



Writ Petition No.15950 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.15950 of 2023

and

W.M.P.No.15401 of 2023

N.Jeyalakshmi
W/o.Late Selvaraj

...Petitioner

Vs

- 1.The District Collector,
Kallakurichi District,
Kallakurichi.
- 2.The Executive Magistrate/
Revenue Divisional Officer,
Thirukoilur, Kallakurichi District.
- 3.The Tahsildar (Revenue),
Thirukoilur, Kallakurichi District.
- 4.Faizel Mohammed
S/o.Sheik Adam
- 5.Mohammed Alikhan
S/o.Rahman Khan
- 6.The Inspector of Police,
Thirukoilur Police Station,
Thirukoilur.



Writ Petition No.15950 of 2023

7.The Wakf Superintendent,
Wakf Superintendent's Office,
No.512, Ganthi Road,
Panruti.

8.Rahman Khan
S/o.Noore Khan Sahib

9.The Thirukoilur Masjid
represented by its Secretary,
Thirukoilur.

... Respondents

[R9 impleaded per the order of this Court
in W.M.P.No.18358 of 2023 in
W.P.No.15950 of 2023]

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of second respondent vide order dated 10.05.2023 u/s.145 Cr.P.C. in A3-816-2023 and quash the same.

For Petitioner : Mr.M.Vijaya Kumar

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor
[R1 to R3 & R6]
Mr.G.Anand Raj [R4 & R9]
Mr.G.Ravi Shankar [R5]
Mr.S.Haja Mohideen Gisthi [R7]
Mr.I.Kowser Nissar [R8]



Writ Petition No.15950 of 2023

ORDER

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2. Heard Mr.M.Vijaya Kumar, learned counsel for petitioner, Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondents 1 to 3 & 6, Mr.G.Anand Raj, learned counsel appearing for respondents 4 and 9, Mr.G.Ravi Shankar, learned counsel appearing for fifth respondent, Mr.S.Haja Mohideen Gisthi, learned counsel appearing for seventh respondent and Mr.I.Kowser Nissar, learned counsel appearing for eighth respondent.

3. The interim order passed by this Court on 02.06.2023 brings out the facts of the case and also the issue involved and hence, the same is extracted hereunder:

"Heard the learned counsel for the petitioner.

2. It is the submission of the learned counsel for the petitioner that the petitioner is a tenant in respect of the agricultural land in S.No.124/1 and S.No.124/2 at Thi.Keeranur Village, Thirukoilur Taluk, Kallakurichi District. There is a dispute with the rival claimants namely respondents 4 to 8. The respondents 4 to 8 are claiming that the property belong to Jamad and cause disturbance to



WEB COPY



Writ Petition No.15950 of 2023

the possession and enjoyment of the petitioner.

3. When the matter was referred to the second respondent, the second respondent passed an impugned order dated 10.05.2023 in A3-816-2023 determining the title to the property which is beyond the scope of Section 145 Cr.P.C proceedings. When it was found that the petitioner has lease documents in her favour, it goes without saying that the petitioner is in possession of the property. Without protecting the possession of the petitioner, deciding title like in a civil suit, is inappropriate and illegal. Therefore, this petition.

4. The learned Government Advocate (Crl.side) submitted that the disputed property belongs to Wakf. He seeks time to get instructions.

5. Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.side) takes notice for the respondents 1 to 3.

6. Issue notice the respondents 4 to 8 returnable by three weeks.

7. Post the matter after three weeks.

8. Section 145(4) Cr.P.C mandates that “the Magistrate shall, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute has to hear the party who is in possession”. However, the impugned order reads that the second respondent proceeded to decide the title of the property in favour of Thirukoilur Masjid. It is beyond the scope of Section 145 Cr.P.C proceeding. When it is admitted that the petitioner's father-in-law was a sub-tenant and the petitioner claims tenancy with the aid of a lease deed, as rightly pointed out by the petitioner that there is a presumption that the petitioner is in possession of the property. Thus, there shall be an order of interim stay of all further proceedings in pursuance to the impugned order dated 10.05.2023 in A3- 816-2023 passed by the second respondent, till then.

9. In the meanwhile, the petitioner is directed to implead the Thirukoilur Masjid as respondent in this case."



4. This Court carefully went through the order passed by the second respondent. The second respondent has virtually declared title of the Masjid, which is beyond the scope of the proceedings initiated u/s.145 Cr.P.C. The said provision merely enables the authority to find out the person, who is in possession of the property and pass appropriate orders strictly in accordance with Section 145 Cr.P.C. to avert likelihood of breach of peace. While undertaking this exercise, the authority is not expected to go into the title to the property. In the instant case, the second respondent has gone into the title and has, in fact, declared the title which is beyond the scope of Section 145 Cr.P.C.

5. In the light of the above discussion, the impugned proceedings of the second respondent in A3-816-2023 dated 10.05.2023 u/s.145 Cr.P.C., is hereby set aside. The matter is remanded back to the file of the second respondent and the second respondent is directed to conduct an enquiry by hearing all the interested parties and strictly pass orders in accordance with Section 145 Cr.P.C. This exercise shall be completed by the second respondent within a period of eight (8) weeks from the date of receipt of a copy of this order.



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Writ Petition No.15950 of 2023

N.ANAND VENKATESH, J
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In the result, this writ petition is allowed with the above direction. It is made clear that the observations made by this Court will not stand in the way of the second respondent to deal with the issue on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

17.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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Writ Petition No.15950 of 2023