



Crl.OP(MD)No.13098 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2026

PRONOUNCED ON : 01.06.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.13098 of 2024

and

Crl.M.P.(MD)Nos.8048 & 12060 of 2024 and 10703 of 2025

Girija Mallika

... Petitioner/Accused

Vs.

1. The State of Tamilnadu,
Rep by the Sub Divisional Magistrate cum
Revenue Divisional Officer,
Periyakulam,
Theni District.

2. The Sub inspector of Police,
Palanichettipatti Police Station,
Theni District.

.... Respondents / Complainants

3. Malathi

4. Gubendran

5. Shanthi

6. Dhinakaran

7. Karthiga

..... Respondents /
Defacto Complainant



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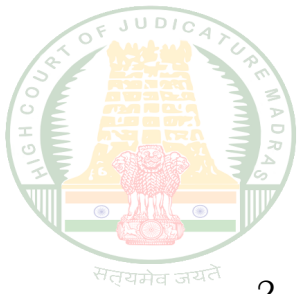
Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for records relating to the proceedings in M.C.No.504/2024/A4 dated 30.07.2024 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.D.Venkatesh
For R-1 & R-2 : Mr.M.Sakthi Kumar,
Government Advocate (Crl. side)
For R-3 : Mr.C.Jegannathan

ORDER

Prologue:

The present Criminal Original Petition is yet another illustration of the uneasy overlap between a civil dispute touching possession and title on the one hand, and the preventive jurisdiction of the Executive Magistracy on the other. The petitioner seeks to quash the proceedings initiated by the first respondent in M.C.No. 504/2024/A4 dated 30.07.2024, invoking the preventive jurisdiction referable to Section 145 of the Code of Criminal Procedure, 1973, now corresponding to Section 164 of the Bharatiya Nagarik Suraksha Sanhita, 2023.



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2. The gravamen of the petitioner's grievance is that when a competent Civil Court has already adjudicated the rights of the parties in respect of the subject property and when execution proceedings are also stated to be pending at the final stage, the Executive Magistrate could not have initiated parallel proceedings under Section 164 BNSS. According to the petitioner, the impugned proceeding is a colourable exercise of preventive jurisdiction and is liable to be interdicted at the threshold.

3. Per contra, the contesting respondents would submit that the impugned proceeding is only a notice requiring the parties to appear before the Revenue Divisional Officer / Sub-Divisional Magistrate and produce their documents with regard to actual possession. According to them, no final order has been passed and, therefore, the present petition is premature.

Case of the Petitioner:

4. The petitioner submits that the land in Survey No. 1454/1A2, measuring an extent of 0.10.5 hectares, situated at Veerapandi Village, stands in the name of her two daughters.



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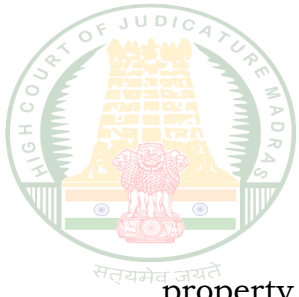
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According to her, the said property had been settled in favour of her daughters and they have been in lawful possession and enjoyment of the same.

5. It is the specific case of the petitioner that her two daughters instituted a civil suit in O.S.No.84 of 2012 on the file of the learned District Munsif Court, Theni, against Palaniyappa Pasana Paribalana Sabai, represented by its administrators, seeking the relief of permanent injunction restraining interference with possession, mandatory injunction for removal of bridge and pathway, and consequential reliefs.

6. The said suit, according to the petitioner, was decreed by judgment and decree dated 27.01.2021 in favour of her daughters. The petitioner would contend that the decree has attained finality, no appeal having been preferred against the same.

7. Pursuant to the said decree, the petitioner's daughters are stated to have filed E.P.No.14 of 2021 before the learned District Munsif Court, Theni, for execution. It is further contended that the



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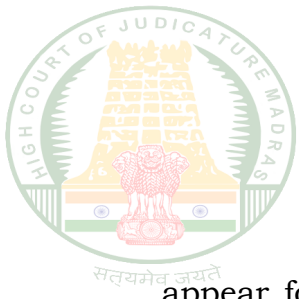
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property was surveyed, fencing was put up with the assistance of the Court process, and only the formal recording of delivery remains.

8. The petitioner would further submit that on 26.04.2024, the private respondents and others formed an unlawful assembly, trespassed into the property, damaged the fence and tin shed, abused the petitioner in filthy language and threatened her. On the basis of her complaint, a case was registered in Crime No.184 of 2024 for the offences under Sections 147, 148, 447, 294(b), 323, 427 and 506(ii) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

9. According to the petitioner, instead of protecting her lawful possession and acting on the criminal trespass committed by the private respondents, the second respondent police forwarded a report to the first respondent as though there was a dispute between two groups creating likelihood of breach of peace.

