



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.10.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.28211 of 2024

and

W.M.P.Nos.30758,30759 & 30760 of 2024

K.Mythili, M/A 35 years,
Wife of Karthikeyan,
Rep.by Power of Attorney Mr.Karthikeyan, M/A 39,
Son of Palanisamy,
Both are residing at:
Door No.14, First Street,
Senthil Nagar, Nehru Street Extension,
15, Velampalayam, Tiruppur North Taluk,
Tiruppur.

.. Petitioner

/versus/

1.The Tahsildar(Tiruppur North),
Tiruppur North Taluk Office,
Tiruppur District.

2.The Inspector of Police,
Vellampalayam,
Tiruppur District.

3.N.Eswaramoorthy

.. Respondents



W.P.No.28211 of 2024

WEB COPY

Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in O.Mu.No.2777/2023/A3, dated 06.03.2024 issued by the 1st respondent and quash the same as contrary to law and consequently, forbear the 3rd respondent from obliterating the pathway in S.F.No.2/2 & 3 of Velampalayam Village, Tirppur Taluk, Tiruppur District.

For Petitioner :Mr.M.Guruprasad

For R1 and R2 :Mr.K.M.D.Muhilan,
Govt.Advocate (Crl.Side)

ORDER

The proceedings of the Tahsildar in the course of enquiry under Section 107 of Cr.P.C. is sought to be quashed on the ground that the enquiry was conducted behind her back and the observations of the Tahsildar is in excess to the power conferred on the Executive Magistrate under Section 107 of Cr.P.C.,



W.P.No.28211 of 2024

2.The learned counsel appearing for the petitioner submitted that there is a dispute between the petitioner and the third respondent regarding usage of pathway. In this connection, already a civil suit is pending. While so, the Tahsildar perpetrates on the request of the Inspector of Police has conducted an enquiry and given a finding that the disputed pathway belongs to Eswaramoorthi, who has given the complaint to the respondent police.

3. The learned counsel appearing for the petitioner submitted that the Tahsildar by recording his finding under the guise of passing the order under Section 107 of Cr.P.C., has exceeded the power conferred under the said Section.

4. The learned Government Advocate (Crl.Side) submitted that a complaint from Eswaramoorthi, was received by the police regarding usage of pathway. Since the dispute had created breach of peace in the locality, the Executive Magistrate was requested to conduct enquiry and pass appropriate orders. Accordingly, the Thasildar has verified the



W.P.No.28211 of 2024

documents and communicated his finding to the Inspector of Police about the pathway and the revenue records which reflects that the pathway in S.No.3/1, belongs to Eswaramoorthi.

5. Section 107 of Cr.P.C., empowers the Executive Magistrate to issue notice to persons who likely to disturb public tranquillity and peace, to show cause why bond for maintenance of peace not obtained from them and after hearing them, direct them to execute bond to keep peace, if necessary.

6. As far as the communication of the Tahsildar addressed to Inspector, there is no such direction or there is no indication that the enquiry was conducted. The Tahsildar has informed the police that the revenue records indicates S.No.3/1 in the village is owned by Eswaramoorthi. This communication neither have a trapping of order under Section 107 Cr.P.C., nor declaring title of Eswaramoorthi. It is the statement of the Tahsildar based on the records in respect of the ownership of pathway in S.No.3/1.



W.P.No.28211 of 2024

WEB COPY

7. In the said circumstances, since the dispute regarding usage and ownership of the pathway has already been seized by the Civil Court and pending in O.S.No.18 of 2024, it is suffice to record that the impugned communication of the Tahsildar to the Inspector of Police issued under Section 107 of Cr.P.C., is *non est in law* and it shall have no legal effect whatsoever.

8. If at any circumstances in future, the Executive Magistrate on his own or on the information from the local police deem fit to conduct enquiry under Section 107 of Cr.P.C, he shall exercise the said power only by following the procedure contemplated under the Chapter concern and proceed.

9. Accordingly, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

04.10.2024



W.P.No.28211 of 2024

WEB COPY

Index:yes/no

Internet:yes/no

ari

To:

1.The Tahsildar(Tiruppur North),
Tiruppur North Taluk Office,
Tiruppur District.

2.The Inspector of Police,
Vellampalayam,
Tiruppur District.

3.The Public Prosecutor, High Court, Madras.



WEB COPY



W.P.No.28211 of 2024

Dr.G.JAYACHANDRAN,J.

ari

W.P. No.28211 of 2024

and

W.M.P.Nos.30758,30759 & 30760 of 2024

04.10.2024