



W.P.(MD)No.4678 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.03.2024

Pronounced on : 14.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.4678 of 2021
and
W.M.P.(MD)No.3793 of 2021

A.Arockiasamy

... Petitioner

Vs.

1. Sub-Collector,
Srirangam,
Trichy District.

2. Revenue Divisional Officer,
Srirangam District.

3. Jabamalai

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in relation to impugned order passed in Na.Ka.A1/6125/2019 dated 28.11.2019 by the first respondent and quash the same as illegal, ultravires, biased, rule of law and against the principles of natural justice.



W.P.(MD)No.4678 of 2021

WEB COPY

For Petitioner : Mr.M.L.Ganesh
For R1 & R2 : Mr.SRA.Ramachandran
Additional Government Pleader
For R3 : Mr.D.Boopal

ORDER

The Writ Petition is directed against the order dated 28.11.2019 passed by the first respondent under Section 145 of the Code of Criminal Procedure.

2. There existed land disputes between the families of the writ petitioner and the third respondent and since there arose law and order issues consequent to the land dispute between the parties, the Inspector of Police, Ramjee Nagar Police Station has referred the matter to the first respondent to decide under Section 145 Cr.P.C. and in pursuance of the said letter, after issuing notice to the concerned parties and after recording statement from both the sides and also from the Village Administrative Officer, Navalur Kuttapattu Village, the first respondent has passed the impugned order dated 28.11.2019 directing the third respondent to remain in possession of the property in dispute i.e., Survey No.401/14 of Navalur



W.P.(MD)No.4678 of 2021

Kuttapattu Village and directing the writ petitioner not to create any law and order issue, failing which, action will be taken against him under the Code of Criminal Procedure. Aggrieved by the impugned order, the writ petitioner has challenged the same by invoking Article 226 of the Constitution of India.

3. The case of the writ petitioner is that the property situated in Punja Survey No.401/14 measuring an extent of 1.10 acres in Navalur Kuttapattu Village, Srirangam Taluk, Tiruchirappalli District has been settled in favour of the writ petitioner by his father M.Alphonse vide registered settlement deed dated 07.10.2015, that the said land was originally owned and possessed by the writ petitioner's father Alphonse and duly effected mutation in the revenue records, that the writ petitioner's father Alphonse had availed agricultural loan for cultivation purpose by mortgaging the said property from time to time at Chathirapatti Primary Agriculture Co-operative Credit Society Limited, that after the execution of the settlement deed, the third respondent, who is paternal uncle of the writ petitioner, had suddenly developed hostile relationship and made attempts to disturb the peaceful possession and enjoyment of the said



W.P.(MD)No.4678 of 2021

property alleging that he had purchased the said property vide sale deed dated 19.05.1976, that the writ petitioner came to know from discreet enquiry and investigation that the executant of the said sale deed did not have any rights, interest or title over the said property, that the writ petitioner has immediately filed two suits for declaration and permanent injunction against the third respondent in O.S.No.5 of 2016 and O.S.No. 386 of 2016 on the file of the District Munsif Court, Tiruchirappalli, which later came to be transferred to the Court of District Munsif, Srirangam as O.S.No.1219 of 2019 and O.S.No.472 of 2019 respectively, that the third respondent had made an application before the Revenue Divisional Officer, Srirangam for cancellation of patta bearing No.840 issued in favour of the writ petitioner's father's name and to re-issue patta in his favour, that the second respondent had cancelled the patta bearing No.840 issued in favour of the writ petitioner's father on 28.12.2017 and directed the Tahsildar to issue fresh patta in favour of the third respondent for the said land, that the writ petitioner has preferred an appeal before the District Revenue Officer, Tiruchirappalli alleging that the second respondent had passed the said order without keeping in mind about the pendency of two civil suits, that though the writ petitioner has lodged



W.P.(MD)No.4678 of 2021

WEB COPY

several police complaints against the third respondent, the same were of no avail, that in pursuance of the letter received by the first respondent from the Inspector of Police, Ramjee Nagar Police Station, the first respondent has passed the impugned order and the same is arbitrary, biased and against the principles of natural justice and that the first respondent has grossly failed to observe that the writ petitioner's family had been doing cultivation for several years and based on the new patta issued by the second respondent only, the third respondent claimed adverse possession in 2019.

4. The third respondent has filed a counter affidavit stating that the third respondent purchased the property situated in Survey No.401/14 of Srirangam Taluk, Navalur Kuttapattu Village, having an extent of 1.09 acres by virtue of a sale deed dated 19.05.1976, that since his purchase, he has been cultivating the land and is in possession and enjoyment of the same, that the writ petitioner had somehow obtained patta behind his back and after coming to know about the same, immediately applied for patta in his favour and also to cancel the patta wrongly issued in favour of the writ petitioner, that the second respondent, after enquiry, has passed an order in his favour on 28.12.2017, that the



W.P.(MD)No.4678 of 2021

writ petitioner with sole intention to grab the said property has been filed petition after petition to interfere with his title and harass him and that therefore, the writ petition is liable to be dismissed.

