

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.28828 of 2023

Ms.Muthanna Nancy

... Petitioner

Vs.

1.The District Collector of Thiruvarur,
Collectorate, Thiruvarur.

2.The Revenue Divisional Officer,
Revenue Divisional Office,
Thiruvarur, Thiruvarur District.

3.The Sub Inspector of Police,
Valangaiman Police Station,
Valangaiman,
Thiruvarur District.

4.Mr.T.Kamaraj

... Respondents

Prayer: Writ Petition is filed under Section 226 of Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to the Summon dated 29.08.2023 made in Na.Ka.o.561/2023/A.5, under Section 145 of Criminal Procedure Code, of the 2nd respondent, quash the same and direct the 3rd respondent viz., the Sub Inspector of Police, Valangaiman Police Station, Valangaiman, Thiruvarur

District to give necessary protection to the petitioner and her properties without the disturbance/interference of the 4th respondent herein viz., T.Kamaraj.

For Petitioner : Mr.T.Dhanasekaran

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)
for R1to R3

ORDER

The notice of the Revenue Divisional Officer under Section 145 of Cr.P.C., is under challenge in this writ petition.

2.The learned counsel appearing for the petitioner submitted that on an alleged complaint by one Mrs.Muthanna Nancy, W/o.Sathyamoorthy, the Inspector of Police, Valangaiman, had referred the matter to the Revenue Divisional Officer stating that there is a dispute between the Muthanna Nancy and Kamaraj regarding enjoyment of the property in S.No.501/1 and therefore, the same has to be enquired under Section 145 of Cr.P.C., and sought both the parties to appear for an enquiry scheduled on 01.09.2023.

3.The learned counsel for the petitioner submitted that already a civil

suit between the parties ended in favour of the petitioner herein and the private respondent Kamaraj has moved the Supreme Court. But Special Leave Petition is not yet numbered. The learned counsel submitted that Section 145 of Cr.P.C., cannot be exercised by the Executive Magistrate when there is a civil suit pending and further more, there is no reference regarding any breach of peace existing for the Executive Magistrate to invoke power under Section 145 of Cr.P.C. This Court on reading the impugned notice dated 29.08.2023, found that while calling upon the parties to appear for enquiry does not say anything about the likelihood of breach of peace. It only refers about the civil dispute as rightly pointed out by the learned counsel for the petitioner. Court has time and again stated that the Executive Magistrate cannot interfere in a civil dispute pending before the Court by exercising power under Section 145 of Cr.P.C., In case where there is no likelihood of breach of peace, the Revenue Disvisional Officer need not resort to under Section 145 of Cr.P.C.,

4.It is made clear that the power of Executive Magistrate to entertain complaint of report to exercise power under Section 145 of Cr.P.C., must disclose likelihood of breach of peace due to the dispute between two

groups. In the absence of such likelihood power under Section 145 of Cr.P.C., more so, when civil dispute is pending cannot be invoked.

5.This order cannot stand in the way of the Executive Magistrate to exercise power under Section 145 of Cr.P.C., despite pendency of the suit, if there is any material for likelihood of breach of peace placed before given by the police in his report or proven source of information.

6.This writ petition is disposed of. No Costs.

16.10.2023

Index : Yes/No
Neutral Citation : Yes/No
ssr

To

- 1.The District Collector of Thiruvavarur,
Collectorate, Thiruvavarur.
- 2.The Revenue Divisional Officer,
Revenue Divisional Office,
Thiruvavarur, Thiruvavarur District.

3.The Sub Inspector of Police,
Valangaiman Police Station,
Valangaiman,
Thiruvarur District.

4.The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN,J.

SSr

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