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W.P.No.8647 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.No.8647 of 2021
and W.M.P.No.9194 of 2021**

M.Arumugam

.. Petitioner

-VS-

1. The Sub Collector/Revenue Divisional
Officer, Sub Collector/Revenue Divisional
Office Complex, Jakkampettai,
Tindivanam, Villupuram District.
2. The Superintendent of Police,
Superintendent of Police Office,
Villupuram, Villupuram District.
3. The Deputy Superintendent of Police,
Deputy Superintendent of Police Office,
Jayapuram, Tindivanam Town.
4. The Inspector of Police,
Tindivanam Town Police Station,
Tindivanam.
5. R.Keerthivarman (Died)
6. Prithvirajan
7. R.Kanagarajan
8. R.Balasubramanian



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9. R.Muradharan (Died)
(RR5 to 9 suo motu impleaded vide
order dt.08.04.2021 in WP)

10.Sumathi

11.Arun Varman
(RR10 and 11 impleaded/substituted
as LR's of deceased 5th respondent
vide order dated 12.12.2022 made
in WMP.20513/2021)

12.M.Devi

13.M.Hemavarshini
(RR12 and 13 substituted as LR's. of
deceased 9th respondent vide order
dated 12.12.2022 made in WMP.
32116/2022)

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Certiorarified Mandamu to call for the entire records pertaining to the proceedings of the 1st respondent in Na.Ka.A.3/3436/2019 dated 18.11.2019 and quash the same and consequently direct the respondents to implement the proceedings of the 1st respondent in Na.Ka.A.3/3550/2014 dated 30.11.2016 in the light of the order passed in M.C.No.14 of 1976 dated 04.04.1977 and as confirmed by this Court in CrI.R.C.No.310 of 1977 and Criminal Revision Petition No.309 of 1977 dated 05.01.1979 and consequential order dated 27.08.1979 in M.C.No.14 of 1976 of the Sub-Divisional Magistrate (Exe), Tindivanam and direction order passed by the sub-collector K.DIS.8379/1977 dated 27.08.1979 to evict the illegal trespassers and restore the possession to auction purchaser Dakshanamurthy or persons claiming title through him in the building at Door No.12 and 13, Vania Pillaiyar Koil Street, Tindivanam Town.



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For Petitioner : Mr.P.L.Narayanan
Senior Counsel
for Mr.A.Devnarendran

For Respondents : Mr.P.Muthukumar
State Govt. Pleader
for RR 1 to 4
: Mr.L.Chandrakumar
for RR 6 to 8
: No appearance
for RR 5, 10 to 13
: R-9 deceased

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

This writ petition was filed in 2021 by one M.Arumugam, S.o.Muniyan, to quash the impugned order dated 18.11.2019 passed by the Sub-Collector/Revenue Divisional Officer, Tindivanam, the first respondent herein, with a consequential direction to the official respondents to implement the order passed by the first respondent dated 30.11.2016 in the light of the order passed in M.C.No.14 of 1976 dated 04.04.1977, by which the Executive Magistrate directed the trespassers to be evicted and as confirmed by this Court in Crl.R.C.No. 310 of 1977 and Crl. Revision Petition No.309 of 1977 by

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order dated 05.01.1979 and by the consequential proceedings dated 27.08.1979 by the Sub-Collector, Tindivanam.

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2. Mr.PL.Narayanan, learned senior counsel appearing for the petitioner, submitted that this matter has been pending for quite a long time at the instance of the private parties, namely, respondents 5 to 13, inasmuch as when the property being a house property having an extent of 2748 sq.ft. of land has become the subject matter of judgment and decree passed in O.S.No.374 of 1967 dated 19.12.1967 by the District Munsif Court, Tindivanam, which became final in the year 1969. The learned senior counsel submitted that one Angammal and her grand daughter Radhabai Ammal borrowed a sum of Rs.7,000/- from one Govinthasamy Reddiyar by way of a promissory note and the suit filed in O.S.No.374 of 1967 was decreed on 19.12.1967 and vide execution proceedings in E.P.No.618 of 1968, the property was sold away in a public auction to one Dakshinamurthy and sale certificate was also issued on 24.04.1969 which was also registered at the Sub-Registrar Office, Tindivanam. Finally, the delivery of possession of the property was also effected with police aid on 08.07.1976 to the said Dakshinamurthy.