10. On such reference, the first respondent initiated proceedings in M.C.No.504/2024/A4, directing both parties to



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appear for enquiry on 02.08.2024 at 3.30 p.m., either in person or through counsel, with relevant documents.

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Grounds for Quash:

11. The principal grounds urged by the petitioner are as follows:

i. The impugned proceeding does not record the subjective satisfaction of the Executive Magistrate as mandated under Section 164(1) BNSS / Section 145(1) Cr.P.C.

ii. The first respondent has mechanically issued a notice as though summoning parties, without recording the grounds of satisfaction regarding likelihood of breach of peace.

iii. The existence of the civil decree in O.S.No.84 of 2012, dated 27.01.2021, operates as a complete bar against the initiation of proceedings under Section 164 BNSS.

iv. The dispute has already been adjudicated by a competent Civil Court and, therefore, the parties cannot be compelled to re-agitate possession before the Executive Magistrate.



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v. Execution proceedings in E.P.No.14 of 2021 are pending and the Executive Magistrate cannot trench upon the domain of the executing Court.

vi. The private respondents, who have not challenged the civil decree, cannot indirectly reopen the dispute through preventive proceedings.

vii. The impugned proceeding amounts to an abuse of process of law and deserves to be quashed in exercise of the inherent powers of this Court under Section 528 BNSS.

Arguments on either side:

12. The learned counsel for the petitioner submitted that the entire proceeding is without jurisdiction. It was contended that the petitioner's daughters have obtained a decree from the Civil Court and, therefore, the Revenue Divisional Officer cannot assume jurisdiction under Section 145 Cr.P.C. / Section 164 BNSS.

13. The learned counsel drew the attention of this Court to the decree dated 27.01.2021 in O.S.No.84 of 2012 and submitted that



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the Civil Court has already recognised the right and possession of the petitioner's daughters over the subject property.

14. It was further submitted that the private respondents had trespassed into the property, damaged the fence and threatened the petitioner, which resulted in registration of Crime No.184 of 2024. According to the petitioner, the very FIR would show that the petitioner was in possession of the property.

15. The learned counsel also submitted that the execution proceedings have reached an advanced stage and that several execution applications filed by the contesting parties were dismissed. It was therefore argued that the private respondents, without filing any appeal against the decree, cannot seek to disturb the decree-holder's possession by invoking Section 145 Cr.P.C. proceedings.

16. Reliance was placed upon the judgment in ***M.Padma v. The Commissioner of Police***¹, wherein it was held that when the rights of parties had already been adjudicated by the Civil Court, proceedings under Section 145 Cr.P.C. ought not to be permitted to

¹ CrI.O.P.(MD) No.1504 of 2019



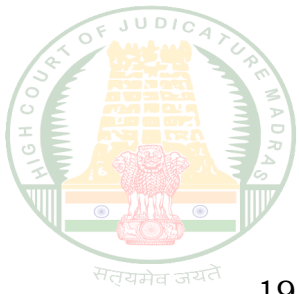
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continue. On the above submissions, the learned counsel prayed that the impugned proceedings in M.C.No.504/2024/A4 dated 30.07.2024 be quashed.

17. The learned Government Advocate appearing for the official respondents submitted that the impugned communication is only a notice calling upon the parties to appear for enquiry and produce their documents. It was contended that no final order has been passed under Section 145 Cr.P.C. / Section 164 BNSS.

18. The learned counsel appearing for the private respondents submitted that the decree relied upon by the petitioner is an ex parte decree obtained against third parties and that the contesting respondents dispute the petitioner's claim of possession. It was further submitted that the petitioner's claim over 25 cents is itself disputed. According to the private respondents, one Jagannathan originally had 60 cents, out of which power had been given in respect of 51.75 cents, leaving only 8.25 cents. It was contended that the settlement deed executed in favour of the petitioner's daughters claiming 25 cents is itself questionable.



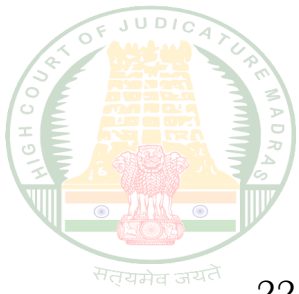
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19. It was also argued that patta proceedings were initiated before the revenue authorities and that the patta relied upon by the petitioner was cancelled. It was submitted that the order of the Revenue Divisional Officer was confirmed by the District Revenue Officer and that a writ petition is pending against the said revenue proceedings.

20. The private respondents further submitted that the pathway is used by nearly 500 persons and that the petitioner had obstructed the pathway by putting up fencing. It was therefore contended that there was a real likelihood of breach of peace, warranting intervention by the Executive Magistrate.

