



CRL RC(MD)No.719 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.719 of 2025

1.K.Paramasivan

2.P.Muthupattarajan

3.P.Pattarajan

... Petitioners

Vs.

1.The Sub Divisional Magistrate /
Revenue Divisional Officer,
Collectorate Campus,
Korampallam,
Thoothukudi-628 101.

2.The Tahsildar,
Srivaikundam Taluk,
Srivaikundam,
Thoothukudi District-628 601.

3.The Inspector of Police,
Srivaikundam Police Station,
Srivaikundam,
Thoothukudi District.

4.V.Senthurkumar

... Respondents

*(R-4 is impleaded as the order of this Court dated 05.08.2025 in
Crl.M.P.(MD)No.10173 of 2025 in Crl.RC(MD)No.719 of 2025)*

PRAYER: Criminal Revision Petition is filed under Section 442 of BNSS, to
call for the records to the order passed in Na.Ka.Aa.1/2838 of 2024 on the file



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of the Court of the learned Sub Divisional Magistrate and Revenue Divisional Officer, Thoothukudi Division dated 02.06.2025 and set aside the same.

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For Petitioners : Mr.K.P.S.Palanivel Rajan,
For Mr. A.Robinson

For R-1 to R-3 : Mr.S.Ravi,
Additional Public Prosecutor

For R-4 : Mr.R.J.Karthick

ORDER

Prologue:

This revision arises at the intersection of criminal-preventive powers under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and long-standing civil disputes on the title and users of a village street/drain. The core question is that, could an Executive Magistrate, invoking BNSS Section 166(3) (the analogue of Section 145 Cr.P.C., 1973), direct removal of compound walls/gates on the footing that the public possess a prescriptive right of way/drainage across the petitioners' patta lands, when title and user stand sub judice in a Second Appeal before this Court? The answer, for reasons set out below, is in the negative.

Gist of the Impugned Order:

2. Impugned order passed by the learned Sub-Divisional Magistrate/Revenue Divisional Officer vide Na.Ka.Aa.1/2838 of 2024 dated



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02.06.2025 under Section 166(3) BNSS, 2023, based on the report of the Inspector of Police, Srivaikundam (LIR 145/2024 dated 18.11.2024), and the reports of the Tahsildar, Srivaikundam (Letter No. A5-900-2024 dated 22.11.2024 and A5-893-2025 dated 11.01.2025), regarding alleged obstruction to the public road and drainage channels situated in Srivaikundam Taluk, Peththurai Samipuram Village, Survey Nos. 1007/1B10, 1007/2 and 1100/2, passed against: (i) Thiru. K. Paramasivam, S/o. Kalimuthu, Nadutheru, Peththurai Samipuram, Srivaikundam, (ii) Thiru. P. Muthupatturajan, S/o. Paramasivam, No. 57-2, Peththurai Samipuram, Srivaikundam, (iii) Thiru. P. Pattarajan, S/o. Paramasivam, Nadutheru, Peththurai Samipuram, Srivaikundam.

Gist of the allegations:

3. The revision petitioners / respondents constructed a retaining wall of two feet in height and thirty feet in length at the end of the street in survey No. 1007/1B10, thereby blocking rainwater drainage allegedly in public use for about 70 years, resulting in stagnation and flooding of nearby houses. The accused blocked a pathway used for several years by the general public and agricultural vehicles by erecting a wall in survey No. 1007/2, thereby obstructing the public right of way. When Town Panchayat authorities attempted to clean the drainage channel in survey No. 1100/2, the revision petitioners / respondents objected, resulting in stagnation of wastewater and



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public health hazards.

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4. The revision petitioners / respondents appeared in person on 29.01.2025 before the Sub Divisional Magistrate and Revenue Divisional Officer, Thoothukudi Division, and submitted the written explanations as follows:

The disputed lands are patta lands belonging to them and their family members. There has never been any drainage channel in Survey No. 1007/1B10. There is no public pathway in Survey No. 1007/2, and the pathway belongs to private individuals. In Case No. A.S.No. 41/2011 before the learned Subordinate Court, Thoothukudi, no relief was granted to them. An appeal on the same matter is pending before this Court in S.A.(MD) No. 45/2013. Stagnation of rainwater occurred due to the Town Panchayat's failure to properly establish drainage channels. The complaint was filed out of personal enmity and malice.

