



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.07.2023

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CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition (MD)No.289 of 2021

Periyakaruppan

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

3.The Tahsildar,
Srivilliputtur Taluk,
Virudhunagar District.

4.The President/ Executive Officer,
Mamsapuram First Grade Panchayat,
Mamsapuram,
Melur,
Srivilliputtur Taluk,
Virudhunagar District.

5.P.Sakthi Murugan

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the second respondent herein to initiate Section 133 of Criminal Procedure Code, 1973 proceedings to control the nuisance in the property in Ayan Punja Survey No.704/1, Valaikulam Village, Srivilliputtur Taluk, Virudhunagar District in



view of the petitioner's representation dated 25.11.2020.

For Petitioner : Mr.M.Jothibasu
For Respondents 1 to 4 : Mr.R.M.Anbunithi
Additional Public Prosecutor
For 5th Respondent : Mr.S.Ramesh

ORDER

The petitioner has filed this writ petition to direct the second respondent herein to initiate Section 133 of Cr.P.C., proceedings to control the nuisance in the property in Ayan Punja Survey No.704/1, Valaikulam Village, Srivilliputtur Taluk, Virudhunagar District, in view of the petitioner's representation dated 25.11.2020.

2.According to the petitioner, one Marimuthu Nadar is the owner of the property in Survey No.704/1, Patta No.1595, Valaikulam village, Srivilliputhur Taluk, Virudhunagar district and on 27.11.1982, he sold the property to South west Street Nadar Uravin Murai, Mamsapuram. The petitioner has purchased the property in his wife's name. The fifth respondent herein had purchased the property to an extent of 1.57 cents on 12.12.2013. The fifth respondent is running an organization in the name and style of 'Thiruchendur Murugan Thirukarthigai Theebam Pathayathirai Kulu'. After the purchase, the fifth respondent dumped the sand and fill up the well and he attempted to encroach the pathway in Survey No.704/1.



Further he created disturbance to the public by raising noise at the time of conducting pooja. He constructed a small temple pooja mandapam without obtaining plan approval from the concerned authorities. Due to the nuisance, the petitioner and the family and the public cannot lead a normal and peaceful live.

3.Further the petitioner's wife filed a suit in O.S.No.408 of 2017 before the Principal Sub Court, Srivilliputhur for declaration and injunction. The fifth respondent is the first defendant in the suit. The said suit is still pending. On 25.11.2000, the petitioner sent a representation to the respondents to take necessary steps to control the nuisance. But the fourth respondent have not responded to the representation given by the petitioner. Hence, he seeks a direction from this Court to invoke Section 133 of Cr.P.C., to take necessary steps to control the nuisance.

4.The fourth respondent has filed a counter stated that the petitioner has filed a petition before this Court to initiate proceedings under Section 133 of Cr.P.C., to control the nuisance in the property in Survey No.704/1, Valaikulam village, Srivilliputhur Taluk, Virudhunagar District is not maintainable. The dispute between the petitioner and the fifth respondent



pertains to the land in Survey No.704/1. In fact on getting the building plan approval, they constructed the building thereof. After getting representation dated 25.11.2020, the field staffs were deputed and they conducted investigation and then, a small temple has been raised. Since no construction was made, no building plan approval was sought for or granted. Since the civil suit is pending between the parties, they have to abide the decree passed by the civil suit. The respondents cannot venture into civil rights of the parties of the contesting parties. As per Section 133 of Cr.P.C., this respondents has no role and only the Sub Divisional Magistrate has to decide the matter. The Principal Bench of this Court in W.P.NO. 20494 of 2008 dated 26.08.2008 inter alia observed that “In view of the Supreme Court, the exercise of writ jurisdiction for removal of encroachment or obstruction on a public land, when specific efficacious remedy for the same has been provided under Sections 133 to 143 of Cr.P.C”. Therefore, this respondents have no role to decide the representation of the petitioner.

5.The learned counsel appearing for the petitioner would contend that the petitioners have constructed a temple in the disputed property and causing disturbance by conducting pooja and playing musical instruments in



the disputed property and they sent a representation dated 25.11.2020 to control the nuisance and the same was not considered.

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6.The learned counsel appearing for the fifth respondent would contend that the the filing of the writ petition for the prayer to invoke Section 133 of Cr.P.C., is not maintainable. The power under Section 133 of Cr.P.C., is discretion of Sub Divisional Magistrate. Thereby, the petitioner cannot claim to consider the representation by invoking proceedings under Section 133 of Cr.P.C., as the matter of fact, the civil dispute is pending between the parties. Now the petitioner filed this petition only to harass the respondents and hence, this petition is liable to be dismissed.

7.The learned Government Advocate appearing for the respondents 1 to 4 would contend that there is civil dispute between the parties. The petitioner sent representation dated 28.11.2020 and the same is under consideration.

8.In view of the above submissions, this Court without going into merits of the petition, this Court direct the respondents 1 to 4 to dispose of the representation dated 25.11.2020, by affording chance to both the parties



and the fifth respondent can raise all the objections with regard to applicability of Section 133 of Cr.P.C., before the respondents and the respondents have to decide the case on merits as to whether the case comes within the purview of Section 133 of Cr.P.C., or not. Since the prayer is limited with regard to consider the representation dated 25.11.2020, the second respondent is directed to consider the same in accordance with law within a period of six weeks from the date of receipt of copy of this order.

9. With the above direction, this Writ Petition is disposed of. No Costs.

17.07.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes/No
Mrn



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P.DHANABAL,J.

Mrn

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