



Crl.O.P.No.3817 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.3817 of 2023
and Crl.M.P.No.2383 of 2023

1. B.Mohan
2. B.Murali
3. B.Sekar
4. B.Selvam

... Petitioners

Vs

The Sub-Divisional Magistrate cum
Sub-Collector, Railway Station Road,
NGO Nagar Extension,
Ponneri 601 204.

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C., pleaded to call for records of the proceedings of the respondent in Na.Ka.No.09/2022/Aa1 dated 02.01.2023 under Section 133(a) of the Cr.P.C., and quash the same.

For Petitioners : Mr.P.Chandrasekar

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to quash the order dated 02.01.2023 in Na.Ka.No.09/2022/Aa1 passed by the respondent.

2. Heard both sides and perused the materials available on record.

3. The petitioners owned property comprised in S.No.28/1A1D7, Punjai Survey No.29/1D and in S.No.38 situated at No.60, Thurapallam Village, Gummidipoondi Taluk and they are in possession and enjoyment of the same. The vacant land ad-measuring 0-0.50 ares ($\frac{1}{2}$ cent) comprised in Punjai Survey No.32/2C situated at No.60, Thurapallam Village, Gummidipoondi Taluk, Tiruvallur district owned by the petitioners' mother and the property comprised in S.No.29/1B1 situated at No.60, Thurapallam Village, Gummidipoondi Taluk, Tiruvallur district, owned by the petitioners' father. After executing the settlement deed in favour of the petitioners, they were issued patta in Patta No.3400 dated 07.10.2020. The total extent of the said property is 5 $\frac{1}{2}$ cents and it has been kept vacant, since it is used by the petitioners to reach their house from their land.



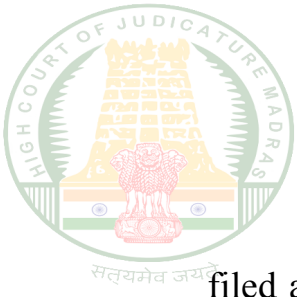
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4. While being so, during the first week of June, 2022, when the petitioners were proceeding to construct a compound wall on both sides of the said property from east to west in order to prevent third parties encroachment, the private individuals lodged a complaint and the same has been referred before the respondent. The respondent conducted enquiry and passed an order dated 02.01.2023, thereby concluding that the property comprised in S.No.29/1B1, in which 0.02.0 ares is used by the general public as pathway to reach their residence as well as all places. Therefore, the petitioners were restrained from constructing any compound wall in and around the said property and also restrained the petitioners from preventing the general public to use the pathway.

5. Admittedly, it is a patta land, which belongs to the petitioners. There is no record to show that in the patta owned by the petitioners, there is a cart track to be used by the general public as pathway. That apart, the petitioners had already filed a suit in O.S.No.273 of 2022 for permanent injunction on the file of the Principal Sub Court, Ponneri. The petitioner also

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filed an application for interim injunction and the same was granted in their favour as against the revenue officials and also private respondents. The interim injunction is still in force. However, without considering the same, the first respondent mechanically passed the order, only on the ground that the said pathway is used by the general public and as such, restrained the petitioners to put up any compound wall and also from preventing the general public from using the said land as their pathway.

6. If at all there is any grievance, the private parties ought to have approached the civil Court claiming their right in the pathway in the petitioners' patta land. Therefore, the first respondent is not the authority to decide the title over the property that too when the civil suit is pending.

7. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the order dated 02.01.2023 in Na.Ka.No.09/2022/Aa1 passed by the respondent is hereby quashed. The private parties are at liberty to approach the civil Court for appropriate relief.



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8. In the result, this Criminal Original Petition is allowed.

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Consequently, connected Miscellaneous petition is closed.

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Index: Yes/No

Speaking Order: Yes/No

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To

1.The Sub-Divisional Magistrate cum
Sub-Collector, Railway Station Road,
NGO Nagar Extension,
Ponneri 601 204.

2.The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN,J.



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