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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/03/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

WP (MD) No.23109 of 2022

Raman : Petitioner

Vs.

- 1.The Superintendent of Police,
Sivagangai District,
Sivagangai.
 - 2.The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.
 - 3.The Inspector of Police,
District Crime Branch,
Sivagangai,
Sivagangai District.
 - 4.The Inspector of Police,
Land Grabbing Special Wing,
Sivagangai,
Sivagangai District.
 - 5.The Inspector of Police,
Sipcot Police Station,
Manamadurai,
Sivagangai District.
 - 6.The Thayapuram Hospital Superintendent,
Thayapuram,
Manamadurai Taluk,
Sivagangai District.
- : Respondents



PRAYER:- This Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the respondents 2 and 5 to initiate proceedings under sections 145 and 107 of Cr.P.C against the 6th respondent and his henchmen and pass such further order or other orders.

For Petitioner : Mr.R.Murugappan

For R1 to R6 : Mr.B.Nambiselvan
Additional Public Prosecutor

For 6th Respondent : Mr.M.S.Ananthamurugan

O R D E R

This writ petition has been filed seeking for direction to the respondents 2 and 5 to initiate proceedings under sections 145 and 107 of the Criminal Procedure Code against the 6th respondent and his henchmen.

2.The facts in brief:-

The petitioner is residing in Kalkurichi Village, Manamadurai Taluk. The properties in Survey Nos.139, 140, 135, 137, 138 and 140-2 are situated in Kalkurichi Village, Seikalathur Revenue Village, Manamadurai Taluk, Sivagangai District, having separate extent. The above



3. Heard both sides. The private respondent is also represented by an Advocate.

<https://www.mhc.tn.gov.in/judis>



issued to the Revenue Authorities or police, as the case may be under sections 145 or 107 Cr.P.C.

5. 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



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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.



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(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



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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.

6. Section 107 Cr.P.C reads as follows:-

"107. Security for keeping the peace in other cases--. *(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.*



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(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

7.The learned counsel appearing for the petitioner would submit that the 6th respondent is making trouble to the villagers not only worship in the temple situated in the above said property, but also prevented the villagers from grazing their cattles. So every day problem occurs and there is every likelihood of breach of peace in the village. So according to him, action ought to have been taken by the competent authority.

8.Per contra, the learned counsel appearing for the private respondent namely the 6th respondent would submit that one Natarajan and others, filed WP (MD) No.14749 of 2021 before this court, impleading the



6th respondent as 9th respondent, in that petition, for a direction to remove the encroachment and for cancellation of patta. That petition was dismissed with a cost of Rs.25,000/-. It was also observed that Ryotwari patta was granted in favour of the 6th respondent herein.

9. Reading of the above said order shows the complete history and issue, that has arisen in respect of the above said properties. Since already an order has been passed by this court, on more than one occasions, it appears that this is the third attempt made by this petitioner under the apprehension of breach of peace in the village. This also amounts to clear abuse of process of court. More-over, it is for the competent authority to initiate action, either under section 145 Cr.P.C or 107 Cr.P.C, if any breach of peace is apprehended. They are competent and ground officers to assess the situation. This court cannot issue any such direction to the competent authority for initiating any action in a particular manner

10. So, I am of the considered view that this writ petition is nothing, but an abuse of process of court and



also outcome of misconception of facts and law. This writ petition deserves no consideration at all.

11. In the result, this writ petition stands **dismissed**. No costs.

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Index: Yes/No

Internet: Yes/No

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6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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