5. Having received the written explanations, the learned Sub-Divisional Magistrate/Revenue Divisional Officer, Thoothukudi Division, framed three issues and decided as follows.



6. **Issue No.1:**

Whether any obstruction has been caused in the rainwater drainage channels situated in Survey Nos. 1007/1B10 and 1100/2?

6.1. According to the Tahsildar's and the Revenue Divisional Officer's reports, field inspection established that rainwater has flowed for many years through Survey No. 1007/1B10. As per the map approved by the Executive Officer, Srivaikundam Town Panchayat, the area in question is described as "Keelatheru" and identified as a rainwater drainage passage.

6.2. In ***Municipal Council, Ratlam v. Vardhichand***¹, the Hon'ble Supreme Court held that "where citizens are exposed to conditions of filth and squalor impairing health, municipal authorities or private actors contributing to the nuisance can be compelled to act; the right to live with dignity and cleanliness is part of Article 21."

6.3. Applying the above, the authority reasoned that although the revision petitioners / respondents claim the lands as patta property, the public have used the path continuously for several years as an easement of necessity. Hence, the respondents' contention is unsustainable. Due to the obstruction, rainwater has stagnated during monsoons, and flooding has occurred in more

¹ AIR 1980 SC 1622



than 35 houses, as revealed during a field enquiry among residents.

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6.4. In **Krishnaram Mahale v. Shobha Venkatrao**², the Hon'ble Supreme Court expanded Article 21 to include the right to live in a clean and safe environment, emphasizing the public right to unobstructed drainage.

6.5. Finding: Obstructing rainwater drainage in Survey No. 1007/1B10 and refusing permission to clean the drain in Survey No. 1100/2 constitute public nuisance and violate citizens' rights.

7. **Issue 2:**

Whether Survey No. 1007/2 is a public pathway?

7.1. The revision petitioners / respondents contended that the 10-feet-wide pathway is their private property and not used by agricultural carts/tractors. Field inspection, however, revealed decades-long use as a connecting road between agricultural lands and the main road, and the agricultural lands exist to the east of Survey No. 1007/2.

7.2. In **G. Venkataswami Naidu v. State of Andhra Pradesh**³, long-

2 AIR 1989 SC 2097



standing, open, and uninterrupted public use “as of right” gives rise to a prescriptive easement. Similarly, in ***K.K. Varghese v. State of Kerala***⁴, the Hon'ble Supreme Court held that the State must protect pathways used by the public for decades, regardless of private ownership claims.

7.3. Section 15 of the Indian Easements Act, 1882, provides that peaceable, open, “as of right” enjoyment for twenty years confers an easement by prescription, the period being computed backward from when the right is first denied.

7.4. Additionally, in A.S.No. 41/2011, the learned Subordinate Court, Thoothukudi, recognized this stretch as a public pathway. Until disposal of S.A.(MD) No. 45/2013 before this Court, that finding is not stayed or barred.

7.5. Finding: Survey No. 1007/2 has long been a public pathway. Hence, the obstruction is illegal.

3 AIR 1971 SC 720

4 (2007) 3 SCC 467



8. Issue 3:

Whether the respondents' actions constitute public nuisance?

8.1. By preventing the flow of rainwater, causing stagnation and unhygienic conditions in more than 50 houses, and by constructing walls obstructing public pathways and drainage facilities used for decades by residents of Peththurai Samipuram, the revision petitioners / respondents have caused public nuisance.

8.2. Finding: The revision petitioners / respondents' actions legally amount to public nuisance.

Conclusions recorded in the impugned order:

9. As per revenue records (as on 19.11.2024), ownership details stand noted. The respondents constructed walls obstructing pathways and drainage channels in Survey Nos. 1007/1B10 and 1007/2, in public use for a long time. In Survey No. 1100/2, where wastewater drainage runs, respondents obstructed local body authorities from cleaning the channel. The plea of patta ownership does not justify infringement of public rights. The respondents' acts are contrary to Supreme Court precedents. Their explanations are unreasonable and unsupported by evidence. Lands in Srivaikundam Taluk, Srivaikundam Village, Peththurai Samipuram, bearing Survey Nos. 1007/1B10, 1007/2 and 1100/2, have been openly, continuously, and "as of



right” used by the public for several decades as public pathways and rainwater/wastewater drainage channels. Accordingly, invoking the cited Supreme Court decisions and Section 15 of the Easements Act, 1882, these lands are deemed to have acquired the status of permanent easements by prescription in favour of the public.