21. Reliance was placed upon the decision in ***Thirkoti Dharmarao v. The Station House Officer***², wherein it was held that when the impugned proceeding is only a notice requiring appearance before the Sub-Divisional Magistrate and no final order has been passed, the petition challenging such notice is premature.

² CrI.O.P.No.26375 of 2022



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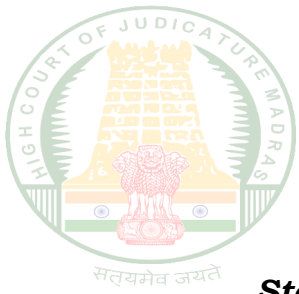
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22. The learned Government Advocate submitted that the petitioner may appear before the Revenue Divisional Officer and place all her documents, including the civil decree, execution records and FIR, and that the first respondent would consider the same in accordance with law.

23. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for Consideration:

24. The point that arises for consideration is whether the notice / preliminary proceeding issued by the first respondent in M.C.No.504/2024/A4 dated 30.07.2024 under Section 145 Cr.P.C. / Section 164 BNSS is liable to be quashed at the threshold in exercise of the inherent jurisdiction of this Court under Section 528 BNSS, particularly in the light of the civil decree relied upon by the petitioner?



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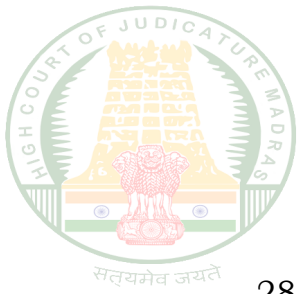
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Statutory Scheme:

25. Section 145 Cr.P.C., now substantially corresponding to Section 164 BNSS, confers preventive jurisdiction upon the Executive Magistrate where he is satisfied from a police report or other information that a dispute likely to cause breach of peace exists concerning any land, water or boundaries thereof.

26. The jurisdiction is preventive and not adjudicatory. The Executive Magistrate does not decide title. The enquiry is confined to the question as to which party was in actual possession on the relevant date, subject always to the adjudication of competent Civil Courts.

27. However, the *sine qua non* for invocation of such jurisdiction is the satisfaction of the Magistrate regarding the existence of a dispute likely to cause breach of peace. Such satisfaction cannot be an empty formality. It must be discernible from the preliminary order.



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28. At the same time, every notice calling upon parties to appear before the Executive Magistrate cannot be treated as a final adjudication. If the proceeding is merely at the stage of calling for appearance and production of documents, ordinarily, the parties must first participate in the enquiry and place their objections before the competent authority.

Analysis:

29. In the case on hand, the petitioner has placed strong reliance upon the decree in O.S.No.84 of 2012, dated 27.01.2021, and the pending execution proceedings in E.P.No.14 of 2021. The petitioner is right in contending that when a Civil Court decree is in force, the Executive Magistrate cannot sit in appeal over the decree nor can he nullify or dilute the effect of the civil adjudication.

30. The preventive jurisdiction under Section 145 Cr.P.C. / Section 164 BNSS cannot be converted into a parallel civil forum. The Executive Magistrate is not competent to pronounce upon title, validity of settlement deeds, genuineness of patta, or the correctness of a civil decree.



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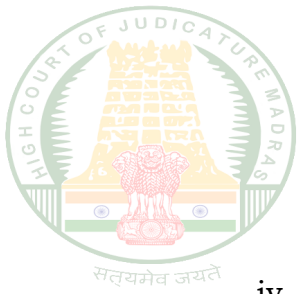
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31. Equally, however, this Court cannot lose sight of the nature of the impugned proceeding. The impugned proceeding, as placed before this Court, is essentially a direction to the parties to appear before the first respondent and produce relevant documents. It is not a final order declaring possession in favour of either party. It is not an order of attachment. It is not an order dispossessing the petitioner. It is not an order nullifying the decree of the Civil Court.

32. The petitioner's apprehension is that the first respondent may proceed to adjudicate the dispute contrary to the civil decree. Such apprehension, though not wholly unfounded in the factual background of the case, cannot by itself be a ground to quash a notice at its inception, especially when the petitioner has an opportunity to place all relevant materials before the first respondent.

33. The petitioner may produce before the first respondent:

- i. the judgment and decree in O.S.No.84 of 2012;
- ii. the records in E.P.No.14 of 2021;
- iii. the survey records and delivery-related documents;



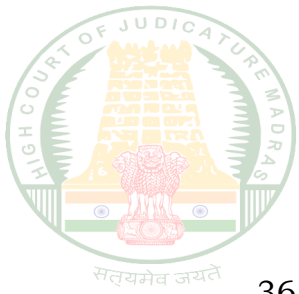
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- iv. the FIR in Crime No.184 of 2024;
- v. the orders passed in the execution applications, if any; and
- vi. all revenue records and patta proceedings relied upon by her.

