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Selvakumar Vs. the Sub Divisional Magistrate Cum Revenue Divisional Officer Ponneri and Others

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Court : Chennai

Decided On : Oct-29-2012

Reported in : 2012(4)MLJ(CrI)593

Judge : B. Rajendran

Appeal No. : Criminal Revision Case No. 532 of 2012 and M.P. Nos. 1 and 2 of 2012

Appellant : Selvakumar

Respondent : The Sub Divisional Magistrate Cum Revenue Divisional Officer Ponneri and Others

Advocate for Pet/Ap. : For the Petitioner: M. Devaraj, Advocate. For the Respondents: R1, R2, R6 & R7, Mohammed Riyas, Government Advocate (CrI.side), R3, R4 & R5, Ms. Meenakumari, Advocate.

Judgement :

(Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. against the order passed by the Sub Divisional Magistrate cum Revenue Divisional Officer, Ponneri in proceedings No. Na.Ka.139/2012/M.C.B./2012/A2 dated 10.05.2012.)

The petitioner has come forward with this Criminal Revision Case as against the final order dated 10.05.2012 passed by the first respondent/Revenue Divisional Officer in the proceedings initiated by him under Section 145 of Criminal Procedure Code (in short Cr.P.C). In and by the said order dated 10.05.2012, the first respondent directed the authorities concerned to take appropriate action to cancel the patta issued in favour of the petitioner.

2. The petitioner challenges the impugned order dated 10.05.2012 of the first respondent mainly on the ground that the order dated 10.05.2012 was passed in violation of Section 145 (i) of Cr.P.C. inasmuch as there was no preliminary order passed by the first respondent before resorting to pass a final order. According to the petitioner, mere issuance of a summon before passing the final order cannot be deemed to be a preliminary order and therefore the impugned order cannot be sustained. Further, if there is an apprehension as to breach of law and order and a reference is made by the Police personnel, the first respondent ought to have taken an independent view of the situation and arrived at a subjective satisfaction to conclude that there exist a ground for initiation of proceedings under Section 145 of Cr.P.C. and only thereafter, the first respondent ought to have passed a preliminary order and to serve such preliminary order on the petitioner in accordance with law. In the absence of passing of such a preliminary order, the impugned final order passed by the first respondent cannot be legally sustainable, even though the petitioner participated in the proceedings. In support of this contention, the learned counsel for the petitioner relied on the decision of this Court reported in **(Indira and others vs. Dr. Vasantha and others) (1991) Crl.Law Journal 1798** to contend that before passing a preliminary order as contemplated under Section 145 (1) of Cr.P.C., the first respondent is estopped from passing a final order. In other words, before coming to a final conclusion, the first respondent ought to have passed a preliminary order and thereafter issued summons in accordance with law as held by this Court in the decision mentioned supra.

3. The learned counsel for the petitioner would further contend that there is a civil suit filed by the private respondents in which they sought for possession of the property and therefore, the impugned order passed by the first respondent would

amount to granting possession as prayed for by the respondents in the civil suit. Further, when the civil suit is pending before the competent Civil Court, the first respondent ought not to have passed the impugned order and prayed for setting aside the same.

4. On the other hand, the learned counsel appearing for the respondents 3, 4 and 5 would contend that the subject matter of the lands were originally allotted in favour of 224 *Burma* Repatriates and they were allotted small extent of lands in bits and pieces in order to rehabilitate them. After such allotment, the occupants have shifted from the lands allotted to them temporarily in search of employment and to eke out their livelihood. Taking advantage of their temporary absence, the petitioner, who is the son of the original owner, from whom the lands have been acquired and allotted to the repatriates, has created false and forged documents to make a claim over the lands in question, after lapse of several years. The petitioner had even sold a portion of the property to some third persons, which under law is punishable. The lands were originally acquired from the owner of the land by resorting to private negotiations and therefore, the petitioner is estopped from making any claim over the same. After such private negotiations, sale deeds were duly executed in favour of the Burma repatriates and in fact necessary orders were passed granting exemption from the Stamp Act to affix stamp on such sale deeds. Under those circumstances, in order to save their land, the repatriates have now formed an association and sought to retrieve the land which has been surreptitiously sold by the petitioner by forging false and fabricated documents. In fact, the civil suit has been filed and pending suit, injunction was sought for. Pending suit, since the purchaser attempted to change the patta, in respect of some of the portion of the land which were clandestinely sold, the descendants of the original repatriates, who were still in occupation of some of the lands, have given complaint to the Inspector of Police, Ponneri complaining attempts to grab the properties under their occupation forcefully. On the basis of such complaint, enquiry was conducted and a detailed report was given to the first respondent with a request to initiate appropriate proceedings under Section 145 of Cr.P.C. The first respondent, acting on the basis of such report given by the Inspector of Police, issued summons to both the parties in which the petitioner and the respondents 3, 4 and 5 have also participated. After conducting necessary enquiry, the first

