



W.P(MD)No.18618 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.18618 of 2014 and
MP(MD) No.2 of 2014

1.Maharajan
2.Manjula

...Petitioners

Vs.

1.The District Collector,
Theni District, Theni.

2.The District Revenue Officer,
Theni.

3.The Revenue Divisional Officer,
Periyakulam,
Theni District.

4.The Tahsildar,
Theni,
Theni District.

5.The Inspector of Police,
Alli Nagaram Police Station,
Theni.

6.Lakshmanan
7.Ammavasai



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8.Rajendran
9.Dhanuskodi
10.Murugesan

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the third respondent in M.C.No.399/2012/A4, dated 25.06.2014, quash the same.

For Petitioners : Mr.R.J.Karthick
For R1 to R5 : Mr.G.V.Vairam Santhosh
Additional Government Pleader
For R6 : No appearance
For R7, R9 & R10 : No appearance

ORDER

This writ petition was filed challenging the order passed by the third respondent under Section 145 of Cr.P.C in M.C.No. 399/2012/A4, dated 25.06.2014. By the order impugned in this writ petition, the Revenue Divisional Officer has cancelled the patta, which stands in the name of the petitioners.



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2.The learned counsel appearing for the petitioners submits that the petitioners have purchased a punja land to an extent of 1 acre 88 cents in S.No.956, 951/3, 951/2 and 950 in Allinagaram Village, Theni District from one Nagaraj, by a sale deed dated 26.11.2001. The petitioners have also purchased the abutting lands in S.No.951/2 and 951/3 from one Ammavasai and they are in peaceful possession and enjoyment of the above property. While so, the respondents 6 to 10 trespassed into the petitioners' land and disturbed their possession. Hence, the petitioners have preferred a complaint before the fifth respondent. The respondents 6 to 10 have also lodged a complaint claiming right over the above property. The complaints have been forwarded to the third respondent/the Revenue Divisional Officer, Periyakulam. According to the petitioners, the third respondent has conducted an enquiry without issuing notice to the second petitioner and passed the order, which is impugned in this writ petition, in and by which, the third respondent has changed the patta in favour of one Ochayee, Muthusamy Thevar, Ochammal and Nagarajan. The grievance of the petitioners is that the appeal



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preferred by petitioners was not accepted by the second respondent.

Hence, this petition.

3.Though notice has been issued by this Court on 19.11.2014, the respondents have not preferred to file any counter affidavit in this writ petition for the past nine years.

4.The learned Additional Government Pleader appearing for the respondents by relying on the written instructions received from the Revenue Divisional Officer, Periyakulam, dated 30.03.2023 submits that in view of the pendency of this writ petition, the impugned order dated 25.06.2014 is not effected by the authorities. He further submits that the possession of the subject property is still with the petitioners alone.

5.This Court considered the rival submissions made by either side and also perused the materials placed on record.



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6. When there is a dispute with regard to the title over the property, the Revenue Divisional Officer, while conducting the proceedings, under Section 145 of Cr.P.C, is not supposed to take a decision for cancelling the patta. Admittedly, the proceedings under Section 145 of Cr.P.C is for the purpose of maintaining peace, wherein, the Revenue Divisional Officer has taken a decision to cancel the patta. For ready reference, 145(1) (4) & (6) of Cr.P.C is as under:-

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.



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)

(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



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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.In view of the above and by recording the submission of the learned Additional Government Pleader that the possession of the subject property is still with the petitioners alone, the order impugned in this writ petition is set aside. If the parties are having any dispute over the title over the property, they are at liberty to approach the competent civil Court.

8.Accordingly, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.04.2023

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

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To

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