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3. It is submitted by the petitioner that after the delivery of possession, the legal heirs of Angammal and Radhabai Ammal along with henchmen trespassed into the property on 01.08.1976. On an application filed under Section 145 Cr.P.C. in M.C.No.14 of 1976, the Executive Magistrate, while allowing the application by order dated 04.04.1977, directed the trespassers to be evicted. However, the implementation of the said order could not be made in view of several interlocutory proceedings and appellate proceedings taken out by the respondents/trespassers. The challenge to the said order in M.C.No.14 of 1976 before this Court was also dismissed by order dated 05.01.1979 in CrI.R.C.No.310 of 1977. Despite the aforesaid judicial orders, the trespassers could not be evicted and they continue to do their illegal business like selling of arrack, in spite of they being subjected to several criminal proceedings. Finally, the Executive Magistrate, Tindivanam, vide his proceedings dated 27.08.1979, directed the Inspector of Police to restore the possession of the property to the petitioner and report compliance.

4. The learned senior counsel submitted that the aforesaid order of the Executive Magistrate, Tindivanam, could not also be enforced



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and hence, the auction purchaser, Dakshinamurthy, filed O.S.No.32 of 1984 before the Sub Judge, Tindivanam, which was re-numbered as 464 of 2009, for declaration and recovery of possession and mesne profits. However, the said suit is also kept pending for almost 39 years for the reason that the defendants therein applied all sorts of delaying tactics. In the meanwhile, the respondents/trespassers also attempted to sell the property by entering into a registered agreement of sale with one Suresh, S/o.Vijayaraj on 07.03.2014. On 15.03.2014, the legal heirs of the auction purchaser, Dakshinamurthy, sold the property to one Annammal, but the registration of the sale deed was kept pending in view of the challenge to the same by the respondents/trespassers. Two writ petitions were filed before this Court, one by the said Annammal in W.P.No.9064 of 2014 seeking to register the sale deed and the other by the trespassers in W.P.No.11441 of 2014 not to register the sale deed. This Court, by order dated 25.01.2016, allowed the writ petition filed by Annammal and dismissed the writ petition filed by the respondents/trespassers, however, with liberty to seek appropriate relief before the civil Court. Therefore, O.S.No.25 of 2016 came to be filed by the respondents/trespassers before the Principal District Munsif Court, Tindivanam on 27.01.2016.



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5. It is the further case of the petitioner that on 01.06.2016, the petitioner, Arumugam, purchased the property from Annammal by way of a registered sale deed. Since the petitioner could not succeed in evicting the respondents/trespassers from the property in question, he approached the Sub-Collector, Tindivanam, by way of a detailed representation dated 16.11.2016 and vide proceedings dated 30.11.2016, the Sub-Collector, Tindivanam, wrote to the Revenue Tahsildar, Tindivanam and the Commissioner of Tindivanam Municipality to enquire into the petition of the petitioner and to take steps and send a report in that regard. Since it did not evoke any response, the petitioner again sent a representation dated 04.12.2018 to the Sub-Collector seeking eviction, which also went in vain. Therefore, the petitioner once again approached this Court by filing W.P.No.24150 of 2019 seeking to dispose of the representation dated 04.12.2018 followed by Contempt Petition No.1156 of 2020 as the said representation was not disposed of. However, it was represented in the contempt petition that an order dated 18.11.2019, which is impugned in this writ petition, was passed on the representation of the petitioner and thus, recording the same, the contempt petition was closed.



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6. By the impugned order dated 18.11.2019, the Sub-Collector, Tindivanam, directed the petitioner to work out his remedy before the civil Court where the suit in O.S.No.32 of 1984, re-numbered as O.S.No.464 of 2009 was pending.

7. The learned senior counsel appearing for the petitioner, narrating the facts aforesaid, would submit it is a clear case of grave misuse of process of law and since the proceedings initiated either at the instance of the petitioner or the respondents/trespassers, in particular, the proceedings under Section 145 Cr.P.C. seeking to evict the respondents/trespassers, ended in favour of the petitioner, followed by the order of the Executive Magistrate dated 27.08.1979 directing the Inspector of Police to restore the possession of the property to the petitioner, the impugned order directing the petitioner to work out his remedy in the pending suit before the civil Court is untenable and unsustainable in the eye of law. Aggrieved by the said order, the present writ petition has been filed.