10. Invoking Section 166(3) BNSS, 2023, the authority on 02.06.2025 issued the following directions:

(i) The respondents shall remove all constructions/walls obstructing public pathways/drainage in Survey Nos. 1007/1B10, 1007/2 and 1100/2 on or before 20.06.2025.

(ii) Failing which, the Executive Officer, Srivaikundam Town Panchayat, after due notice, shall remove such constructions/walls on or before 30.06.2025.

(iii) The Executive Officer shall restore public pathways/drainage to their original condition for public use.

(iv) The Tahsildar, Srivaikundam, and the Inspector of Police, Srivaikundam, shall extend full cooperation.

(v) The Tahsildar shall submit a report on or before 30.06.2025 regarding removal.



(vi) The Inspector of Police shall ensure adequate security and take appropriate legal action in case of non-cooperation.

(vii) Failure to comply shall attract proceedings under Section 223 of the Bharatiya Nyaya Sanhita, 2023.

11. Challenging the above, the respondents have filed the present Criminal Revision Petition on the following grounds.

Grounds in Revision:

12. The impugned order suffers from non-application of mind and is liable to be set aside. The impugned order is unsustainable in law and on facts and is liable to be set aside. The first respondent was fully aware of the Second Appeal pending before this Court in S.A.(MD) No. 45 of 2013. Earlier, the first petitioner's wife, Thangaisakki, filed O.S. No. 39 of 2006 before the learned District Munsif Court, Srivaikuntam, seeking declaration of title and injunction. By judgment dated 30.11.2010, the suit was decreed. On appeal, A.S. No. 41 of 2011 before the learned Sub-Court, Thoothukudi, reversed the decree. Against that, the first petitioner's wife filed S.A.(MD) No.45 of 2013, which is pending. Being aware of this pendency, the first respondent ought to have abstained from passing the impugned order as it violates the doctrine of sub judice.



13. On the basis of a complaint by one Senthur Kumar, alleging encroachment on a public pathway, the municipality registered Na.Ka.No. 280/2022 and directed a survey. The Revenue Inspector, in the presence of parties, conducted a survey and submitted a report dated 08.08.2024 to the third respondent stating that there were no encroachments and emphasizing that the petitioners' house and compound walls stand within their patta land. Despite these apparent materials, the first respondent arbitrarily passed the impugned order without due consideration. Hence, it is liable to be set aside.

14. The first respondent, proceeding under Section 166(3) BNSS, directed removal of compound walls and other constructions in Survey Nos. 1007/1B10, 1007/2 and 1100/2 on or before 20.06.2025. Unless set aside, the petitioners will suffer serious prejudice and irreparable loss.

Submissions:

15. The learned senior counsel Mr.K.P.S.Palanivel Rajan appearing for the petitioners submitted that the impugned order explicitly proceeds under Section 166(3) BNSS (corresponding to Section 145 Cr.P.C., 1973), which is confined to breach-of-peace disputes concerning possession of land or water. By its tenor, the order adjudicates an alleged obstruction to stormwater drainage and a claimed public pathway, which, if at all, would fall within the domain analogous to right of user proceedings (Cr.P.C., s.147) or public



nuisance (Cr.P.C., s.133; BNSS s.156), not a pure s.145/BNSS-166(3) possession enquiry. Reliance on Section 164(4) & 164(6)(a) BNSS (the possession-only enquiry and the scope of parties) is misplaced in an order that, in effect, travels into user rights/public drainage issues beyond the narrow remit of a 145/BNSS-166 proceeding.

16. BNSS 166(3) requires the Executive Magistrate to found satisfaction on a police report contemporaneous to the dispute, since the scheme contemplates fresh/continuous inputs, as pointed out by the learned senior counsel for the petitioners as a “three-month” proviso/check. Here, the inquiry was initiated in November 2024, while the final order is dated 02.06.2025 came to be passed well beyond the contemplated window, without any continuous police updates forming the live basis of satisfaction. The order is therefore without jurisdiction/nullity for breach of the statutory timeline discipline built into 166(3).