respondent passed the impugned final order. Therefore, it is futile on the part of the petitioner to contend that the impugned order was passed without application of mind or without jurisdiction. The civil suit filed by the private respondents is not a bar for the first respondent to initiate the proceedings under Section 145 of Cr.P.C. when there is breach of law and order problem. Even other wise, by the impugned final order, the first respondent only issued appropriate directions to the concerned authorities to take action for cancellation of the patta issued in favour of the petitioner in accordance with law.

5. The learned counsel for the respondents 3, 4 and 5 also brought to the notice of this Court the subsequent development in this case. According to the learned counsel for the respondents 3, 4 and 5, the District Registrar, North Chennai initiated further action and in fact the sale deed in favour of the third person which came into existence during the year 2008 was ordered to be cancelled and the name of the purchaser was ordered to be removed from the register of the concerned Registering authorities. The learned counsel for the respondents 3, 4 and 5 also brought to the notice of this Court that as against the order passed by the District Registrar, North Chennai, the petitioner preferred an appeal and the same is pending. Therefore, when the sale deed itself was cancelled by the District Registrar, who is competent to do so, the question of the petitioner allegedly remaining in possession of the properties does not arise. In any view of the matter, the impugned order passed by the first respondent is in accordance with law and it does not call for any interference by this Honourable Court.

6. It is also brought to the notice of this Court by the counsel for the respondents 3, 4 and 5 that in the report dated 19.04.2012 of the seventh respondent namely the Special Tahsildar, Repatriates Rehabilitation, Thiruvallur it is stated that soon after the conclusion of private negotiation for acquiring the lands for rehabilitating the Burma repatriates, sale deeds were executed in favour of the allottees and appropriate orders were also obtained from the competent authority for exemption of payment of stamp duty by issuing G.O. Ms. No.1291, Revenue Department dated 29.04.1971. It was further stated that there are 274 approved plots allotted to the Burma repatriates. This report dated 19.04.2012 fortify the submission of the respondents 3, 4 and 5 that lands were allotted in favour of Burma repatriates way

back in the year 1971 and from that date, the allottees were in possession of the lands.

7. The learned Government Advocate appearing for the respondents 1, 2, 6 and 7, relying on the counter affidavit filed by the first respondent, would contend that the order passed by the first respondent is in accordance with the provisions of Section 145 of Cr.P.C. In and by the final order, the first respondent has not decided the title of any person and only ordered to cancel the patta in accordance with law, meaning thereby, the patta has to be cancelled if there exist any ground for cancellation of the same, as per law. Therefore, the impugned order only directs cancellation of the patta as per law and it cannot be called in question by the petitioner. Further, the District Registrar, North Chennai passed an order for cancellation of the sale deeds and based on the same, the sale deed in favour of third persons were also cancelled. As against the same, appeal has been filed and the same is pending before the appellate authority. Under those circumstances, the first respondent is justified in passing the impugned order and he prayed for dismissal of this Criminal Revision Case.

8. I heard the counsel for both sides and perused the materials placed on record. When we analyse the impugned proceedings of the first respondent, it could be seen that the origin for initiation of the proceedings under Section 145 of Cr.P.C. is the complaint given by the Burma repatriates to the Inspector of Police, Ponneri and based on the same, the case in Crime No. 9 of 2012 came to be registered on 03.01.2012. After conducting investigation on the basis of the complaint, the Inspector of Police, Ponneri submitted a report to the first respondent, who in turn issued a notice dated 21.03.2012 to both the parties to appear for an enquiry to be held on 09.04.2012. When we analyse this notice dated 21.03.2012, in the 'subject' column, it is clearly stated that "summons for participating in the personal enquiry on 09.04.2012 in respect of the proceedings initiated under Section 145 of Cr.P.C.". In the reference column, the first respondent referred to the case in Crime No. 9 of 2012 dated 03.01.2012 on the file of the Inspector of Police, Ponneri and the earlier proceedings in e/f/vz; 139/2012/m2 dated 09.01.2012 of the first respondent. When we read this notice, it is clearly stated by the first respondent that there is a dispute as to the ownership of the property between A

