



Crl.R.C.No.971 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.971 of 2020

and

Crl.M.P.No.6756 of 2020

G. Thangavel
S/o.Govindha

... Petitioner

Vs

The Executive Magistrate/Tahsildar,
Thirupathur Taluk,
Thirupathur District.

... Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the impugned order passed by the Executive Magistrate/The Tahsildar, Thirupathur in Na.Ka.Aa1/3614/2020 dated 19.10.2020.

For Petitioner	:	Mr.M.P.Saravanan
For Respondent	:	Mr.Kishore Kumar
		Government Advocate

ORDER

The petitioner herein, being aggrieved by the order passed by the Executive Magistrate/Tahsildar, in exercise of power under



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Section 133 of Cr.P.C, directing him to remove the fencing in his land has approached this Court by way of revision petition stating that Survey No.563/2, 564/1B and 564/2B belongs to his ancestors and a cart track 7 feet was used for the personal convenience. While the property was divided among the brothers, they tried to fence their land for better protection and utilisation. However, the Tahsildar suo-motu has passed the impugned order directing the petitioner to remove the fencing alleging that the pathway is used by the general public and if it is fenced, it will cause threat and danger to public tranquillity and peace.

2. The learned counsel appearing for the petitioner submitted that the order of the first respondent directing to remove the fencing to protect his land as against the law and amounts to interference of their peaceful enjoyment of the property. The proceedings initiated by the first respondent under Section 133 of Cr.P.C. is without application of mind and without following the procedure as contemplated under the Act. Without conducting enquiry, final order has been passed under Section 133 of Cr.P.C, which is contrary to the provisions.

3. Learned counsel relying upon the Judgment rendered in



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the case of *The Manager, Kodanad Estate, Kothagiri Taluk Vs. The Sub Divisional Magistrate and the Assistant Collector, Coonoor, The Nilgiris Distrcit*, reported in *2008 (2) MWN (Cr) 383* submits that the principle laid down by the Court in the said Judgment is totally violated in the impugned order passed by the first respondent.

3. The Government Advocate submitted that the pathway is used by the Panchanampatti Villagers from time immemorial. Under the guise of putting lay out, unauthorisedly, the pathway used by the public was fenced and as a consequence the impugned order was passed. Subsequently, the fencing has been removed, the road has been laid down and public is using the pathway for access to either side of the petitioner's land.

4. The learned Government Advocate also furnished the Judgement of the Principal District Munsif, Thirupathur, passed in O.S.No.141 of 2020 filed by the petitioner Thangavel seeking injunction against his brother Palani, the first respondent/Tahsildar as well as the



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District Collector, the order reveals the said suit was dismissed on the memo filed by the plaintiff that he is not pressing in the suit.

5. In the light of the above fact, though the contention of the learned counsel for the petitioner that before passing the impugned order no notice or enquiry conducted may be true, due to efflux of time in appears the parties have reconciled the issue and the fence is no more in existence. In such circumstances, nothing survives in this revision petition for consideration. Hence, recording the subsequent development this Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No

Index: Yes/No

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To
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1. The Executive Magistrate/Tahsildar,
Thirupathur Taluk,
Thirupathur District.

2. The Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN, J.



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