17. The respondent authority’s own counter affidavit acknowledges that a civil Second Appeal since 2013, is pending before this Court on the very dispute. Earlier civil proceedings and decrees including the petitioners suit and decree from 2010, recognise the pendency of the petitioner’s civil suit for title and possession. Once title/possession issues are sub judice in Civil Courts, an Executive Magistrate cannot render findings camouflaging them as



a 166/145 order. The proper course is to maintain *status quo* as to possession and relegate parties to the civil forum. Any contrary adjudication exceeds jurisdiction.

18. The impugned order and the authorities' stance effectively declare the petitioner's construction a "common pathway" obstruction, directing removal akin to a permanent injunction/encroachment eviction decree which a 166/145 forum cannot do. The learned counsel for the petitioner further cites this Court's decision in CRL RC(MD)No.902 of 2024, where the Court held that the Executive Magistrate exceeded jurisdiction by opining on title/forgery and by directing removal of alleged encroachment; such orders are unsustainable in 145-type proceedings.

19. The final order is dated 02.06.2025 and the Magistrate's "Iruthi Utharavu" (final direction) demands immediate removal, thereby stultifying the statutory right of revision under Limitation Act s.115B and further pointed out the limitation of 30 days to District Court, 60 days to High Court. An executive direction that compels compliance before expiry of the revision window impermissibly "puts a dagger" on the vested right of revision and violates due process.



20. The impugned order cites survey numbers that, as per the petitioner, do not tally with any recognised common pathway. The Tahsildar's report dated 06.08.2024 is said not to support a 166-style breach-of-peace possession action; without a compliant police report and proper correlation of survey numbers, the satisfaction under 166(3) is untenable.

21. If the land were truly Government/local body or a public pathway, the bar under s.22A would have precluded the 2013 settlement (mother to petitioner) and subsequent registrations touching such land. The absence of any 22A embargo historically undermines the afterthought claim that the property is a public pathway.

22. The impleading applicant is not the prosecution agency that triggered BNSS 166; he was not even a party to earlier civil suits. In a possession-focused 166/145 enquiry under 164(4), roping in third-party "public" claimants expands the proceeding beyond its statutory compass. The petitioner seeks opportunity to file a counter but disputes the necessity and maintainability of such impleadment altogether.

23. The petitioner asserts continuous possession since 2010 (earlier by the mother), supported by decrees. The stormwater narrative is a collateral



device to convert a private title/possession dispute into a public user case; any drainage/right-of-way conflict must be pursued in the proper civil/municipal forum, not via a 166/145 shortcut. The learned senior counsel categorically sought to set aside the impugned order for want of jurisdiction, timeline breach, civil pendency, and denial of revision rights.

24. The learned Additional Public Prosecutor Mr.S.Ravi submitted that the case is not about possession but a “dispute concerning the right of use of land or water,” i.e., an access/drainage pathway obstructed by the petitioner’s wall and iron gate across East Street. Multiple public complaints prompted the learned Executive Magistrate to act under the BNSS analogue of Cr.P.C., s.147 (right of user), and to rely on BNSS s.166 for his preventive/remedial jurisdiction. The learned Additional Public Prosecutor further submitted that the petitioner’s characterisation as a 145/possession case is incorrect.

25. He further submitted that the findings of the 1st respondent Magistrate formed satisfaction on the police report(s), Tahsildar’s report, and the RDO’s field inspection/verification. He further pointed out that the impleading applicant’s typeset includes the approved building plan explicitly showing a street where the petitioner has constructed across/closed it, producing floodwater stagnation during monsoons with photographs corroborating the obstruction as claimed.



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26. He made it a point that, while the petitioner cites an earlier decree, the appellate judgment recognises the pathway as common and records that the petitioners obstructed it. He insisted that the local body is not required to be the appellant for the pathway to be common and user by the public/agricultural access suffices to characterise it as a right of user controversy.

27. The learned Additional Public Prosecutor categorically contended that, the learned Executive Magistrate's preventive/remedial jurisdiction is not eclipsed merely because a second appeal has been pending since 2013, more particularly where fresh obstruction like a wall/gate has been recently erected, leading to public nuisance and flooding. He stressed upon recency that, despite the long-pending appeal, the petitioner built the wall/gate only now, triggering law-and-order/public inconvenience. Preventive authority may intervene to abate nuisances and maintain peace, without deciding title.