and B parties and there is likelihood of breach of peace, therefore, the notice dated 21.03.2012 was issued by the first respondent invoking Section 145 (1) of the Cr.P.C. and called upon both the parties to the dispute to appear for a personal enquiry to be conducted on 09.04.2012. Therefore, it is evident that the first respondent has considered the report filed by the Inspector of Police, Ponneri, applied his mind as to the existence of the dispute between both sides, which was likely to cause breach of peace and issued the preliminary notice dated 21.03.2012. Pursuant to this notice, both sides appeared for an enquiry on 09.04.2012. The first respondent heard both sides and afforded them sufficient opportunity. A reference is also made to another proceedings in e/f/vz; 139/2012/m2 dated 09.01.2012 of the first respondent about the prior notice. Therefore, the notice and order is passed after complying with all the formalities including the contents of the report of the police. However, the petitioner, during the course of such hearing, did not raise the plea that the first respondent did not pass a preliminary order as required under Section 145 (1) of Cr.P.C.

9. As stated supra, the notice dated 21.03.2012 issued by the first respondent is in conformity with the procedure contemplated under Section 145 (1) of Cr.P.C. inasmuch as the first respondent applied his mind as to the existence of dispute between both sides, which was likely to cause breach of peace as well as a law and order problem. Therefore, the reliance made by the counsel for the petitioner to the decision of this Court reported in **(Indiraand others vs. Dr. Vasantha and others) (1991) Crl.Law Journal 1798** cannot be made applicable to the facts and circumstances of this case, as, in the present case, the first respondent had passed a preliminary order dated 21.03.2012 which is in conformity with the procedures contemplated under Section 145 (1) of Cr.P.C. In fact, in the decision relied on by the counsel for the petiitoner, it was held that the Revenue Divisional Officer need not pass an elaborate order but there must be some indication in the notice, which require the first respondent to conduct an enquiry under Section 145 of Cr.P.C. Such an indication is very much available in the preliminary notice dated 21.03.2012 issued by the first respondent in this case and therefore it cannot be said that the first respondent did not apply his mind to the existence of the dispute, which is likely to cause breach of peace. The relevant passage of the judgment of this Court can usefully be extracted hereunder:-

"9.Though the Magistrate was not obliged to elaborately set out the entire details of the information received by him, the preliminary order, on the face of it, should set out the grounds of the Magistrate being so satisfied or at least employ language to similar effect so as to indicate that he had applied his judicial mind to the information, in coming to the conclusion that there was in existence a dispute, which dispute was likely to cause breach of peace, necessitating initiation of proceedings under Section 145, Cr.P.C.. If there was absolutely nothing in the preliminary order showing expressly the ground of his being so satisfied, which are in the nature of conclusions arrived at by him, on the report or information placed before him, it would be impossible for the parties called upon to put in their claims before him, to predicate as to what had led the Magistrate to pass such an order and to make their effective representations before him....."

10. In the light of the above, the main ground of attack made by the counsel for the petitioner that the first respondent failed to follow the procedure contemplated under Section 145 of Cr.P.C. cannot be sustained especially when the first respondent indicated in the notice dated 21.03.2012 as to the existence of the dispute between the parties, which is likely to cause breach of peace.

11. The next point urged on behalf of the petitioner is that there is a civil suit between the parties and therefore, the first respondent ought not to have initiated the proceedings under Section 145 of Cr.P.C. and passed the impugned final order directing the authorities concerned to cancel the patta issued in favour of the petitioner. Admittedly, a suit in O.S. No. 147 of 2010 on the file of the learned District Munsif, Ponneri was instituted by Nethaji Nagar Burma Tamizhargal Munnetra Nala Sangam, rep. by its Secretary M. Raju against one Balammal and others praying for the following relief:-

"(a) For declaration that transferring of patta in favour of defendants 1 to 5 by defendants 6 and 7 bearing patta No. 231 in respect of S.No.146 to patta No.799 by subdividing S.No. 146 to 146/1A in respect of land at Periakavanam Village in respect of the property is null and void

(b) For mandatory injunction directing the defendants 6 and 7 to cancel the patta bearing patta No.799 in respect of New S.No.146/1A at Periakavanam Village

issued in favour of defendants 1 to 5.

(c) For permanent injunction restraining the defendants 1 to 5, their men, agents and servants from encumbering the property in any way to third parties based on the patta bearing No. 799 bearing S.No.146/1A at Periakavanam Village

(d) For permanent injunction restraining the defendants 1 to 5, their men, agents and servants from interfering with the possession and enjoyment of the members of the plaintiff's Sangam

(e) for cost of the suit and pass such or other orders.

