



W.P.(MD) No.10990 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD) No.10990 of 2019

Singaravelu ... Petitioner

Vs

1 The Sub Divisional Magistrate
cum Revenue Divisional Officer,
Karur.

2 Sakthivel

3 Ganesan ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records of the first respondent by the impugned order in Na.Ka.No.A2/930/2019, dated 19.03.2019, and quash the same.

For Petitioner : Mr.M.Viji

For Respondent 1 : Mr.M.Muthumanikkam,
Govt. Advocate.

For Respondents 2 & 3 : Mr.K.Hari Haradoss



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ORDER

The petitioner challenges the proceedings of the first respondent – Sub-Divisional Magistrate – cum- Revenue Divisional Officer, Karur, in Na.Ka.No.A2/930/2019, dated 19.03.2019.

2. The respondents 2 and 3 had lodged a complaint with the first respondent on 25.02.2019. Their objection was that the petitioner and his wife are in occupation of the property situated in New Town Survey No. 311/5A, Old Survey No.735, Block No.8, Ward No.3, of Karur Town, to an extent of 0.038.0 sq.mts. The respondents 2 and 3 pleaded that the land is a Government land. They alleged that the writ petitioner and his wife - Lakshmi have encroached upon the aforesaid land and are running a fish mart and a cold storage facility to store dead bodies on the said land. They further alleged that persons coming to the premises of the writ petitioner are urinating and defecating in and around the area, which is causing nuisance to the public. In addition, they also stated that the shop of the writ petitioner is causing obstruction for the public to use the road abutting the shop.

3. The first respondent took cognizance of the said complaint under Section 133 of the Code of Criminal Procedure, 1973. He issued summons to the respondents 2 and 3, the writ petitioner and his wife, calling



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upon them to appear before him on 11.03.2019. He treated the respondents 2 and 3 as 'A' Party, and the petitioner and his wife as 'B' Party. He recorded evidence of the writ petitioner and his wife as well as that of the complainants. Thereafter, he passed the impugned order on 19.03.2019.

4. He directed the petitioner and his wife to abate the nuisance caused by them or, in default, directed the revenue and municipal officials concerned to ensure that the nuisance created by the petitioner and his wife be removed. He took cognizance of the fact that the petitioner's claim of having been benefited with patta was false and directed that appropriate proceedings be initiated by the revenue department. Challenging the same, the present Writ Petition.

5. This Court had entertained the Writ Petition on 29.04.2019 and issued notice to the respondents, returnable by 17.06.2019. Interim stay was granted.

6. I have heard Mr.M.Viji, learned counsel for the petitioner; Mr.A.Kannan, Additional Government Pleader, for the first respondent; and Mr.K.Hari Haradoss, learned counsel for the respondents 2 and 3.

7. Referring to the impugned order, Mr.Viji submitted that the first respondent had not followed the procedure under Section 133 of the Code of Criminal Procedure, 1973, and that he ought not to have passed a final



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order, without passing a conditional order, as required under the said provision. He further pleaded that the petitioner and his wife had been in occupation of the property for over forty years and eking out their livelihood and, therefore, the impugned order interfered with their rights. He pointed out that the first respondent did not possess jurisdiction to order the cancellation of patta, that had been issued to the writ petitioner, by the appropriate authority.

8. Mr.Hari Haradoss, appearing for the respondents submitted that the business activity of the petitioner was creating a nuisance in the area and, therefore, the first respondent possessed the jurisdiction to pass the order that he did.

9. Mr.A.Kannan pointed out that patta had not been granted to the writ petitioner in the manner contemplated by law and they were merely interlineations in the revenue maps, without prior order supporting such interleniations. He stated that the impuned order had been rightly passed, and this Writ Petition deserves to be dismissed. Mr.Hari Haradoss supported these submissions made by the learned Additional Government Pleader.

10. I have carefully considered the submissions and also gone through the records.



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11. The erstwhile Code of Criminal Procedure empowered a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate, notified by the State Government, to enquire into the matters, covered under Section 133 (1) (a) to 133 (1) (f) of the Code of Criminal Procedure, 1973. Prior to passing any order, discretion was given to the aforesaid three authorities as to whether or not he or she would want to record evidence in the said proceedings. An option was given to the Magistrate, who is enquiring into the issue, to pass a conditional order, directing the person, at whose instance, the nuisance was being caused or obstruction made, to immediately abate the nuisance and/or remove the obstruction. After passing such an order, in case the person, at whose instance the nuisance or obstruction had been caused, objects to the same, the authority was empowered to make the order absolute.

12. Let us now look at the facts of the present case. The possession of the petitioner over the aforesaid area is not in dispute. It is also not in dispute that the writ petitioner and his wife are running a fish stall and a cold storage facility for keeping dead bodies. The fact that on account of urination and defecation, nuisance is being created in and around the area is also not in dispute.



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13. During the course of proceedings, the first respondent examined the respondents 2 and 3 and, thereafter, gave an opportunity to the writ petitioner and his wife. The writ petitioner and his wife deposed that they had come to know about the nuisance and had given an undertaking to the authority that they would remove the nuisance by themselves. This makes it clear that there are no disputed facts involved for the authority to investigate and give a finding upon the allegation made against the writ petitioner and his wife. They appeared before the authority and accepted the allegations levelled against them.

14. Once the facts are admitted, all that the first respondent had to do was, to give a direction to the writ petitioner and his wife to abate the nuisance and also to remove the obstruction. When facts are not in dispute, and when obstruction and nuisance are admitted, the question of holding a further enquiry would, in my opinion, amount to reinventing the wheel. Therefore, the first respondent rightly passed an order, giving an opportunity to the writ petitioner and his wife to remove the nuisance.

15. As pointed out by Mr.Viji, Sub-Divisional Magistrate had given certain directions to the revenue department. The said directions came to be given on account of the plea raised by the writ petitioner that he had been benefitted with patta. In other words, the plea of the petitioner was that he



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was in lawful occupation of the property. This plea having been raised by the writ petitioner. The first respondent, obviously, had to answer the same. Hence, he summoned the Tahsildar and the Village Administrative Officer concerned to verify if the petitioner had been benefitted with a patta for the property under occupation.

16. After going through the records, the Sub-Divisional Magistrate came to the conclusion that no formal proceedings had been passed by any of the authorities in the revenue department, granting the petitioner the right to be in possession of the property. He concluded that the possession of the petitioner and the subsequent settlement deed that had been executed by the petitioner in favour of his wife, were based on certain corrections that had been made in the revenue records, without the same having been backed up by the prior proceedings of the appropriate authorities.

17. Mere fact that this finding had been given does not mean that the revenue authorities can walk into the property and dispossess the writ petitioner. In case the petitioner is in possession of the property without authority of law, the revenue department is always entitled to invoke the appropriate provisions to remove the encroachments, and proceed in accordance with law. For the said purpose, an order passed by the first respondent is neither an essential, nor a condition precedent.



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18. As the petitioner himself has accepted that there is nuisance and obstruction, I do not find anything wrong in the impugned order, passed under Section 133 of the Code of Criminal Procedure. The observations made as regards the alleged unauthorised possession of the writ petitioner and his wife would not bind the revenue authorities, while initiating appropriate action to remove the encroachments, if any.

19. In the light of the above discussion, this Writ Petition is dismissed. No costs. Consequently, the connected W.M.P.(MD) No.8394 of 2019 is closed.

13.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

The Sub Divisional Magistrate
cum Revenue Divisional Officer,
Karur.



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V.LAKSHMINARAYANAN, J.

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