28. The learned Additional Public Prosecutor made it clear that, satisfaction is based on cumulative materials, including police, revenue, and executive inspection. The petitioner's "three-month" construction is hyper-technical whereas the statute requires credible satisfaction, which exists here. The impugned order dated 02.06.2025 reflects due process after enquiry and



there is no fatal delay.

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29. The learned Additional Public Prosecutor further clarified that, the State does not claim ownership over the petitioner's property. The case is limited to restoring public user/drainage along the common pathway. The Registration Act, 1908, s.22A point is inapposite because no State title is asserted; the issue is obstruction of the user, established through the plan and inspections. Seeking to sustain the impugned order, upholding the learned Executive Magistrate's direction to remove the obstruction so that stormwater may flow and public access be restored, the learned Additional Public Prosecutor pressed for dismissal of the criminal revision petition.

30. The learned Counsel Mr.R.J.Karthick appearing for the 4th respondent, submitted that, as a resident of the same village and now the first defendant in O.S. No.46/2025 (learned Principal District Munsif Court, Srivaikuntam), the learned counsel for the 4th respondent asserts direct impact from the petitioner's closure of East Street and drainage choke for the past 10 years. Pointing out that, the building plan approval obtained by the petitioner acknowledges the street, he categorically contended that, despite this, a compound wall and iron gate now block both sides, converting the street into a private enclosure, resulting in stagnant rainwater during monsoons. Placing before me a photo of a monsoon versus a normal-day view, the learned counsel



evidenced that the obstruction alone causes flooding rather than any natural defect.

31. He further insisted that the learned Civil Appellate Court recorded that the stretch is a common pathway used by all and that the petitioners obstructed it, aligning with the Magistrate's conclusion. He also pointed out that the impugned order's survey references, including 1B5/1B10 etc., match the layout reflected in the plan and field inspection; the petitioner's objection on the survey mismatch is an afterthought to deflect the plain plan depiction of a public street. Accordingly, he sought to dismiss the criminal revision case, affirming the order directing removal of the wall/gate to restore the public pathway and storm-water drainage.

32. Heard the learned Counsel Mr.K.P.S.Palnivel Rajan, for the petitioners, the learned Additional Public Prosecutor Mr.S.Ravi for the respondents 1 to 3, Mr.R.J.Karthick, learned counsel for the 4th respondent and carefully perused the materials available on record.

33. *Points for Determination:*



(i) Whether the Executive Magistrate could, under BNSS Section 166(3), adjudicate a right of public user/drainage and direct removal of constructions/walls?

(ii) Whether the impugned order is vitiated by the statutory scheme and timeline discipline attributed to Section 166(3)?

(iii) Effect of pending civil proceedings (S.A.(MD) No.45 of 2013) on the learned Executive Magistrate's jurisdiction and relief granted.

(iv) Whether the peremptory demolition within dates fixed (20.06.2025/30.06.2025) unlawfully chills or stultifies the petitioners' right to pursue revision/appeal.

(v) Appropriate relief, including interim civic arrangements for drainage and public convenience, without trenching upon civil rights.

Analysis:

34. For better appreciation Section 166 of BNSS,2023, is extracted as follows:

166. Dispute concerning right of use of land or water - (1)

Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed



as an easement or otherwise, 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 an advocate on a specified date and time and to put in written statements of their respective claims.

Explanation.—For the purposes of this sub-section, the expression "land or water" has the meaning given to it in sub-section (2) of section 164.

(2) The Magistrate shall peruse the statements so put in, under sub-section (1), hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 164 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at



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particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

35. Section 164 of BNSS,2023, is extracted as follows:

164. 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 an advocate, 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.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Sanhita for the service of summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall, without reference to the merits or the



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claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

36. Point (i) Whether the Executive Magistrate could, under BNSS Section 166(3), adjudicate a right of public user/drainage and direct removal of constructions/walls?