8. The facts narrated above by the learned senior counsel for the petitioner clearly show that one Dakshinamurthy had become the



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absolute owner of the property originally owned by one Angammal and her grand daughter, Radhabai Ammal, after having been declared as successful bidder in the public auction on 21.04.1969 and sale certificate having been issued on 24.04.1969. The execution application filed in O.S.No.374 of 1967 for eviction of the legal heirs of Angammal and Radhabai Ammal was also allowed directing delivery of possession with police aid. After the said order of eviction, the legal heirs of Angammal and Radhabai Ammal along with henchmen trespassed into the property and therefore, proceedings under Section 145 Cr.P.C. were initiated for eviction of the respondents/trespassers, which was also allowed by the Executive Magistrate and the challenge against the said order before this Court was also dismissed by order dated 05.01.1979 in Crl.R.C.No.310 of 1977. This apart, on being approached, the Executive Magistrate, Tindivanam, by proceedings dated 27.08.1979 directed the Inspector of Police to restore the possession of the property to the said Dakshinamurthy. The orders aforesaid have been successfully thwarted by the respondents/trespassers and the suit filed by the petitioner in O.S.No.32 of 1984 (re-numbered as 464 of 2009) for declaration and recovery of possession and mesne profits, has also been kept pending



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for almost 39 years by virtue of the delaying tactics adopted by the respondents/trespassers. The subsequent steps taken by the petitioner before this Court have also become futile and ultimately, the impugned order came to be passed by the Sub-Collector directing the petitioner to work out his remedy in the pending suit before the civil Court, despite the order passed under Section 145 Cr.P.C. and the proceedings of the Executive Magistrate directing restoration of the property to Dakshinamurthy.

9. It is settled law that pendency of any suit is not a bar for enforcing the order passed under Section 145 Cr.P.C., especially the said order was passed before initiation of suit. Therefore, the impugned order runs contra to the order dated 04.04.1977 passed in M.C.No.14 of 1976 under Section 145 Cr.P.C. by the Executive Magistrate, Tindivanam, directing the trespassers to be evicted. Besides, by proceedings dated 27.08.1979, the Executive Magistrate also directed the Inspector of Police to restore possession of the property to Dakshinamurthy and report compliance thereof. Both the aforesaid orders have not been given effect to. Therefore, by endless delaying tactics adopted by the respondents/trespassers by filing



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vexatious petitions, and despite obtaining favourable orders, the petitioner was not successful in evicting them and the respondents/trespassers continue to be in possession and enjoyment of the property. Therefore, the impugned order directing the petitioner to work out his remedy in the pending suit before the civil Court cannot be justified, in view of the order passed under Section 145 Cr.P.C. directing eviction of the respondents/ trespassers, as confirmed by this Court in Crl.R.C.No.310.1977.

10. The contention of the learned State Government Pleader that the Sub-Collector, Tindivanam, by proceedings dated 30.11.2016, has only directed to enquire into the petition of the petitioner and to send a report thereof and therefore, it cannot be construed as a favourable order to the petitioner, cannot be accepted, since subsequent to the said order dated 30.11.2016, there was no progress at all on the matter and only after the order of this Court dated 04.12.2018 in W.P.No.24150 of 2019 and subsequent filing of the contempt petition, the impugned order came to be passed on 18.11.2019, which is also unsustainable in law for the aforementioned reasons.



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For the foregoing reasons, the impugned order dated 18.11.2019 is set aside and the writ petition stands allowed. The order dated 04.04.1977 passed in M.C.No.14 of 1976 under Section 145 Cr.P.C. and the proceedings of the Executive Magistrate, Tindivanam, dated 27.08.1979 directing the Inspector of Police to restore the possession of the property shall be duly complied with, as the same had become final and concluded long back. The said exercise be completed within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.No.9194 of 2021 is closed.

(T.R., ACJ.) (D.B.C., J.)
20.03.2023

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

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To

1. The Sub Collector/Revenue Divisional Officer, Sub Collector/Revenue Divisional Office Complex, Jakkampettai, Tindivanam, Villupuram District.
2. The Superintendent of Police, Superintendent of Police Office, Villupuram, Villupuram District.
3. The Deputy Superintendent of Police, Deputy Superintendent of Police Office, Jayapuram, Tindivanam Town.
4. The Inspector of Police, Tindivanam Town Police Station, Tindivanam.



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T.Raja, ACJ.
and
D.Bharatha Chakravarthy, J.

(sra)

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