



Crl.O.P.No.16948 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.09.2024

Pronounced on :10.09.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.16948 of 2024

1.S.Rajamanickam
2.R.Sathyamurthy
3.N.Saravanan
4.V.Rajagopal
5.R.Hari
6.Rajakumar

.. Petitioners/Revision
Petitioners to 7/A Party

/versus/

1.A.M.Jayaraman
2.Mr.Pingalan
3.V.Ganesan

.. Respondents 1 to 3/
Revision Petitioners 1 to 3/
B Party

4.The Executive Magistrate-cum-
Revenue Divisional Officer,
Erode.

.. Fourth Respondent/1st
Revision Petitioner/Executive
Magistrate



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Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set aside the order in Crl.R.P.No.14/2023, dated 09.02.2024 on the file of the Principal Sessions Judge, Erode, confirming the order of the fourth respondent in his proceedings No.Na.Ka.4097/2019/A2, dated 07.03.2023 and restore the possession to the petitioners herein.

For Petitioners	:Mr.S.Vijayakumar, Senior Counsel for Mr.K.N.Pandian
For R1 to R3	:Mr.A.R.Karunakaran for M/s T.Sureka
For R4	:Mr.S.Udayakumar Govt.Advocate (Crl.Side)

ORDER

The dispute between the petitioners and the respondents 1 to 3, is in respect of administering the Temple and Madam situated in a Government porambokku land at Erode. Name of the Temple is Krishnan Koil and Shri Laskhmi Narasimha Swami Bajanai Madam.



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2. The petitioners as 'A' party and the respondents 1 to 3, as 'B' party were called for enquiry under Section 145 of Cr.P.C by the 4th respondent, the Executive Magistrate -cum- Revenue Divisional Officer, Erode. The said enquiry, which commenced on 09/10/2019 culminated in passing of order on 07/03/2023 by the 4th respondent. Wherein, the police was directed to restore the possession of the Temple and Madam to the petitioners (A Party). Accordingly, the possession of the Temple and Madam was taken by the petitioners (A Party).

3. Aggrieved by the order of the 4th respondent, the respondents 1 to 3 herein, (the members of the B party) preferred revision petition before the Principal Sessions Judge, Erode in Crl.R.P.No: 14/2023. The Learned Sessions Judge, vide order dated 09/02/2024 set aside the order of the Executive Magistrate dated 07/03/2023.

4. The Learned Sessions Judge, considering the facts of the case disposed of the revision petition observing that, Section 145 Cr.P.C.



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mandates the Executive Magistrate to decide the likelihood of breach of public peace and pass necessary orders for maintenance of public peace.

In the course of such decision, he shall decide and declare possession of land or water in dispute, till decided by due course of law. Perpetual dispossession and delivery of possession to another can be made only in due course of law and not by an order of the Executive Magistrate. The Executive Magistrate under Section 145 of CrPC is not empowered to order perpetual eviction against the person in wrongful possession, or with delivery of perpetual possession in favour of the person entitled to be in possession.

5. Holding that, the Executive Magistrate, who has to deal with the likelihood of disturbance of public peace and incidentally about the possession but not the right and title, had failed to deal with the likelihood of breach of peace, however ordered perpetual dispossession of B party. That apart, ordered the District Registrar to cancel the trust deed executed by the B party in the year 2006. Therefore, for exceeding the power conferred under Section 145 of Cr.P.C., the order of the



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Executive Magistrate was set aside and the ordered to deliver the possession back to B party (respondent 1 to 3 herein) stating that, the members of B party are in possession of the disputed property since 2006 as per VAO report. The persons in possession for 17 years cannot be dispossessed by exercising power under Section 145 of Cr.P.C.

6. The said order of the District Sessions Judge is impugned in this Criminal Original Petition.

7. The specific case of the petitioner is that, the Temple and the Bajanaai Madam is more than 100 years old. Telugu speaking people of Routh community in Erode are performing daily poojas. While so, in the name and style of Erode District, All Naidugar's Welfare Trust, respondents 1 to 3 had registered a trust deed showing the Government poramboke land as the address of its registered office and fraudulently got the deed registered at SRO, Erode as Document No:1025/2006. Based on the trust deed, they were letting out the temple premises for rent and making money illegally. Further, they are also preventing the



petitioners from performing poojas, denying their century old right.

