



W.P.(MD)No.19748 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.19748 of 2024
and W.M.P.(MD)No.16733 of 2024

Mr.A.Ibrahim Kalil

... Petitioner

Vs.

1.The District Revenue Officer,
Trichy District,
Trichy – 620 001.

2.The Revenue Divisional Officer,
Trichy District,
Trichy.

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the 1st respondent pertaining to its impugned proceedings bearing No. Na.Ka.Aa2/48999/2023 dated 31.05.2024 and to quash the same as illegal and consequently restrain the respondents from interfering the peaceful enjoyment and possession of the petitioner property bearing survey Nos. 2/1, 2/2, 2/3, 2/4, 3/1, 3/2, 4/1, 4/3, and 4/4, of Kumbakudi - Velayuthangudi Village, Thiruverumbur Taluk, Trichy District.



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For Petitioner : Mr.Vidhuthalai, Senior Counsel
for S.C.Herold Singh

For Respondents : Mr.R.Baskaran,
Addl. Advocate General
Assisted by Mr.D.Gandhiraj,
Spl. Govt. Pleader

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the 1st respondent pertaining to its impugned proceedings bearing No.Na.Ka.Aa2/48999/2023 dated 31.05.2024 and to quash the same as illegal and consequently restrain the respondents from interfering the peaceful enjoyment and possession of the petitioner property bearing survey Nos. 2/1, 2/2, 2/3, 2/4, 3/1, 3/2, 4/1, 4/3, and 4/4, of Kumbakudi - Velayuthangudi Village, Thiruverumbur Taluk, Trichy District.

2. The brief facts leading to the filing of this Writ Petition are as follows:

The subject lands were assigned in favour of predecessors in title on 13.02.1984 under D-Form Pattas. The petitioner purchased 28.40 acres of vacant land in S.Nos.3/1, 3/2, 2/1, 2/2, 2/3, 4/1, 4/3 and 4/4 bearing patta Nos.82, 83, 84,



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85, 320, 439, 409 and 219. The revenue records also stand in the name of the petitioner. The petitioner has also paid the taxes and the petitioner is in possession and enjoyment of the said property. However, the 2nd respondent has issued a restraint order under Section 145 of the Code of Criminal Procedure, 1973, vide reference No.Na.Ka.A1-8017-2008, for a larger extent of 12 acres comprised in Survey Nos.1 to 22 situated at Kumbakudi Village, Thiruchirapalli Taluk, Trichy District. Within that entire larger extent of land, the petitioner's land to an extent of 28.40 acres are also covered. According to the petitioner, the Tamil Nadu Housing Board objected to the issuance of the restraint order passed by the 2nd respondent, in respect of the lands comprised in S.Nos.10/2,3,4 and 11/3,4,5,6. Thereafter, the 2nd respondent on 06.12.2012, by way of a proceeding vide Ref.No.Na.Ka.A1-8017-2008, withdrew the restraint order dated 17.12.2008 to the extent of 4.21.5 hectares of land comprised in S.Nos.10/2,3,4 and 11/3,4,5,6 of the said Village. However, the petitioner's land has not been released. Hence, the petitioner gave a representation to the first respondent, seeking for revocation of the restraint order passed by the 2nd respondent dated 17.12.2008. However, the 1st respondent, through the impugned order dated 31.05.2024, rejected the request of the petitioner. Challenging the same, the petitioner has filed this Writ Petition mainly on the ground that there is no jurisdiction to invoke the proceedings under



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Section 145 of Cr.P.C., and the impugned order passed by the first respondent is not sustainable in the eye of law.

3. The first respondent has filed a counter affidavit to the effect that a larger extent of lands comprised in S.Nos.1/1,2,3 etc., were attempted to be encroached by one Ravichandran of Mannargudi and others. In this regard, a case was registered in Crime No.213408 by the Inspector of Police, Navalpattu Police Station and he has also by letter dated 21.11.2008, requested the Revenue Divisional Officer, Tiruchirappalli, to initiate action under Section 145 of Cr.P.C. Accordingly, the 2nd respondent has issued a restraint order through a proceeding in Ref.No.Na.Ka.A1-8017-2008, dated 17.12.2008. It is further stated in the counter affidavit that as per G.O.Ms.No.639, Housing and Urban Development Department, dated 30.05.1988, the Government has allotted an extent of 37.165 Hectares situated in Velayuthangudi and Kumbakudi Villages to the Housing Board, for implementation of the Tamil Nadu Urban Development Project.

4. Thereafter, the petitioner has given a petition on 08.03.2023 to the District Revenue Officer, Trichirappalli, to set aside the restraint order issued by the 2nd respondent under Section 145 of Cr.P.C. On receipt of the above petition,



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the 1st respondent has conducted an enquiry on 03.08.2023 and after conducting enquiry, the 1st respondent found that though the assignment was given to various persons, the said lands have not been brought into agricultural cultivation till the Fasli year 1403 and they have sold the said lands without getting prior permission from the Revenue Divisional Officer. Therefore, the 1st respondent held that any transactions made violating the assignment rules, without obtaining prior permission from the Revenue Divisional Officer, are not valid and the lands, to which the petitioner claims title, have already been allotted to the Tamil Nadu Housing Board for development purposes. Further it is stated that in 1971 settlement register, the property has been shown as Government Dry Tharisu. However, in the UDR Register, some names of the unconnected persons have been mentioned and after that, the petitioner has purchased the lands from the respective vendors. According to them, the lands in question have already been allotted to the Tamil Nadu Housing Board through G.O.Ms.No.639, Housing and Urban Development Department dated 30.05.1988.