36.1. BNSS 166(3), in substance, succeeds Cr.P.C., 145: it empowers an Executive Magistrate to prevent breach of peace by determining who was in actual possession on the relevant date and to maintain such possession till evicted in due course of law. The jurisdiction is summary and preventive, not plenary. It does not clothe the Magistrate to adjudicate title or to grant



eviction/demolition on disputed user claims. The impugned order, however, goes much further: (a) it finds decades-long easement by prescription in favour of the public under Section 15, Easements Act, 1882; (b) it treats the lands as having “acquired the status of permanent easements”; and (c) it commands removal of walls/gates. This travels beyond the fence of a 166/145 proceeding. Even if the materials suggest a public nuisance/user issue, the proper statutory lanes are BNSS 156 (public nuisance, akin to CrPC 133) or proceedings devoted to right of user (akin to CrPC 147), or a civil/municipal process, not 166(3).

36.2. In the given circumstances of this case, it would be useful to refer the judgment of the Hon’ ble Apex Court in **Ranbir Singh Vs Dalbir Singh and Others**⁵, in which the Hon’ ble Supreme Court has held that in a proceeding under Section 145 Cr.P.C., 1973, the main concern should be the possession of the property in dispute on the date of the final order, if any, within two months prior to that date and the relevant portion of the same is extracted as follows:

“7. On perusal of the relevant papers on the record and on consideration of the contentions raised by learned counsel for the parties, we are of the view that in the context of the facts of this case, the order passed by the High Court setting aside the order dated 11.7.2000 passed under Section 145(1) as well as the order dated 14.11.2000 passed

⁵ 2002 3 SCC 700



under Section 146(1) Cr.P.C. is unassailable.

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8. However, the High Court was in error in dealing with the Revision Petition as if it was exercising appellate jurisdiction. The High Court has dealt with the developments in the case relating to the acquisition of title, the allegations of fraudulent transfers made by Karnail Singh and M/s.Homestead and the circumstances in which the suit was dismissed as withdrawn. Keeping in view the limited scope of the proceeding under Section 145, Cr.P.C. these questions were not material for determination of the main issues in the case. The Court, while dealing with a proceeding under Section 145 Cr.P.C., is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) Cr.P.C. and sustainability of the order of attachment passed under Section 146(1) Cr.P.C. For deciding the questions it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property. Further, both the parties in the case have filed suits seeking decree of permanent injunction against each other and in the suit filed by the appellant an order of interim injunction has been passed and an objection petition has been filed by respondent no.1. The suits and the interim order are



pending further consideration before the civil court.

9. *In these circumstances, we are of the view that while maintaining the order of the High Court quashing the preliminary order passed by the Sub-Divisional Magistrate under Section 145(1) and the order of attachment of the property under Section 146(1) Cr.P.C., leave should be granted to the parties to approach the civil court for appropriate interim order and the civil court should deal with the application for interim order without being influenced by the observations made/findings recorded by the High Court in the impugned judgment. It is ordered accordingly.*

10. *In order to enable the parties to approach the civil court for interim order and with a view to avoid further complication in the matter, the interim order passed by this Court on 18.01.2002 directing status quo regarding possession of the property in dispute to be maintained shall remain in force for a period of three weeks from today.”*

36.3. It would be necessary to refer the judgment of the Hon’ ble Apex Court in ***Rame Gowda (D) By Lrs Vs. M.Varadappa Naidu (D) By Lrs and another⁶*** and the relevant portion of the same is extracted as follows:

“ 8.... If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the

⁶ AIR 2004 SC 4609



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trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors. case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by



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force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force..”

36.4. In view of the discussion above, I am of the considered view that, the learned Executive Magistrate exceeded jurisdiction under 166(3).

37. Point (ii) Whether the impugned order is vitiated by the statutory scheme and timeline discipline attributed to Section 166(3)?

37.1. The statutory architecture of 166/145 contemplates a live apprehension of breach of peace based on police report/information proximate



to the event, leading to prompt preliminary and final orders. Here, the trigger materials are dated 18.11.2024, 22.11.2024 and 11.01.2025, but the final order issues on 02.06.2025, with no indication of continuing police updates forming the final substratum. While no rigid “three-month” outer-limit is textually demonstrated before me, the absence of a contemporaneous, live-breach assessment and the grant of demolition relief together vitiate the exercise.

37.2. Accordingly, I find that, the order lacks the contemporaneous satisfaction discipline inherent in 166 proceedings. This compounds the jurisdictional error.