8. Accordingly to the Learned Senior Counsel appearing for the petitioners, the members of B party with intention to grab the property maintained by the members of A party, had created a trust deed with fraudulent intention and thereafter, encroached the property. Later, they are disturbing the religious activities of the petitioners in the Temple and Madam, which they were carrying on for more than 100 years. This prompted the petitioners to give representation to the Executive Magistrate on 26/08/2019. The Executive Magistrate after ascertaining from the VAO and through the records placed by either side, had arrived at the conclusion that the Temple and Madam in dispute is located in Government Poramboke land. Any registration of the document in respect of government promboke land is illegal. Based on the trust deed alone, the members of B party claims right over the property. Whereas, the A party able to produce documents that the Temple and Madam were in their possession and management for nearly 100 years. Documents and VAO's report proves that till 21/08/2006, the property in dispute was in



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possession of A party. Therefore, the illegal dispossession by B party been set right, by the order of the Executive Magistrate by putting the A party back in possession. This order is well within the power of the Executive Magistrate conferred under Section 145 of Cr.P.C.

9. Per contra, the Learned Counsel for the respondents 1 to 3, referring Section 145 Cr.P.C and the judgments of the Hon'ble Supreme Court and the High Court contented that, dispossession, if any, within 2 months alone can be ordered to be restored in exercise of power under Section 145 of Cr.P.C. Admittedly, in this case, dispossession if any was in the year 2006 and the complaint was given to the Executive Magistrate in the year 2019. The Executive Magistrate has erroneously taken 21/08/2006, as the date to consider the last possession, instead of two months prior to the complainant.

10. The 4th respondent in his counter has stated that, more than 100 years ago, Telugu speaking Routh Community had put up the Krishnan Temple and Lakshmi Narashimaswamy Bajanai Madam and



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worshipping. The land is classified as ‘ Government Poramboke-KrishnanKoil ‘. It is in No: 113, Cutchery Street, Erode. The respondents 1 to 3 rely upon the Trust deed by name, “ Erode District All Naidugar’s Welfare Trust, registered as document No: 1025/2006 mentioning its registered office as No: 96, Cutchery Street, Erode claiming right over the Temple and Madam. The trust members are using the place of temple and leasing it out for the purpose of marriage and other functions after getting electricity connection and water connection in the trust name.

11. The respondents besides misusing the temple property for commercial activities, also started preventing the petitioners from conducting bajanai and other religious activities in the Madam. There was likelihood of breach of peace, due to the dispute between these two groups. Hence, the Executive Magistrate has taken up the dispute for enquiry under Section 145 of Cr.P.C and on completion of enquiry, directed the police to ensure the members of the B party, take all their belongings from the disputed land and handover the possession to members of the A party, who were in possession of the temple and



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conducting pooja and bajanai. The records as well as the reports of the VAO and the statements of witnesses clearly prove that the petitioners were in possession of the Temple and Madam. The illegal occupation of the members of the B party, based on the Trust deed is illegal. The claim of the B party that the land in S.Nos:90,91 and 92, upon which the Temple and Madam situated is not Government Poramboke, but the private land of the Trust, found to be incorrect during the enquiry conducted by the Executive Magistrate. Therefore, the order of the Executive Magistrate to give possession to the A party is well within the power of the Executive Magistrate. The Executive Magistrate directed the District Registrar to cancel the trust deed No:1025/2006, to safeguard the Government Land and same cannot be termed as exceeding the jurisdiction. While preserving peace and tranquillity of the public, the Executive Magistrate is also empowered to preserve and protect Government property. Further, in the counter of the 4th respondent, it is stated that after the order of the Principal Sessions Judge dated 09/02/2024 in Crl.R.P.No.14/2023, the respondents 1 to 3 had forcible broke open the temple and had taken possession.



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12. Heard the Learned Counsels representing the petitioners and the respondents.

13. Under Section 145 of Cr.P.C., the Executive Magistrate conferred with jurisdiction to pass order in the matters where dispute concerning land or water is likely to cause breach of peace. The apprehension of the Magistrate is the foundation of the jurisdiction. The power of the Executive Magistrate to repossess the property and hand it over to the person dispossessed is subject to the proviso to Sub-Section (4) and Subsection (6) of Section 145 of Cr.P.C. That apart, the Executive Magistrate while ordering the repossession, shall mandatorily subject his order to the final decision of the court of law. He should be satisfied that the dispossession occurred within two months from the date on which the report received by the police or from any other source. Further, the Executive Magistrate under section 145 Cr.P.C has no jurisdiction to declare a registered deed as legal or illegal. He has no jurisdiction to direct the District Registrar to cancel the Trust Deed. At the same time,



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even though the possession of documents may arise to presumption of title, it is the duty of the Executive Magistrate to ascertain who is in actual possession. Section 145(4) of Cr.P.C., entitles even a squatter in possession to get protection. Time and again courts have repeatedly held that, under section 145 Cr.P.C., the Executive Magistrate is not supposed to decide the title, but only the possession on the date of the complaint or in case of dispossession within two month before the complaint.