5. It is not in dispute that the writ petitioner had already filed two civil suits, one in O.S.No.5 of 2016 (new O.S.No.1219 of 2019) on the file of the District Munsif Court, Tiruchirappalli claiming permanent injunction restraining the defendant and his men from interfering with the plaintiff's peaceful possession and enjoyment of the suit property either by dispossessing the plaintiff from the suit property or in any manner whatsoever and the other suit in O.S.No.386 of 2016 (new O.S.No.472 of 2019) on the file of the District Munsif Court, Tiruchirappalli declaring that the registered sale deed dated 19.05.1976 executed by Savarimuthu Udayar in favour of the first defendant is null and void and consequent permanent injunction restraining the first defendant and his men from in any way alienating or encumbering the suit property in favour of any other third party.

6. It is not in dispute that the suit in O.S.No.1219 of 2019 (old O.S.No.5 of 2016) was already dismissed and that the second suit in



W.P.(MD)No.4678 of 2021

WEB COPY

O.S.No.472 of 2019 (old O.S.No.386 of 2016) is pending. The property situated in Survey No.401/14 of Navalur Kuttapattu Village, Srirangam Taluk measuring 1.06 acres out of 1.09 acres is shown as the suit property in O.S.No.472 of 2019.

7. It is the specific case of the third respondent that the third respondent's father Micheal, while alive, had executed a settlement deed dated 01.06.1990 in favour of the third respondent's brother Alphonse-father of the writ petitioner and his sister Regina Mary, that thereafter the third respondent's father has executed another settlement deed dated 04.06.1997 in favour of the third respondent, that the writ petitioner, by suppressing the above documents and alleging that the third respondent and the writ petitioner had partitioned the properties before the village elders, obtained patta in his favour and that the property in Survey No. 401/14 has absolutely no connection whatsoever with the property allotted in the settlement deeds dated 01.06.1990 and 04.06.1997 in favour of the writ petitioner's father, the said Regina Mary and the third respondent.

8. It is not in dispute that after issuance of the patta in favour of the writ petitioner, the third respondent has preferred a petition before the



W.P.(MD)No.4678 of 2021

second respondent and the second respondent, after conducting enquiry, has passed an order dated 28.12.2017 cancelling the patta changing order and to issue separate pattas as per the settlement deeds and to issue patta in favour of the third respondent in respect of the land in Survey No. 401/14. Aggrieved by the said order, the writ petitioner has preferred an appeal before the District Revenue Officer and the same is pending.

9. The learned counsel appearing for the writ petitioner has relied on some decisions of this Court in the case of ***R.Mallika Vs. M.Padmini and others*** in ***W.A.Nos.2242 and 2675 of 2018 dated 31.01.2023*** and in the case of ***Vishwas Footwear Company Ltd. Vs. The District Collector and others*** reported in ***(2012) 1 MLJ 566***, wherein, Hon'ble Division Benches of this Court have reiterated the legal position that the Revenue Divisional Officer has no jurisdiction to go into the disputed questions of title and the aggrieved person has to be given liberty to institute suit against any person, who denies his right or interest.

10. The learned counsel appearing for the writ petitioner would contend that the first respondent ought to have taken cognizance of the



W.P.(MD)No.4678 of 2021

fact that the matter in issue already seized of by the civil Court to decide the title and possession of the subject land, that the first respondent, while exercising the powers under Section 145 Cr.P.C., ought to have passed balanced order instead of aggravating the tense situation between the parties, that the first respondent, without any basis, has given a finding that the third respondent has been in possession from 2018-2019 and on that basis, passed the impugned order directing the third respondent to remain in possession and that therefore, the above order cannot be sustained.

11. The learned counsel appearing for the third respondent would submit that the writ petitioner alone had been attempting to grab the property if possible had made bogus, fabricated and concocted documents, that the writ petitioner had obtained patta behind the back of the third respondent, that the Village Administrative Officer and the Tahsildar have given specific reports that the third respondent has been in possession and enjoyment of the property and that the first respondent, considering the above aspects in proper perspective, has passed the impugned order.



W.P.(MD)No.4678 of 2021

WEB COPY

12. No doubt, as already pointed out, the writ petitioner has already filed a civil suit challenging the validity of the sale deed dated 19.05.1976 executed in favour of the third respondent.

