



Crl.O.P.No.14873 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.14873 of 2017

Kanniyammal

... Petitioner

Vs.

- 1.B.A. Hajar Ahamed
- 2.B.A. Younus Saleem
- 3.Siraj Ahamed
- 4.Gani Rowthar
- 5.N. Bose
- 6.S. Rajeshkumar
- 7.Saraswathy
- 8.Subramanian
- 9.Krishnasamy
- 10.S. Sasikumar

- 11.State by Inspector of Police,
Komangalam Police Station,
Comibatore District.
(Crime No.04/D3PS/2017)

... Respondents

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the learned Sub Collector cum Revenue Divisional Officer, Pollachi, Coimbatore District made in M.C.No.22.A/2016/A1 dated 21.06.2017 and quash the proceedings.



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For Petitioner ... Mr. N. Baskaran, Senior Counsel
for Mr. Eswar Kumar

For Respondents ... Mr. D. Kanaga Sundaram, for R1 to R3
Mr. L. Baskaran, for R11
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed challenging the proceedings in M.C.No.22A/2016/A1 dated 21.06.2017 pending on the file of the learned Sub Collector cum Revenue Divisional Officer, Pollachi, Coimbatore District.

2. The learned counsel appearing for the petitioner submitted that the petitioner is a 'C' party in the impugned proceeding and there is a dispute between three parties with regard to property in R.S.Nos.150 and 152, Thippampatti Village, Pollachi Taluk pertaining to 8.30 acres. In this regard, a civil case is also pending in O.S.No.233 of 2010 before the Sub Court, Pollachi for partition. All the parties are parties to the civil suit. The Revenue Divisional Officer conducted the enquiry and observed that since the 'C' party removed the road laid by them, they are not in possession, it is not correct, they are also in possession of the property. Further, in the



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impugned order, the learned RDO observed that the 'A' party alone is in possession that is against the fact. The impugned order impliedly decided the title and held that 'A' party alone is in possession. Therefore, it is challenged before this Court.

3. The learned counsel appearing for the State as well as respondents 1 to 3 supporting the impugned order sought to dismiss this Crl.O.P.

4. I have considered the matter in the light of the submissions made by the counsel on both side and perused the records.

5. On perusal of the facts, the record reveals that the Inspector of Police, Komangalam Police Station, Comibatore District registered a case in Crime No.281 of 2010 dated 22.09.2010 and forwarded the FIR to the Revenue Divisional Officer for conducting enquiry under Section 145 Cr.P.C., to avoid law and order problem. In pursuance of the FIR and a request made by the Inspector of Police, Komangalam Police Station, RDO registered M.C.No.22A/2016/A1 and conducted enquiry and enquired A,



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B, and C parties and also perused the records pertaining to the R.S.No.150 and 152 of Thippampatti Village, Pollachi Taluk with regard to 8.30 acres land and also considered the revenue records and other relevant revenue records and also taking into consideration of the civil case pending with regard to title and partition, the RDO on satisfaction came to the conclusion that at present the 'A' party is in possession and enjoyment. Therefore, he directed the other parties i.e., 'B' and 'C' to not to disturb his possession, till the disposal of the civil suit and arrival of final conclusion as to who is entitled to be in possession and also directed the police to provide protection. It is not in dispute that the suit for partition is pending before the Court. In that case, the parties who are entitled to get a share, title and possession will be decided. It is also not in dispute that all the parties are parties to the civil suit in O.S.No.233 of 2010. Under these circumstances, the RDO passed this order.

6. I have considered the submission of the counsel for the petitioner. There is no observation by the RDO with regard to actual law and order problem exists.



Section 145 Cr.P.C., reads as follows: -

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression " land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute,

(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate that any party has been forcibly and



wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

(5) Nothing in this section' shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order; and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub- section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub- section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub- section shall be served and published in the manner laid down in sub- section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.



(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

7. In view of the above provision, whenever an executive magistrate is satisfied from a report of the police officer, a dispute likely to cause breach of peace exists concerning any land within his local jurisdiction, is competent to pass order within the law. Therefore, actual existence of law and order problem is not warranted. Even if there is a chance for law and order problem in local jurisdiction it is enough to pass order. Therefore, I find no merit in the argument advanced by the learned counsel for the petitioner and thereby, in order to keep law and order problem in that area,



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I find no infirmity in the order passed by the RDO and no merit in this

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8. Accordingly, this Criminal Original Petition stands dismissed.

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Index : Yes/No

Neutral Citation : Yes/No

AT

To

1.The Sub Collector cum Revenue Divisional Officer,
Pollachi, Coimbatore District

2.The Inspector of Police,
Komangalam Police Station,
Comibatore District.

3.The Public Prosecutor,
High of Madras.



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V.SIVAGNANAM ,J.

AT

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