



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 14196 of 2022 &
CrI.MP.Nos.7746 of 2022

- 1 R.Sundaraj
- 2 N.Ponnusamy

...Petitioner

Vs.

- 1 The Executive Magistrate cum Revenue Divisional Officer,
Udumalpet.
- 2 V.Sundarraaj
- 3.P.Arumugam
- 4.S.Nachimuthu
- 5.T.Tamizh Jothi

...Respondents

PRAYER : This petition has been filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings of the Ist respondent in Na.Ka. No. 2003/2022-A2 dated 16.06.2022 on the file of the Executive Magistrate cum Revenue Divisional Officer, Udumalpet the 1st Respondent quash the same.

For Petitioners : Mr.K.Selvaraj



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For R1

: Mr.S.Vinoth Kumar,
Government Advocate
(Crl. Side)

For R2 to R5

: Mr.P.R.Arunkumar.

ORDER

The petitioner herein filed this petition to call for the records relating to the proceedings of the 1st respondent in Na.Ka. No. 2003/2022-A2 dated 16.06.2022 on the file of the Executive Magistrate cum Revenue Divisional Officer, Udumalpet the 1st Respondent quash the same.

2. The learned counsel for the petitioners submits that the first respondent passed an order to measure the property S. No. 380/3 at Thungavi Village, Madathukulam Taluk, to form pathway in order to avail the right to use as a pathway for the A party. For sake of convenience, A party is respondent 2 to 5 herein, B party is the petitioners herein.

3. The learned counsel for the petitioners submits that as per the patta issued by the revenue authorities Patta No. 1200 is for S.No. 380/3 which was stands in the name of the petitioner's mother and as on date they enjoyed the property as absolute owner in which B party formed a path way and caused interference. Subsequently, the enquiry was conducted under



Section 107 Cr.P.C on 09.06.2022. Though these petitioners were appeared before revenue authorities the first respondent was not appeared for the enquiry. Subsequently, challenging the same the petitioner filed this petition. Thereafter, order dated 16.06.2022 was passed by the first respondent to form pathway in S.No.380/3 which is a absolute property of these petitioner's mother. In fact the first respondent has no right to form a path way in S. No. 380/3. Besides, respondents having other pathway to reach their land. Furthermore, as per the Section 145 Cr.P.C the respondent has no right to give a direction to form a pathway without giving notice to the other party. As per the provision, the first respondent bound to give notice to the parties concerned in respect of the dispute no such procedures was followed by the first respondent.

4. Further, the learned counsel for the respondent raised objection stating that petitioner also appeared for the enquiry. On seeing the revenue records, the first respondent rightly passed the order since because already there was public pathway in S.No. 380/3.

5. On perusal of the records, it reveals that the patta relied by the petitioners proves that as on date S.No. 380/3 is stands in the name of the petitioner's mother. Furthermore, the petitioners have filed O.S No. 3 of



2022 before the subordinate Judge, Udumalpet, against the respondent but the suit was dismissed. Against the same they preferred the appeal. Further, it seems that the revenue authorities are remains exparte in the said suit. Against the said judgment, the petitioners preferred the appeal. Further, the first respondent/Tahsildar remains exparte before the Trial Court. In the said suit S. No. 380/3 is subject issue so the Government officials are directed to appear before the Civil Court proceedings in O.S No. 3 of 2023 or even before the appeal Court. As discussed above, the suit is pending before the lower appellate Court and also revenue authorities ought to have given notice to the party before passing the order. Hence, the order passed by the first respondent is liable to be quashed. In respect of forming the pathway there was a civil suit pending before the Court, the parties shall work out their remedy before the Trial Court.

6. In the result, this petition is allowed. No Costs. Consequentially, connected miscellaneous petition is closed.

06.02.2024

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T.V.THAMILSELVI, J.

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To

1.The Public Prosecutor,
High Court, Madras.

2. The Executive Magistrate cum Revenue Divisional Officer, Udumalpet.

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