13. At this juncture, it is necessary to refer the decisions relied on by the learned counsel appearing for the writ petitioner,

(i) Ranganayagi and others Vs. State, rep. by the Inspector of Police, Anamalai Police Station, Coimbatore District and others : 2021 (5) CTC 71

“11.From the above, it is obvious that Section 145 Cr.P.C. is intended to provide a speedy remedy for the prevention of breach of peace, arising out of disputes concerning any land or water or the boundaries, by maintaining one or other of the parties, in possession. Where the Magistrate relies upon the report of a police officer or on any other information. Though he is required to pass a preliminary order and serve it on the parties in the manner provided under the code, there is nothing in the said provision, which declares that the non- existence of a preliminary order will vitiate a final order passed by him. On the other hand, the internal evidence found in the very section itself shows that his order can be reviewed either at the instance of the party, who was wrongfully dispossessed within two months of the order or by a party,



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W.P.(MD)No.4678 of 2021

who was to be restored to possession. Besides that, the findings rendered by the Executive Magistrate are not conclusive and are rebuttable in a competent Court. If any party moves the civil court and obtains either an interim order or a decree regarding the property, then the decision of the Executive Magistrate vanishes into thin air. Therefore, in short, the object of the Section is to enable a magistrate to intervene and pass a temporary order in regard to possession of a property in dispute having effect, until the actual right of one of the parties gets determined by a competent civil court; it must be construed to be a mere power to restore peace and not beyond that; the aggrieved parties can always move the judicial forum i.e. the civil court to establish either the right to possession or the title to the property; and the power of judicial review of the same is also limited.”

(ii) Asset Reconstruction Company (India) Limited Vs. Inspector of Police and others : (2022) 8 SCC 238

"5. Having given our thoughtful consideration, and keeping in mind the mandate contained in Section 145(4) of the Cr.P.C., it is apparent, that the determination of the Magistrate is without reference to merits of the claims of any of the parties. Even, learned counsel representing the caveator states, that he has no objection if an order is passed to the effect, that the order passed by



WEB COPY



W.P.(MD)No.4678 of 2021

the Magistrate on 1.4.2010 would not be treated to be an order on merits either on the question of possession or on the question of title. We affirm the aforesaid legal position by clarifying, that the observations recorded by the Magistrate in the order dated 1.4.2010, will not be treated as a binding determination on the issues pertaining to possession and title.”

14. It is settled law that the very object of Section 145 Cr.P.C. is to provide speedy relief to prevent the breach of peace in disputes over land, water or boundaries and the said provision enables the Magistrate to intervene and pass temporary order regarding possession of property in dispute, until actual right of parties are determined by the competent civil Court. No doubt, order passed under Section 145 Cr.P.C. does not confer title/ ownership or right to possession of the disputed property and the order passed based on the apprehension of breach of peace is temporary in nature, irrespective of rights of parties and that the findings given by the Executive Magistrate is not conclusive and is rebuttable in competent civil Court.

15. In the present case, even after filing the civil suit before the competent civil Court, there arose quarrels and disputes very often



W.P.(MD)No.4678 of 2021

between the parties which resulted in law and order problem and that is why the matter was referred by the jurisdictional police to the first respondent.

16. In the impugned order, the first respondent has referred about the statement of the Village Administrative Officer, wherein, the Village Administrative Officer has stated that there was no cultivation in the land in dispute for the years 2016-2017 and 2017-2018 and that the third respondent has been cultivating paddy in 2018-2019. As rightly contended by the learned counsel appearing for the third respondent, though the writ petitioner in his complaint has alleged that he was in possession and enjoyment of the suit property at the time of filing of the suits in 2016, as already pointed out, the Village Administrative Officer has observed that there was no cultivation in the years 2016-2017 and 2017-2018.

17. Whether the order passed by the second respondent dated 28.12.2017 is legally valid or not cannot be gone into at this stage and is a matter for decision in the appeal pending before the District Revenue Officer.



W.P.(MD)No.4678 of 2021

WEB COPY

18. Considering the long pending disputes between the parties and the law and order issues created, the first respondent, taking note of the earlier possession of the third respondent, has permitted the third respondent to remain in possession. As rightly contended by the learned counsel appearing for the third respondent, the order passed by the first respondent is not final and is not conclusive with regard to the rights and possession of the parties. More importantly, in view of the pendency of the civil suit, the parties are to be directed to putforth their cases and it is for the competent civil Court to decide about the title and possession of the property in dispute.

19. As rightly contended by the learned Additional Government Pleader appearing for the respondents 1 and 2 as well as the learned counsel appearing for the third respondent, the writ petitioner has not produced any evidence sufficient enough to decide that the writ petitioner has been in possession and enjoyment of the property at the relevant point of time.

20. Considering the above, the impugned order of the first respondent cannot be found fault with.



W.P.(MD)No.4678 of 2021

WEB COPY

21. In the result, this Writ Petition is dismissed and the impugned order dated 28.11.2019 passed by the first respondent stands confirmed. However, the learned District Munsif, Srirangam, where the civil suit in O.S.No.472 of 2019 is pending, is directed to complete the trial and dispose of the suit within a period of four (4) months from the date of receipt of a copy of this order. The parties are at liberty to approach the competent authorities subject to the result of the civil suit. Consequently, connected Miscellaneous Petition is closed. No costs.

14.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif,
Srirangam.
- 2.The Sub-Collector,
Srirangam,
Trichy District.
3. The Revenue Divisional Officer,
Srirangam District.



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W.P.(MD)No.4678 of 2021

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
W.P.(MD)No.4678 of 2021
and
W.M.P.(MD)No.3793 of 2021

Dated : 14.06.2024