have been prevented by the above said Mokkaiyan, over which proceedings under section 145 Cr.P.C has been initiated and an order has been passed by the concerned authority barring both parties from claiming right to the properties. This is the position now.



11. Now the question which arises for consideration is whether such an order can be passed by the competent authority by invoking the provisions of section 145 Cr.P.C as stated above. Now the right of Mokkaian has been recorded as cultivating tenant.

12. The learned counsel appearing for the petitioner would straightaway rely upon the judgment of the Hon'ble Supreme court, which is a Full Bench decision in Rame Gowda (D) by Lrs Vs. M.Varadappa Naidu (D) by Lrs (2004-3-L.W.143) for the purpose of argument that when there is a settled possession, that cannot be interfered, otherwise then under due process of law. This is the settled position of law. So we need not be trouble this judgment extensively quoting the above said judgment.

13. But here, the fact scenario is entirely different. The petitioner has been recognized as a cultivating tenant by the competent authority. Unless it is set aside in the appeal or revision, as the case may be, even his right cannot be interfered by way of initiation of action under section 145 Cr.P.C.



14.As rightly pointed out by the learned counsel appearing for the petitioner, the right of the above said Mokkaiyan has been recognized, not only by the competent authority under the provisions of Recording Tenancy Right Act, but also by the competent court in O.S No.570 of 2004, as confirmed by the first appellate court in AS No.13 of 2010.

15.So the action that was initiated by the first respondent is without any jurisdiction. On that sole ground, it got to be quashed and accordingly, it is quashed by directing the parties to work out their remedy through appropriate proceedings under under provisions of relevant law. The petitioner can be evicted only by due process of law by filing appropriate application before the concerned revenue court, initiation of parallel proceedings by the revenue authorities for evicting the petitioner is not proper, because in the complaint itself, it has been stated by the complainant to the effect that the petitioner trespassed upon the property and they are preventing them from cultivating the same

16.In the light of the above said discussion, such a



power cannot be exercised by the revenue officials by exercising the jurisdiction under 145 Cr.P.C. So the interim order that has been passed by 1st respondent itself is not valid under law. Even though, only revision ought to have been filed against the interim order, but writ petition has been preferred by the petitioner.

17.In the facts and circumstances of the case, I am of the considered view that the action that has been initiated by the 1st respondent is liable to be quashed and accordingly, it is quashed.

18.In the writ petition is **allowed**. The impugned proceedings of the 1st respondent, dated 23/08/2018 is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

30/08/2022

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Internet:Yes/No
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To,



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1. The Revenue Divisional Officer-cum-
The Executive Magistrate,
Uthamapalayam,
Theni District.
2. The Inspector of Police,
Koodaloor North Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G. ILANGO VAN, J



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