14. In this case, the complaint to Executive Magistrate, dated 26/08/2019 signed by the members of A party, alleges that, the first respondent sought consent to put up a compound wall after demolishing the old wall through his Trust. Same was permitted by the members of their community (A Party). Later, the community members felt that the work should not be carried out through others, therefore, the first respondent and his trust was requested to stop the construction work. Later, construction was put up using the contribution made by their community members (telugu speaking Routh community), when, the petitioner attempted to claim right in the property, they were prevented



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from interfere in the affairs of the temple and Madam. While so, a month before the complaint, the first respondent through his men forcible engaged in putting up construction without permission of A Party. The complaint and counter- complaint to the Erode Town Police is under investigaon, meanwhile, there is likelihood of breach of peace hence to take action under section 145 of CrPC.

15. Thus, in this case it is evident that the dispossession or an attempt to dispossess was a month before the complaint to the Executive Magistrate and the oral evidence of the witnesses also fortified the case of the A party, that the Telugu speaking Routh community are continuously workshipping in the Temple and Madam for 100 years. Therefore, the order of the Executive Magistrate directing the police to take possession from B party and give it to the members of A party is in compliance to the proviso to subsection (4) and subsection (6) of Section 145 Cr.P.C.

16. The Principal Sessions Court, Erode, in the Revision



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Petition failed to take note of the fact that the complainant as well as the evidence of witnesses stated that the petitioners are maintaining the Krishnan Kovil and Lakshminarashimha Bajanai Madam. One of the Trustee of Erode District All Naidugars' Welfare Trust Mr. Singam T.R.Venugopal and the Treasurer of the said Trust Mr. Singam.T.Ravikumar had specifically stated that the Trust has nothing to do with the Shri Lakshmi Narasimha Swamy Bajanai Madam. While so, the order of repossession is justifiable and well within the scope of proviso to sub Section (4) of Section 145 of Cr.P.C, since the dispossession had started a month before the complaint and completed, violating the prohibitory order issued by the Executive Magistrate, pending disposal of the enquiry. The learned Sessions Judge has failed to take note of the sequence of event and the admission of the Trust members and office bearers of the Trust who have without any reservation has admitted the possession of the petitioners.

17. It is incorrect to say that the members of B party took possession of the Temple and Madam in the year 2006 itself. The trust



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deed will not confer title or possession. The continuous worship by the members of A party/the petitioners herein, never been take away. The disturbance to their possession by an attempt to put up further construction has lead to complaint and counter-complaint. Apprehension of disturbance to public peace and tranquillity has forced the Executive Magistrate to take up the enquiry in exercise of his power under Section 145 of Cr.P.C. He has ordered repossession to the petitioners based on the records and in tune with the power under Section 145 (4) and (6), however failed to restrict and qualify his order that the possession to A party will be subject to the out come of any suit or decision under due process of law. Therefore, while upholding the direction to restore the possession to the A party/ the petitioners herein, the said possession shall be subject to the decision in due course of law.

18. In so far as the direction of the Executive Magistrate to the District Registrar to cancel the trust deed, it is purely beyond the powers of the Executive Magistrate conferred under Section 145 of Cr.P.C. The deed of trust is not a title document. It is about the wish of the Founder to



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administer the activities mentioned in the Deed. It is matter between the Founder, Trustees and the beneficiaries under the trust. Even assuming the registration of deed is contrary to law (though in this case not so), the Executive Magistrate while enquiring a dispute under Section 145 of Cr.P.C is not empowered to declare a duly registered document as invalid or illegal and direct the District Registrar to cancel the Deed. To that extend, the order of the learned Principal Sessions judge is upheld.

19. The order of the Principal Sessions Judge, Erode passed in Cr.R.P.No. 14 of 2023 is set aside in respect of ordering repossession of the property to the respondents 1 to 3 (B party) from the petitioners (A party). The order of the Executive Magistrate to hand over the possession to the petitioners /A party is hereby confirmed.

20. The order of the Principal Sessions Judge, Erode setting aside the order of the Executive Magistrate directing the District Registrar, Erode to cancel the trust deed No: 1025 of 2006 is hereby confirmed.



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21. In the result, **the Criminal Original Petition is partly allowed.** The possession of the property to be restored back to the petitioners herein. No order as to costs.

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Index:yes

Neutral citation:yes/no

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To:

- 1.The Principal Sessions Judge, Erode.
- 2.The Executive Magistrate-cum-Revenue Divisional Officer, Erode.
- 3.The Public Prosecutor, High Court,Madras.



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DR.G.JAYACHANDRAN,J.

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delivery Order made in
CrI.O.P.No.16948 of 2024

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