5. The learned Senior Counsel appearing for the petitioner would submit that the restraint order has been passed in a proceeding under Section 145 of Cr.P.C., without any dispute over the immovable property. According to him, the



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lands have been originally assigned in the year 1984 and the petitioner has purchased the property from the original assignee. When that being the position, merely on the basis of some proceedings initiated under Section 145 of Cr.P.C., without any dispute, the restraint order has been passed. However, when the Tamil Nadu Housing Board has given an objection for such restraint order, the same has been considered and an extent of 4.21.5 hectares of lands have been released. Thereafter, the petitioner gave a representation seeking relief on the same line. However, it was rejected, through the impugned order holding that the sale executed in favour of the petitioner is not valid. Hence, the petitioner has filed this Writ Petition.

6. According to the learned Senior Counsel, absolutely there is no evidence to show that there is a dispute over the immovable property between the rival members and to initiate a proceeding under Section 145 of Cr.P.C. The second respondent has initiated the said proceedings without any material. Now the impugned order has been passed by the first respondent, as if the sale deed in favour of the petitioner is not valid. Hence, the impugned order is liable to be set aside since the said order cannot be sustained in the eye of law.



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7. The learned Additional Advocate General appearing for the respondents would submit that the impugned order clearly shows that as per G.O.Ms.No.639, Housing and Urban Development Department, dated 30.05.1988, the Government has allotted an extent of 37.165 Hectares to the Housing Board. Though the petitioner's vendors have been given assignment in the year 1984, the property has not been put under cultivation. Further, in the 'A' Register, the property has been shown as 'Tharisu'. Since the petitioner did not derive any title, the impugned order has been passed as a consequence of the restraint order passed under Section 145 of Cr.P.C. Hence, opposed this Writ Petition.

8. Heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

9. On a perusal of the proceedings under Section 145 Cr.P.C., it is seen that the second respondent has passed a restraint order holding that the land has been encroached upon by one Ravichandran, Zanasakaran, Kalaiselvan, Ravi and Ibrahim Kalil. Therefore, Section 145 of Cr.P.C. proceedings has been initiated restraining them from entering into the property. It is relevant to note that the very initiation of Section 145 Cr.P.C. proceedings is not according to law. Section 145 (1) of Cr.P.C. reads as follows:



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“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.”

10. The above provision makes it clear that only if the Magistrate is satisfied himself from a report of the 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, the Magistrate 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. Therefore, for initiation of proceedings under Section 145 of Cr.P.C., the Executive Magistrate must be satisfied about the existence of the dispute and the dispute must relate to the land or water or boundaries thereof and there must be a dispute between two factions of the parties claiming right over the property.



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11. Whereas, in this case, the order passed under Section 145 of Cr.P.C.,

does not indicate that there are two rival groups raising the dispute over the land.

The orders shows as if some of the parties are encroachers and therefore, the proceeding under Section 145 of Cr.P.C. has been initiated. It is relevant to note that the object of Section 145 Cr.P.C. is merely to maintain law and order to prevent breach of peace by maintaining one or other of the parties in possession and not for evicting any person from possession. This has been held by the Hon'ble Supreme Court in *Ashok Kumar Vs. State of Uttarakhand [(2013) 3 SCC 366]*. In the above judgment, it is also held that if one of the party is in possession rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The remedy provided under Section 145 Cr.P.C. is rather summary, in the sense of investing power upon the Executive Magistrate to go into the question of actual or factual possession of the subject matter of dispute in favour of any one of the parties, without actually going into the merits and deciding the rights of the parties. Therefore, when the property was in possession of some so called encroachers, the very initiation of Section 145 proceedings is not proper. If the Government properties have been encroached upon by the third parties, the proper remedy of the Government to evict them by resorting the provisions under the Tamil Nadu Land Encroachment Act. Without doing so, the



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initiation of proceedings under Section 145 of Cr.P.C. cannot be sustained in the eye of law.

12. Further, having passed such a restraint order on 17.12.2008 under Section 145 of Cr.P.C., an extent of 4.21.5 hectares of land has been released in favour of the Tamil Nadu Housing Board. On a perusal of the impugned order of the first respondent, it is seen that the first respondent has decided the title by holding that the sale in favour of the petitioner is not valid and therefore, the impugned order cannot be sustained in the eye of law. Further, the assignment given by the Government in favour of certain individuals has not been disputed. The petitioner has purchased the property from the said assignees. Whether assignment is attached with conditions and it contravene the conditions, which makes the document is not valid, is all the different aspect. In that case, the assignment ought to have been cancelled properly, which have not been done so. Without doing so and without deciding any such things, merely in the parallel proceedings, it cannot be said that the purchase made by the petitioner is not valid. It is for the Government to take appropriate action under the Tamil Nadu Land Encroachment Act, if there are any encroachment in the Government land. Further, if the conditions of assignment are violated, it is for them to restore the



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land as per law. Without doing so, by way of parallel proceedings viz., through the impugned order, it cannot be said that the sale made by the petitioner is not valid.

Therefore, the impugned order is liable to be quashed.

13. Accordingly, this Writ Petition is allowed and the impugned order of the first respondent dated 31.05.2024 is quashed. However, liberty is granted to Government to proceed in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.10.2024

NCC : Yes/No
Index : Yes/No
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To

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Trichy District,
Trichy – 620 001.
- 2.The Revenue Divisional Officer,
Trichy District,
Trichy.



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