12. Thus, it is evident that the suit was instituted in the year 2010 and it is pending adjudication. The suit was filed for the relief of declaration and a consequential injunction. The suit came to be instituted since the subsequent purchasers attempted to encumber or alienate the property and also to put up a construction thereon. It is also seen from the records that originally, interim injunction was granted by the civil Court and thereafter the application for interim injunction was dismissed for non-prosecution. The defendants in the suit have also filed their written statement and the suit is pending for adjudication. It is also seen that pending suit, the defendants therein along with others have attempted to dispossess the members of the plaintiff sangam by attempting to pull down the super structure by means of a JCB machine. Therefore, the instant complaint was given to the Inspector of Police, Ponneri seeking to initiate necessary action against the offenders. It was also complained therein that the members of the plaintiff sangam are in occupation of the properties allotted to them in bits and pieces and their possession has to be safeguarded. It was also complained that taking advantage of the situation that most of the members of the plaintiff's sangam have shifted temporarily in search of job, the original vendor, whose lands were allotted to the members of the plaintiff's sangam through private negotiation, instigated his son, the petitioner herein, to produce false documents and to incorporate necessary changes in the entries in the revenue records. It was also complained that some of the members of the plaintiff's sangam are still in occupation of the lands allotted to them.

13. It is evident from the relief sought for in the suit and the proceedings initiated by the first respondent under Section 145 of Cr.P.C. that there was no nexus or connection to the filing of the suit as well as the initiation of the proceedings by the first respondent under Section 145 of Cr.P.C. In fact, photographs were produced in the typed set of papers would indicate that JCB machines were used to pull down the superstructures put up by the members or descendants of Burma repatriates, as the case may be. Under those circumstances only, the complaint was given to The Inspector of Police, Ponneri which was the basis for initiation of the proceedings under Section 145 of Cr.P.C. by the first respondent. Even in the order passed by the first respondent, which is impugned in this Criminal Revision Case, the first respondent had only issued a direction to the concerned authorities to cancel the patta in accordance with law. The relevant passage of the impugned order is extracted hereunder:-

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14. It is seen from the final order passed by the first respondent that the first respondent has not expressed any opinion as to the possession or otherwise of both sides. What was stated or recommended therein is that necessary action has to be taken for cancellation of the patta in accordance with law, meaning thereby the first respondent left the matter to be decided by the concerned authorities after following due process of law. The order passed by the first respondent, is, therefore, only recommendatory in nature, for initiation of further proceedings. Therefore, this order cannot be construed to be an order in violation of Section 145 of the Cr.P.C. or it was passed in derogation to or detrimental to the pendency of a decision in the civil suit pending before the Civil Court. Therefore, the grounds urged by the counsel for the petitioner cannot be sustained and I do not find any reason to interfere with the order passed by the first respondent.

15. The learned counsel for the respondents 3, 4 and 5 also brought to the notice of this Court the subsequent development, by which, the sale deeds executed in favour of third persons in respect of the property in question, were cancelled by an order dated 08.05.2012 of the District Registrar, North Chennai. A perusal of the order dated 08.05.2012 of the District Registrar, North Chennai, which is enclosed

in the typed set of papers, would indicate that based on the complaint dated 05.01.2012 of the Association namely Burma Tamizhargal Munnettra Nala Sangam, an enquiry was conducted by the District Registrar, North Chennai and after such enquiry, invoking Section 83 of the Registration Act, the District Registrar cancelled all the pattas issued in respect of the lands allotted in favour of Burma Repatriate and ordered to issue fresh patta in favour of the descendants of the Burma Repatriates or the Burma repatriates as the case may be. Thus, it is evident that the cancellation of the sale deed has taken place after giving due notice to both sides and after affording opportunity to the parties concerned. In fact, as against the order dated 08.05.2012, the petitioner has also filed appeal and the same is pending. Therefore, when the sale deed in favour of the persons, who now claim right over the properties, have been duly cancelled by the appropriate and competent authority, the first respondent is right in only issuing a direction to adhere the provisions of law and cancel all the patta issued in favour of third persons. It is needless to mention that it is always open to the petitioner to participate in the proceedings, if any, initiated pursuant to the order passed by the first respondent and prove his case. However, taking into consideration the limited scope of direction issued by the first respondent to initiate appropriate action as per law, I am not inclined to interfere with the order passed by the first respondent.

16. In the light of the above discussion, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

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