34. Upon production of such materials, the first respondent is bound to consider whether, in the face of the civil decree and execution proceedings, it is either necessary or permissible to continue the preventive proceedings.

35. The contention of the petitioner that the existence of a civil decree is a relevant and weighty circumstance is undoubtedly correct. But whether the civil decree completely covers the question of actual possession, whether the parties before the Executive Magistrate are bound by the decree, whether execution has been completed, whether there is a public pathway dispute involving third parties, and whether there exists an imminent breach of peace are matters which the first respondent must examine at the first instance.



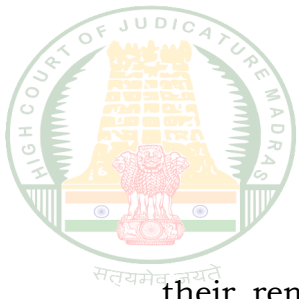
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36. The inherent jurisdiction of this Court under Section 528 BNSS is undoubtedly wide, but it is not meant to interdict every preliminary notice issued by a statutory authority. The power must be exercised sparingly, with circumspection, and only where the proceeding is manifestly without jurisdiction or amounts to abuse of process.

37. In the present case, since the impugned proceeding is only at the stage of notice and enquiry, this Court is not inclined to quash the same at the threshold. However, the first respondent cannot proceed as though there is no civil decree. The decree in O.S.No.84 of 2012 and the proceedings in E.P.No.14 of 2021 shall be given due legal weight.

38. It is made clear that the first respondent shall not adjudicate title. The first respondent shall not pass any order contrary to or in derogation of the decree of the competent Civil Court. If the parties have any grievance regarding the decree, execution, redelivery, obstruction or pathway, they must work out



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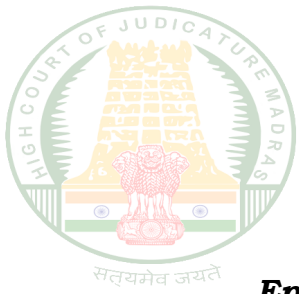
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their remedies before the competent Civil Court or in the pending writ proceedings, as the case may be.

39. The preventive jurisdiction may be exercised only to maintain public peace and not to unsettle civil rights already adjudicated. The first respondent shall therefore confine himself strictly to the statutory limits of Section 164 BNSS.

40. This Court finds that the impugned proceeding in M.C.No. 504/2024/A4 dated 30.07.2024 is only a notice requiring the parties to appear for enquiry and produce documents. No final order affecting the petitioner's rights has been passed.

41. Therefore, the challenge at this stage is premature. However, the petitioner is entitled to raise all objections before the first respondent, including the objection based on the civil decree, execution proceedings and alleged absence of jurisdiction.



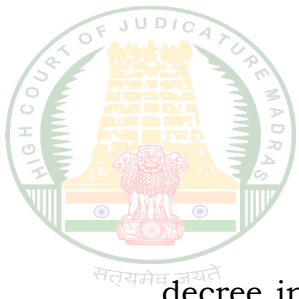
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Epilogue:

42. Preventive jurisdiction is a shield to preserve public peace; it is not a sword to cut through decrees of Civil Courts. The Executive Magistrate must remember that his authority under Section 164 BNSS is narrow, immediate and peace-preserving. It is not a substitute for civil adjudication. At the same time, a person summoned for a preventive enquiry cannot refuse to appear merely because she has a civil decree. The proper course is to appear, produce the decree, place all objections on record and require the Executive Magistrate to act within the bounds of law.

43. The balance of law, therefore, lies not in quashing the notice at its inception, but in directing the authority to proceed strictly in accordance with law, without trenching upon the jurisdiction of the Civil Court.

44. In the result, this Criminal Original Petition is disposed of directing the petitioner to appear before the first respondent / Revenue Divisional Officer / Sub-Divisional Magistrate and submit her explanation along with all relevant documents, including the



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decree in O.S.No.84 of 2012, the records in E.P.No.14 of 2021, and the FIR in Crime No.184 of 2024.

45. The first respondent shall consider the said materials and pass appropriate orders strictly in accordance with law, bearing in mind that he cannot decide title or pass any order contrary to the decree of the competent Civil Court. It is made clear that all the contentions of both parties are left open. Consequently, connected miscellaneous petitions are closed.

01.06.2026

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

To

1. The Sub Divisional Magistrate cum
Revenue Divisional Officer
Periyakulam,
Theni District.
2. The Sub inspector of Police,
Palanichettipatti Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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