38. Point (iii) Effect of pending civil proceedings (S.A.(MD) No.45 of 2013) on the Executive Magistrate’s jurisdiction and relief granted.

38.1. The parties admit pendency of Second Appeal on the very subject; earlier civil decrees/judgments are relied upon on both sides. The more sub judice the merits, the narrower the room for summary criminal-preventive adjudication to trench upon civil rights. Far from maintaining possession to avert breach, the impugned order declares prescriptive public rights and directs demolition, outcomes that pre-empt the civil field. Preventive powers do not collapse due to pendency *per se*; but they must be exercised with restraint to avoid prejudging civil issues. That restraint is absent here.



38.2. Hence, I don't have any hesitation to say that the impugned order trenches upon matters sub judice and pre-judges user/title in a summary forum and the same is impermissible.

39. Point (iv) Whether the peremptory demolition within dates fixed (20.06.2025/30.06.2025) unlawfully chills or stultifies the petitioners' right to pursue revision/appeal.

39.1. The directions to remove constructions by 20.06.2025, with fallback municipal removal by 30.06.2025, operate within the limitation window for statutory remedies, thereby stultifying the right to seek revision/appeal. Executive action should accommodate the litigant's avenue for judicial review, especially where the order effects irreversible consequences (demolition).

39.2. Hence, it is my considered view that, the peremptory schedule chills the petitioners' remedial rights and offends due process.

40. Point No.(v) -Appropriate relief, including interim civic arrangements for drainage and public convenience, without trenching upon civil rights.

Discrepancies in survey correlation and the s.22A argument were urged.



I refrain from adjudicating those on merits, since both belong more aptly to the civil fora. It suffices to record that even assuming the State's factual premise, the chosen jurisdiction/provision and relief are legally untenable for reasons above.

41. In view of the above, the impugned order dated 02.06.2025 passed by the Revenue Divisional Officer, Srivaikundam, in Na.Ka.Aa1-2838-2024, is set aside for (i) misapplication of BNSS Section 166(3), (ii) excess of jurisdiction in adjudicating prescriptive easement/user and directing demolition, (iii) failure to maintain the contemporaneous, preventive character of the enquiry, (iv) expansion of parties/issues beyond a 166/145 remit, and (v) peremptory directions that stultify statutory remedies.

42. This order does not pronounce on title or easementary rights of either side. The competent authorities are at liberty to proceed, if so advised, under the appropriate statute and provision (e.g., BNSS public-nuisance jurisdiction, municipal statutes, or by approaching the civil court) strictly in accordance with law, after issuing due notice and affording an opportunity of hearing, and without relying on or importing any finding from the set-aside order.

43. The pendency of S.A.(MD) No.45 of 2013 shall be unfettered by any observation herein; parties may pursue appropriate interim reliefs before the



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44. To avert hardship to residents pending proper proceedings, the Executive Officer, Srivaikundam Town Panchayat, may, within two weeks, undertake non-structural, reversible measures (e.g., temporary desilting/pumping, sand-bag channels, grating/slucice management) that do not alter or demolish the petitioners' existing boundary walls/gates, to facilitate storm-water/runoff and public hygiene, with the aid of the 3rd respondent as necessary.

45. The petitioners shall co-operate with such minimal measures; refusal or obstruction to these temporary initiatives warrants criminal action.

Epilogue:

46. Preventive criminal jurisdiction is a shield against breach of peace, not a sword to carve out civil rights or decree demolitions. Where civil contests on title/user are alive, the learned Executive Magistrates must eschew adjudicatory overreach and confine themselves to status-preserving directions. Equally, civic bodies retain a duty to safeguard public health and drainage, but through lawful, proportionate, and reversible steps pending adjudication. This calibrated path alone preserves peace, rights, and the rule of law.



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47. In fine, this Criminal Revision case is allowed. No costs.

27.11.2025

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

To

- 1.The Sub Divisional Magistrate /
Revenue Divisional Officer,
Collectorate Campus,
Korampallam,
Thoothukudi-628 101.
- 2.The Tahsildar,
Srivaikundam Taluk,
Srivaikundam,
Thoothukudi District-628 601.
- 3.The Inspector of Police,
Srivaikundam Police Station,
Srivaikundam,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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27.11.2025